



Meeting Agenda Planning Commission

Tuesday, January 25, 2022

7:30 PM

Betty J. Glick Assembly Chambers

Zoom Meeting ID: 907 714 2200 - Special Hearings

The hearing procedure for the Planning Commission public hearings are as follows:

- 1) Staff will present a report on the item.
- 2) The Chair will ask for petitioner's presentation given by Petitioner(s) / Applicant (s) or their representative – 10 minutes
- 3) Public testimony on the issue. – 5 minutes per person
- 4) After testimony is completed, the Planning Commission may follow with questions. A person may only testify once on an issue unless questioned by the Planning Commission.
- 5) Staff may respond to any testimony given and the Commission may ask staff questions.
- 6) Rebuttal by the Petitioner(s) / Applicant(s) to rebut evidence or provide clarification but should not present new testimony or evidence.
- 7) The Chair closes the hearing and no further public comment will be heard.
- 8) The Chair entertains a motion and the Commission deliberates and makes a decision.

All those wishing to testify must wait for recognition by the Chair. Each person that testifies must write his or her name and mailing address on the sign-in sheet located by the microphone provided for public comment. They must begin by stating their name and address for the record at the microphone. All questions will be directed to the Chair. Testimony must be kept to the subject at hand and shall not deal with personalities. Decorum must be maintained at all times and all testifiers shall be treated with respect.

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF CONSENT AND REGULAR AGENDA

All items marked with an asterisk () are consent agenda items. Consent agenda items are considered routine and non-controversial by the Planning Commission and will be approved by one motion. There will be no separate discussion of consent agenda items unless a Planning Commissioner so requests in which case the item will be removed from the consent agenda and considered in its normal sequence on the regular agenda.*

If you wish to comment on a consent agenda item or a regular agenda item other than a public hearing, please advise the recording secretary before the meeting begins, and she will inform the Chairman of your wish to comment.

1. Time Extension Request
2. Planning Commission Resolutions
3. Plats Granted Administrative Approval
4. Plats Granted Final Approval (KPB 20.10.040)
5. Plat Amendment Request
6. Commissioner Excused Absences
7. Minutes

D. OLD BUSINESS**E. NEW BUSINESS**

[KPB-3875](#) CLUP Modification Application
Applicant: Cook Inlet Region, Inc.

Attachments: [1. Hearing Agenda 012522](#)
[1.CIRI Remand MEMO w attachments](#)
[Appeal Packet CIRI CLUP](#)

[KPB-3876](#) CLUP Application
Applicant: Beachcombers, LLC

Attachments:

- [1. Hearing Agenda_012522](#)
- [3. Volume 2 - Beachcomber_R](#)
- [2. Volume 1 - Beachcomber_R](#)
- [4. HEARING OFFICER'S DECISION - BEACHCOMBER REMAND \(00884169x](#)
- [5. Hearing Packet](#)
- [6. Meeting Summary](#)
- [7. Transcript Volume 1](#)
- [Transcript Volume 2](#)
- [9. CERTIFICATE OF SERVICE DECISION ON RECONSIDERATION](#)
- [10. TRANSMITTAL OF AGENCY RECORD](#)
- [11. Bilben Mtn for Reconsideration](#)
- [12. Bilben - Objection to Adjudicatory Session](#)
- [13. Beachcomber MEMO w attachments](#)

F. PLAT COMMITTEE REPORT

G. OTHER

H. PUBLIC COMMENT/PRESENTATION

(Items other than those appearing on the agenda or scheduled for public hearing. Limited to five minutes per speaker unless previous arrangements are made)

I. DIRECTOR'S COMMENTS

J. COMMISSIONER COMMENTS

K. ADJOURNMENT

MISCELLANEOUS INFORMATIONAL ITEMS

NO ACTION REQUIRED

NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING

The next regularly scheduled Planning Commission meeting will be held Monday, [INSERT DATE] in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley Street, Soldotna, Alaska at 7:30 p.m.

CONTACT INFORMATION

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Phone: 907-714-2215

Phone: toll free within the Borough 1-800-478-4441, extension 2215

Fax: 907-714-2378

e-mail address: planning@kpb.us

website: <http://www.kpb.us/planning-dept/planning-home>

A party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances. An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the filing and records preparation fees. Vacations of right-of-ways, public areas, or public easements outside city limits cannot be made without the consent of the borough assembly.

Vacations within city limits cannot be made without the consent of the city council. The assembly or city council shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received within the specified period, it shall be considered that consent was given.

A denial of a vacation is a final act for which the Kenai Peninsula Borough shall give no further consideration. Upon denial, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.



Planning Commission Hearing Agenda

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2215 • (907) 714-2378 Fax
Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

Melanie Aeschliman, Planning Director • Charlie Pierce, Borough Mayor

Blair Martin, Chair – District 2-Kenai ~ Robert Ruffner, Vice Chair – District 7-Central

Syverine Abrahamson-Bentz, Parliamentarian – District 9-South Peninsula ~ Jeremy Brantley – District 5-Sterling/Funny River

Pamela Gillham – District 1-Kalifornsky ~ Virginia Morgan – District 6-East Peninsula ~ Vacant – District 3-Nikiski ~ Vacant – District 8-Homer

Diane Fikes – City of Kenai ~ Vacant – City of Seward ~ Vacant – City of Soldotna ~ Vacant – City of Seldovia ~ Franco Venuti – City of Homer

**January 25, 2022
7:30 p.m.**

**Zoom Meeting Link: <https://us06web.zoom.us/j/9077142200>
Zoom Toll Free Phone Numbers: 888-788-0099 or 877-853-5247
Zoom Meeting ID: 907 714 2200**

To join the meeting from a computer visit the Zoom meeting link above. If you connect by computer and do not have speakers or a microphone, connect online and then select phone for audio. A box will come up with toll free numbers, the meeting ID, and your participant number. To attend the Zoom meeting by telephone use the Zoom toll free phone numbers listed above.

****Please note the records on these items have not been reopened, no new evidence will be accepted nor is public comment opened. It is also possible that the Commission will elect to deliberate these matters in an adjudicative session.***

HEARINGS

1. Conditional Land Use Permit Modification Application
Applicant: Cook Inlet Region, Inc.
Parcel ID # 065-081-18
Sterling Area
2. Conditional Land Use Permit Application
Applicant: Beachcomber, LLC
Parcel ID # 169-010-67
Anchor Point Area

MISCELLANEOUS INFORMATIONAL ITEMS

CONTACT INFORMATION

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Phone: 907-714-2215

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Fax: 907-714-2378

e-mail address: planning@kpb.us

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MEMORANDUM

TO: Blair Martin, Chair
Member, Kenai Peninsula Planning Commission

FROM: Sean Kelley, Borough Attorney

DATE: December 21, 2021

RE: Setting the Remand Hearing Date ITMO: Cook Inlet Region, Inc. CLUP modification application

The purpose of this scheduling discussion is for the Planning Commission to set a date to consider this matter consistent with the Court's remand decision. The Commission should not discuss the merits of the application during the scheduling discussion.

On December 2, 2021, Administrative Law Judge Rebecca Kruse entered an *Order for Remand* in the matter of *Rosenberg v. Cook Inlet Region, Inc.* (CIRI) regarding a conditional land use permit (CLUP) modification application filed by CIRI. The order highlights that the KPB Planning Commission decision on appeal states that “[c]ompliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in the KPB 21.29.040.”

The Order for Remand, at page 2-3, provides that:

“On remand, in light of the superior court's holding in *Bilben*, the Planning Commission should review CIRI's CLUP modification application to determine whether it meets the standards of KPB 21.29.040, not merely whether it includes the mandatory conditions in KPB 21.29.050 – similar to how the Commission reviewed CIRI's CLUP application in 2017.

It does not appear that the Commission's understanding of its discretion under KPB 21.29.040 impacted the development of the factual record. Thus Commission should be able to review CIRI's CLUP modification on remand without opening the record for

new evidence. If the Commission determines that it is has insufficient facts to proceed, however, the Borough Code does not prohibit opening the record.

One issue where the record is lacking relates to a procedural argument raised by CIRI in its opening statement. As CIRI points out, only a party of record may appeal a Planning Commission decision. One of the requirements to be a party of record is to own land within the "notification radii." It is thus unclear from the record whether Mr. Rosenberg had the right to appeal the Planning Commission's decision. A list of the landowners within the half mile radius who were mailed notice would clear up any question about who is a potential party of record."

The Order for Remand and the motion for joint stipulation filed by the parties in this matter are attached for review.

On January 10, 2021 the Planning Commission should determine when to set a remand hearing and the procedure that will be followed on remand, including whether or not the Commission finds it necessary to open the record for new evidence.

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL BY THE KENAI BOROUGH PLANNING COMMISSION**

In the matter of the Kenai Peninsula Borough)	
Planning Commission’s decision to approve the)	
Modification of a conditional land use permit)	
That was requested for KPB Parcel 06508118,)	
legally described as he East ½, the East ½ of the)	
West ½, and the Northwest ¼ of the Northwest ¼,)	
Of Section 16, Township 5 North, Range 8 West,)	
Seward Meridian)	
)	
ERIC F. ROSENBERG,)	
Appellant.)	
)	
v.)	
)	
COOK INLET REGION, INC.,	)	OAH No. 21-2058-MUN
Applicant.	)	Agency No. 2021-03-PCA
)	

ORDER FOR REMAND

On December 6, 2021, Appellant Eric Rosenberg and Applicant Cook Inlet Region, Inc. (“CIRI”) filed a joint motion and stipulation to remand this matter to the Kenai Peninsula Borough Planning Commission. The motion states that the Borough does not oppose the motion. Thus time for response does not need to be provided under KPB Code 21.20.300(B).

The parties have requested a remand in response to a September 2, 2021 superior court decision in *Hans Bilben v. Kenai Peninsula Borough, Planning Commission*, which Mr. Rosenberg attached to his Opening Statement.¹ In *Bilben*, the court explained that the Commission had previously interpreted KPB 21.29 as providing it discretion to approve or disapprove a Conditional Land Use Permit (“CLUP”), even when the application includes the mandatory conditions set forth in KPB 21.29.050.² In a 2018 appeal, a hearing officer held that the Commission did not have this discretion and remanded to the Commission for further findings.³ On appeal of the Commission’s decision on remand, the superior court held that the Commission does, in fact, have discretion to adjudicate CLUP applications that include the mandatory conditions.⁴

¹ 3KN-20-00034CI (Sept. 2, 2021).
² *Id.* at 2.
³ *Id.* at 3.
⁴ *Id.* at 10-15.

The record in this matter tracks the changing code interpretations at play in *Bilben*. The Planning Commission approved CIRI’s CLUP in 2017 at a time when the Commission interpreted the code as providing discretion to approve or disapprove applications. Indeed, the Commission exercised that discretion in requiring an additional condition not included in the KPB 21.29.050 mandatory conditions.⁵ When CIRI applied to modify this CLUP in 2021, however, the Commission had received the hearing officer’s decision in *Bilben* stating that it did not have discretion to scrutinize a CLUP application that complied with KPB 21.29.050. Thus the decision on appeal here states that “[c]ompliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in the KPB 21.29.040.”⁶

When an appeal raises changed circumstances that could not have been presented to the Planning Commission, the matter will be remanded to the Commission for further proceedings.⁷ While changed circumstances would typically mean changes to the facts, there can also be a change to the law — or in how the Commission is to interpret the law. Here, the Commission reviewed CIRI’s application and issued its decision August 9, 2021 based on how a hearing officer in *Bilben* had instructed it to interpret KPB 21.29. The superior court’s decision a month later held the Commission needs to apply a different interpretation. That change in how the Commission should interpret the Borough Code is a changed circumstance that requires remand.

On remand, in light of the superior court’s holding in *Bilben*, the Planning Commission should review CIRI’s CLUP modification application to determine whether it meets the standards of KPB 21.29.040, not merely whether it includes the mandatory conditions in KPB 21.29.050 — similar to how the Commission reviewed CIRI’s CLUP application in 2017.

It does not appear that the Commission’s understanding of its discretion under KPB 21.29.040 impacted the development of the factual record. Thus Commission should be able to review CIRI’s CLUP modification on remand without opening the record for new evidence. If the Commission determines that it is has insufficient facts to proceed, however, the Borough Code does not prohibit opening the record.

One issue where the record is lacking relates to a procedural argument raised by CIRI in its opening statement. As CIRI points out, only a party of record may appeal a Planning

⁵ R-38 (requiring CIRI’s reclamation plan to include the requirements set forth in KPB 21.29.060(C)(3)).

⁶ R-10.

⁷ KPB 21.20.330(A).

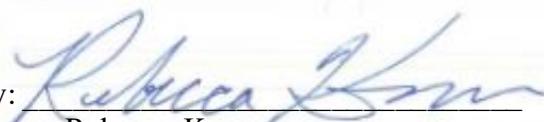
Commission decision.⁸ One of the requirements to be a party of record is to own land within the “notification radii.”⁹ The record states that notice was mailed to 255 landowners and leaseholders within a one-half mile radius of “subject parcels.”¹⁰ The record also includes a map depicting this notification radius.¹¹ The record indicates that Mr. Rosenthal is an attorney practicing law in Maryland, but also includes statements from Mr. Rosenthal that he owns and operates a business on Moonshine Drive in Soldotna.¹² CIRI argued that Mr. Rosenberg’s land is not within the notification radius and therefore he is not a party of record who could appeal.¹³ Mr. Rosenberg responded that he “lives on Moonshine Drive” and pointed to the notification radius map.¹⁴ But according to the map, not all parcels of land along Moonshine Drive are within the notification radius.¹⁵ It is thus unclear from the record whether Mr. Rosenberg had the right to appeal the Planning Commission’s decision. A list of the landowners within the half mile radius who were mailed notice would clear up any question about who is a potential party of record. Presumably the Borough has documentation of the notice it provided. On remand, the Commission is encouraged to add this information to the record.

Accordingly, Planning Commission Resolution 2021-26 is remanded to the Commission to review whether CIRI’s CLUP modification application meets the standards of KPB 21.29.040 in addition to including the mandatory conditions set forth in KPB 21.29.050. The Commission may, but is not required to, open the record for additional input from parties or the public. The Commission is, however, encouraged to add information to the record identifying the landowners within the notification radius.

This is not a final decision and therefore it is not appealable to superior court under KPB 21.20.360. Because this matter is remanded to the Commission, the hearing scheduled for December 7, 2021 is cancelled.

DATED: December 6, 2021.

By:



Rebecca Kruse
Administrative Law Judge

⁸ KPB 21.250(A); CIRI Opening Statement at 9.

⁹ KPB 21.20.210(A)(5).

¹⁰ R-10.

¹¹ R-47.

¹² R-53-55

¹³ CIRI Opening Statement at 9-10.

¹⁴ Rosenberg Reply at 3.

¹⁵ R-47.

Certificate of Service: I hereby certify that on the December 6, 2021 a true and correct copy of this document was served on the following by e-mail to the following listed below:

Eric Rosenberg
ERosenberg@rosenberg-fayne.com

Niki Pereira
niklnuk@gci.net

Suzanne Settle
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Johni Blankenship
JBlankenship@kpb.us

By: *Haley Canfield*
Office of Administrative Hearings

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON BEHALF
OF THE KENAI PENINSULA BOROUGH PLANNING COMMISSION

In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve the Modification of a conditional land use permit That was requested for KPB Parcel 06508118, legally described as he East 1/2, the East 1/2 of the West 1/2, and the Northwest 1/4 of the Northwest 1/4, Of Section 16, Township 5 North, Range 8 West, Seward Meridian

ERIC F. ROSENBERG,
Appellant,

v.

COOK INLET REGION, INC.,
Applicant.

OAH No. 21-2058-MUN
Agency No. 2021-03-PCA

MOTION ON JOINT STIPULATION TO REMAND

Pursuant to KPB 21.20.300, Applicant Cook Inlet Region, Inc. ("CIRI") and Appellant Eric F. Rosenberg (together, the "Parties") hereby submit the following joint stipulation to remand of the Kenai Peninsula Borough Planning Commission's ("Commission's") approval CIRI's modification of its Conditional Land Use Permit, PC Resolution 2021-26. The Parties have agreed that PC Resolution 2021-26 should be remanded to the Commission in light of the September 3, 2021 order issued by the Alaska Superior Court in *Hans Bilben, et al. v. Kenai Peninsula Borough Comm'n and*

JOINT STIPULATION FOR REMAND
ERIC F. ROSENBERG v. COOK INLET REGION, INC.
OAH No. 21-2058-MUN
Page 1 of 3

Beachcomber, LLC, et al., Appeal Case 3KN-20-00034CI¹ (hereinafter “*Beachcomber* decision”). The Parties request that OAH, pursuant to KP.B 21.20.300.C, instruct the Commission on remand to determine whether it can make the necessary factual findings to ensure consistency with the *Beachcomber* decision based off the existing record or if it should augment the existing record with a public hearing.

The Parties have conferred with the Kenai Peninsula Borough and the other parties who entered appearances in this appeal, and the Parties have confirmed that there is no opposition to this stipulation. A proposed order granting remand is attached.

DATED: December 3, 2021.

PERKINS COIE LLP

By: /s/ Cameron Jimmo
Cameron Jimmo, Alaska Bar No. 1711055
CJimmo@perkinscoie.com

Attorneys for Appellee
COOK INLET REGION, INC.

By: /s/ Eric F. Rosenberg
Eric F. Rosenberg
ERosenberg@rosenberg-fayne.com

Appellant

¹ See Appellant’s Opening Statement (Nov. 12, 2021), at Exhibit A.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 3, 2021, a true and correct copy of the foregoing document was served by email on:

Eric Rosenberg
ERosenberg@rosenberg-fayne.com

Richard Schiefelbein
rick@anchorconstruction.info

Suzanne Settle
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Cindy Hamlin
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Sean Kelley
KPB Borough Attorney
legal@kpb.us
skelley@kpb.us

/s/ Tae Kim

Tae Kim
Legal Practice Assistant

PC RESOLUTION 2021-26

**APPEAL OF THE KENAI PENINSULA BOROUGH
PLANNING COMMISSION
APPROVAL OF A MODIFICATION TO
CONDITIONAL LAND USE PERMIT
IN THE SOLDOTNA**

KPB Tax Parcel ID#: 065-081-18

Legal Description:

**East ½, East ½ of the West ½ , & the Northwest ¼ of the
Northwest ¼ of Section 16, Township 5 North, Range 8 West,
Seward Meridian, Alaska, Excluding the Sterling Highway
Right-of-Way**

Applicant:

Cook Inlet Region, Inc.

Landowner:

Cook Inlet Region, Inc.

INDEX

Record Page #	Document Name
R-1 to R-8	Conditional Land Use Permit Application
R-9 to R-13	KPB Planning Commission Resolution 2021-26
R-14 to R-18	August 12, 2021 Notice of Decision
R-19 to R-70	Meeting Packet & Desk Packet July 12, 2021 Memo to Planning Commission July 27, 2021
R-71 to R-76	Miscellaneous / Additional Information
R-77 to R-86	Planning Commission Minutes July 12, 2021
R-87 to R-95	Planning Commission Minutes August 9, 2021

VERBATIM TRANSCRIPT

T1 to T-16	Verbatim Transcript / Index July 12, 2021
T-17 to T-39	Verbatim Transcript / Index August 9, 2021

CONDITIONAL LAND USE PERMIT APPLICATION



Planning Department

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

Charlie Pierce
Borough Mayor

PC Resolution #. _____

App. Complete _____

KPB 21.29 Conditional Land Use Permit Modification Application

For a Sand, Gravel or Material Site

I. APPLICANT INFORMATION

Applicant Cook Inlet Region, Inc. Landowner Same as Applicant

Address PO Box 93330 Address _____

City, State, Zip Anchorage, AK 99509-3330 City, State, Zip _____

Telephone 907-263-5150 Fax _____ Telephone _____ Fax _____

Cell Phone 907-240-6861 Cell Phone _____

Email ssettle@ciri.com Email _____

II. CURRENT PERMITTED PARCEL INFORMATION

KPB Tax Parcel ID# 065-081-18 Township 5N Range 8W Section 16

Subdivision _____ Lot _____ Block _____ Parcel acreage _____

Legal Description T 5N R 8W SEC 16 SEWARD MERIDIAN KN E1/2 & E1/2 W1/2 & NW1/4
NW1/4 EXCEPT THAT PORTION PER W/D 383 @ 681

III. INFORMATION/DOCUMENTATION "Check" boxes below to indicate items included.

- \$300.00 permit processing fee payable to: Kenai Peninsula Borough. (Include Parcel # on check comment line.)
- Site Plan Diagram, to scale, showing:
 - parcel boundaries
 - existing required buffers
 - existing and/or proposed processing area(s)

Permit Modification Worksheet

Applicant Cook Inlet Region, Inc. Owner Same as applicant

CURRENT PERMITTED KPB Tax Parcel ID # 065-081-18 Parcel Acreage appr. 600

1. Reason(s) for requesting permit modification: Excavation of material to improve the Sterling highway, competent to meet Alaska Transportation Department specifications for highway construction

2. Additional cumulative acres to be disturbed (excavation plus stockpiles, berms, etc.) 61 acres

3. Additional type(s) of material to be mined (circle all that apply): gravel sand peat other

4. Additional equipment to be used (circle all that apply): excavation processing other _____

5. Modification(s) is requested on current permit buffers: _____ yes X no

CURRENT PERMIT REQUIRED BUFFERS – “check” all types, and circle all directions that apply:

- | | | | | |
|--|----------|----------|----------|----------|
| <input checked="" type="checkbox"/> 50 ft. of natural or improved vegetation | <u>N</u> | <u>S</u> | <u>E</u> | <u>W</u> |
| <input type="checkbox"/> minimum 6 ft. earthen berm | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. fence | N | S | E | W |
| <input type="checkbox"/> other _____ | N | S | E | W |

MODIFIED BUFFER REQUEST, if applicable – “check” all types, and circle all directions that apply:

- | | | | | |
|--|----------|----------|----------|----------|
| <input checked="" type="checkbox"/> 50 ft. of natural or improved vegetation | <u>N</u> | <u>S</u> | <u>E</u> | <u>W</u> |
| <input checked="" type="checkbox"/> minimum 6 ft. earthen berm | <u>N</u> | <u>S</u> | <u>E</u> | <u>W</u> |
| <input type="checkbox"/> minimum 6 ft. fence | N | S | E | W |
| <input type="checkbox"/> other _____ | N | S | E | W |

6. Permit modification is requested due to subdivision of originally permitted parcel? _____ yes X no

7. Permit modification to enter the water table is requested? _____ yes X no

8. Additional excavation depth beyond permitted depth: 20 ft.

Depth to groundwater: More than 20 ft.

9. Voluntary permit conditions proposed (additional buffers, dust control, limited hours of operation, etc.):

A. Berms along North (Sterling Highway), West (Tikahtnu Road) and East (Keani Keys Road) edge of excavation

B. _____

- all encumbrances on parcel, including easements
 - points of ingress and egress
 - existing permitted extraction area(s)
 - proposed additional extraction area(s) and/or other requested permit modifications(s)
 - a north arrow and diagram scale
 - preparer's name and date
- Permit Modification Worksheet (attached)

IV. CERTIFICATION STATEMENT

The information contained on this form and attachments are true and complete to the best of my knowledge. I grant permission for borough staff to enter onto the property for the purpose of processing the permit modification request.

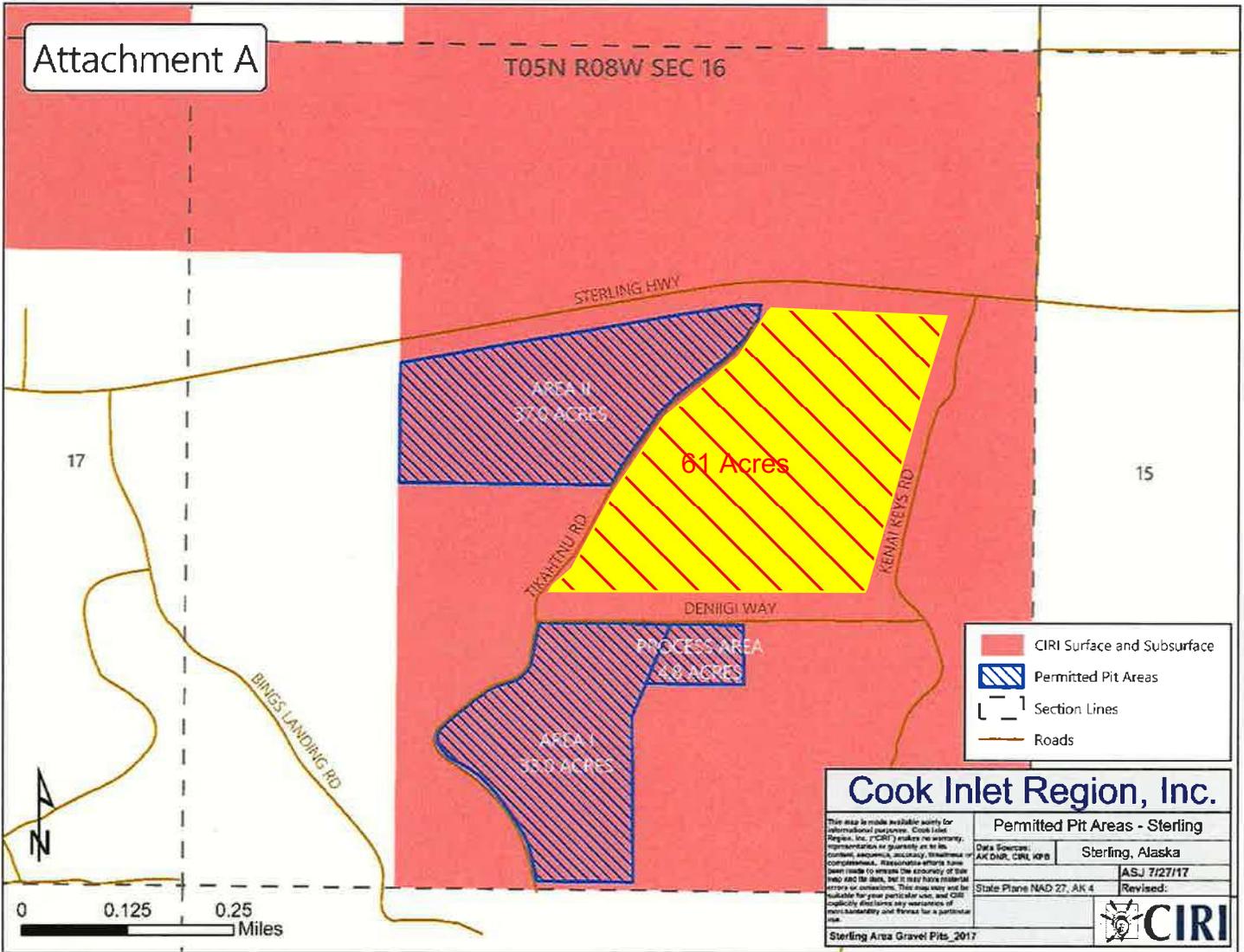

Applicant Signature

June 21, 2021
Date

Property Owner Signature
(required if not applicant)

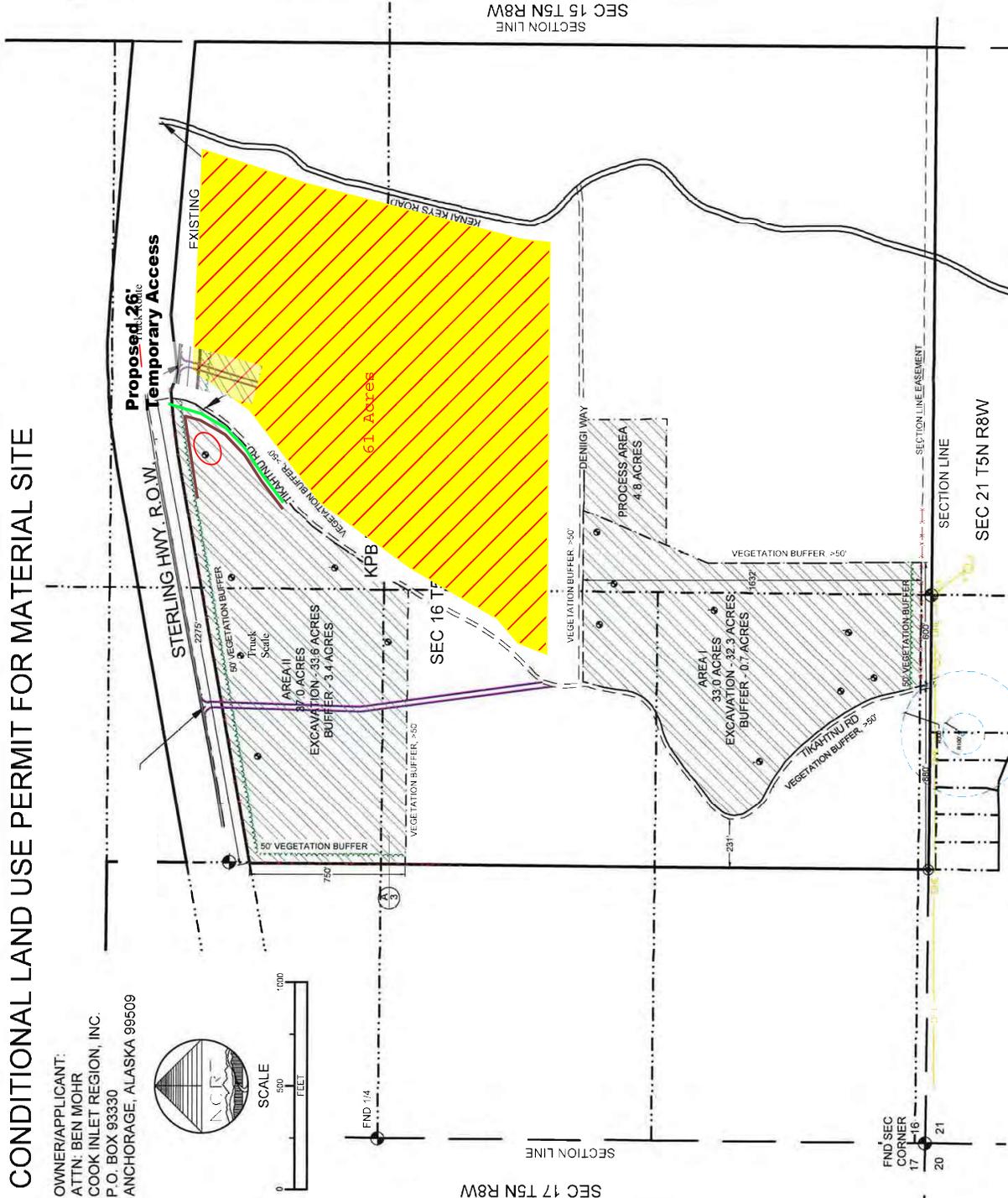
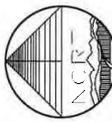
Date

Exhibit A
Map of Contract Area



CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT:
 ATTN: BEN MOHR
 COOK INLET REGION, INC.
 P.O. BOX 93330
 ANCHORAGE, ALASKA 99509



LEGEND

- RECORD MONUMENT
- PROPERTY CORNERS
- INGRESS/EGRESS
- WELL SETBACK
- INTERVISIBLE FLAGGING
- PROPOSED BUFFER TREELINE
- APPROX. TEST HOLE LOCATION

CLUP DEVELOPMENT NOTES

- THIS PERMIT APPLICATION IS FOR THE PORTION OF KPB PARCEL 06508118 SOUTH OF THE STERLING HIGHWAY, T5N R8W SECTION 16 SEWARD MERIDIAN, E1/4, W1/4 & NW1/4, EXCEPT THAT PORTION PER W/D 383 @ 681.
- THE PARCEL IS UNDEVELOPED AND COVERED IN NATIVE VEGETATION.
- PROPOSED INGRESS IS FROM TO KENAI KEYS ROAD AND EGRESS IS TO THE STERLING HIGHWAY, AS SHOWN AN ADOT APPROACH ROAD REVIEW. APPLICATION WILL BE NECESSARY.
- THE PREFERRED BUFFERS ARE 50' (OR GREATER) NATIVE VEGETATIVE BUFFERS ON ALL SIDES OF EXCAVATION AREA. EXCAVATION BELOW WATER TABLE IS NOT PROPOSED.
- THERE ARE NO WELLS WITHIN 100' OR 300' OF THE EXCAVATION AREA.
- THERE ARE NO MAPPED WETLANDS AND/OR SURFACE WATER.
- NATIVE VEGETATION WILL PROVIDE SURFACE WATER PROTECTION VIA PHYTOREMEDIATION OF ANY SITE RUN-OFF.
- GROUNDWATER IS >20' BELOW EXISTING GROUND IN PROPOSED EXCAVATION AREAS. TEST HOLES WERE EXCAVATED IN 32 LOCATIONS BY THE OWNER OR OTHER REPRESENTATIVES.
- THE RECLAIMED AREA WILL BE GRADED AND RECONTOURED USING STRIPPINGS, OVERBURDEN AND TOPSOIL TO A CONDITION THAT ALLOWS FOR RE-ESTABLISHMENT OF NATURAL VEGETATION AND SLOPES STEEPER THAN 2:1 WILL BE SEEDED.
- A CENTRAL AREA WILL BE MAINTAINED AS A PROCESSING AND STAGING AREA. PROCESS AREA IS GREATER THAN 300' FROM ALL PROPERTY LINES.
- THE PROPERTY CORNERS WERE LOCATED AND THE PARCEL BOUNDARY HAS BEEN FLAGGED AT VISIBLE INTERVALS WITHIN 300' OF THE EXCAVATION AREA, AS SHOWN ON THE EXHIBIT.

REV	DATE	DESCRIPTION

FIELD WORK DATE: 11/20/17
 FIELD BOOK NO: 17 03
 JOB NO: 174014
 PERMIT S.I. 174014
 DMD:

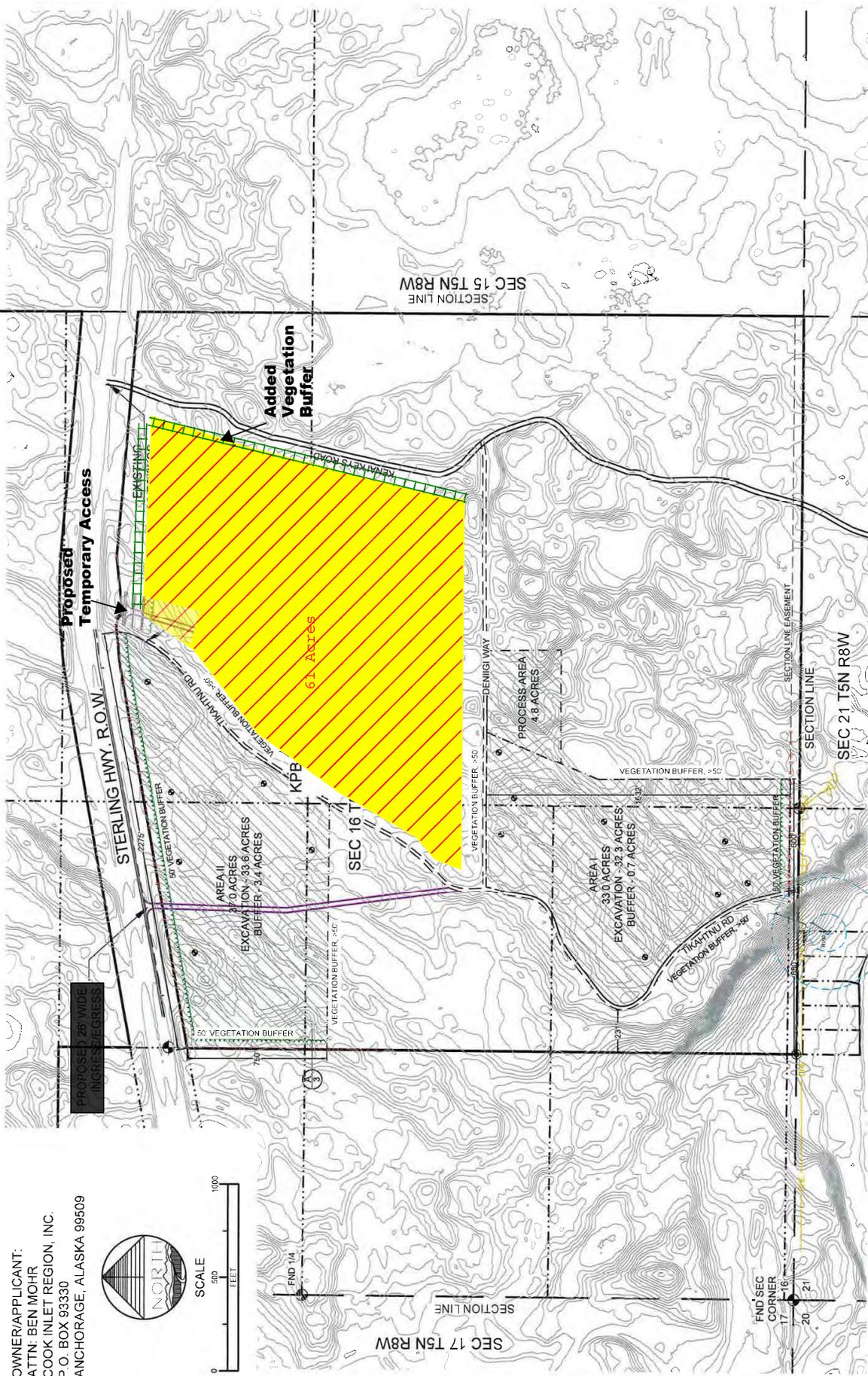
ENGINEERING - TESTING
 SURVEYING - MAPPING
 SOLICITORS - ALASKA
 VOICE: (907) 333-1218
 WWW.MCLANECG.COM

DRAWN BY: GMD
 CHECKED BY: GMD
 HORIZ. SCALE: 1" = 500'
 VERT. SCALE: N/A
 SHEET: P1

CRI TIKAHINU
 MP 79 - 80 STERLING HWY
 CONDITIONAL LAND USE PERMIT

CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

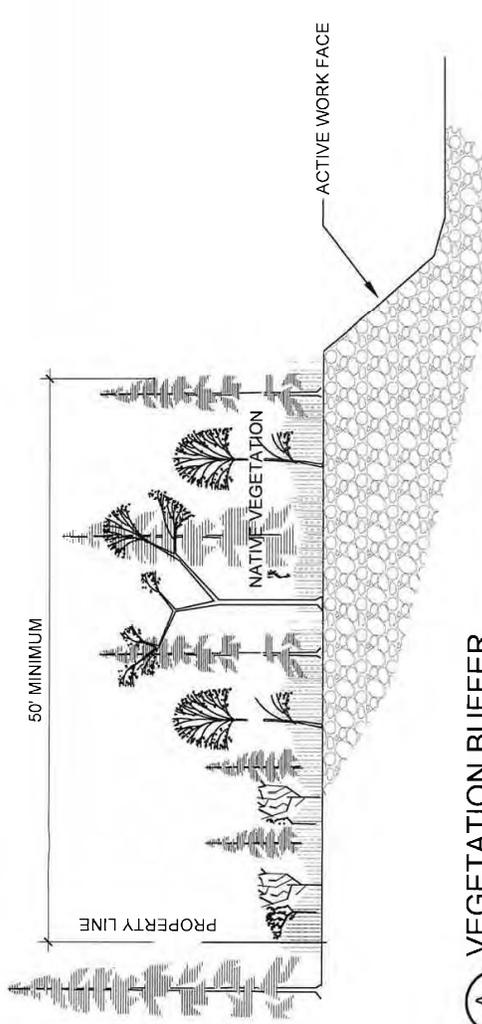
OWNER/APPLICANT:
 ATTN: BEN MOHR
 COOK INLET REGION, INC.
 P.O. BOX 93330
 ANCHORAGE, ALASKA 99509



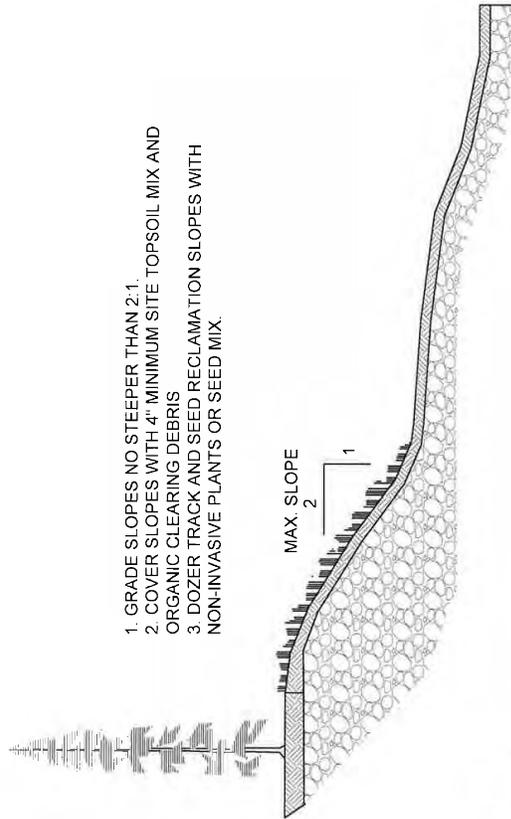
	FIELD WORK DATE: 11/20/17 FIELD BOOK NO: 17-03 JOB NO: 17-014	REVISIONS: 1 XXXX PERMIT SUBMITTA REV DATE DESCRIPTION REV DATE DESCRIPTION	DRAWN BY: GMD CHECKED BY: GMD HORIZ SCALE: 1" = 100' VERT SCALE: N/A	SHEET: P2
	PROJECT: MP 79 - 80 STERLING HWY TITLE: CIRI TIKAHNTU CONDITIONAL LAND USE PERMIT	STATE OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION DIVISION OF LAND USE PERMITTING	CONSULTING INC ENGINEERING - TESTING SURVEYING - MAPPING 501 DOTNA AK 99589 VOICE: 907 283 4278 WWW.MCLANECORP.COM	SCALE: 1" = 100' SHEET: P2	SHEET: P2

CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT:
 ATTN: BEN MOHR
 COOK INLET REGION, INC.
 P. O. BOX 93330
 ANCHORAGE, ALASKA 99509

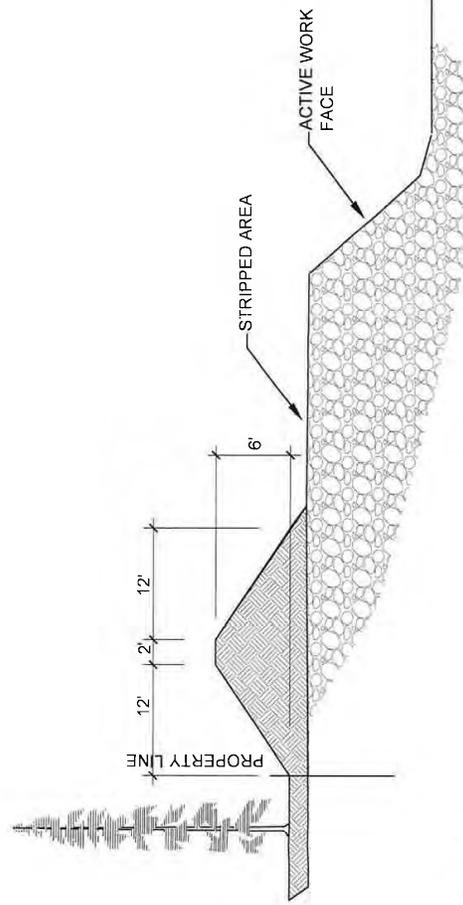


A VEGETATION BUFFER
 3 SCALE: 1" = 10 FT.



1. GRADE SLOPES NO STEEPER THAN 2:1.
2. COVER SLOPES WITH 4" MINIMUM SITE TOPSOIL MIX AND ORGANIC CLEARING DEBRIS
3. DOZER TRACK AND SEED RECLAMATION SLOPES WITH NON-INVASIVE PLANTS OR SEED MIX.

B RECLAMATION SLOPE
 3 SCALE: 1" = 10 FT.



C EARTHEN BERM BUFFER
 3 SCALE: 1" = 10 FT.



REV	DATE	DESCRIPTION
1	XXXX	PERMIT SUBMITAL

CIRI TIKAHNTU
 MP 79 - 80 STERLING HWY
 CONDITIONAL LAND USE PERMIT

JOB NO. 174014
 FIELD BOOK NO. 17-03
 FIELD WORK DATE: 1/15/2017

McLANE Consulting Inc
 ENGINEERING, TESTING, SURVEYING, MAPPING
 P.O. BOX 489
 SPOKANE, IDAHO 83403
 VO CE: (807) 253-4278
 FAX: (807) 283-2362
 WWW.MCLANEC.COM

DRAWN BY: EDE
 CHECKED BY: GWD
 HORIZ. SCALE: 1" = 50'
 VERT. SCALE: N/A
 SHEET: P3

PLANNING COMMISSION RESOLUTION 2021-26

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2021-26
KENAI RECORDING DISTRICT**

A resolution granting modification to a conditional land use permit for a material site to allow for additional excavation are on property described as the East ½, the East ½ of the West ½, and the Northwest ¼ of the Northwest ¼, of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way

- WHEREAS,** the KPB Planning Commission approved PC Resolution 2017-08 on March 27, 2017, which established a conditional land use permit for material extraction on KPB tax parcel ID# 065-081-18; and
- WHEREAS,** on June 22, 2021, the applicant, Cook Inlet Region, Inc., submitted an application to modify the existing conditional land use permit by expanding the area for excavation by 61-acres south of the Sterling Highway within KPB Parcel 065-081-18; and
- WHEREAS,** KPB Chapter 21.29.090 provides for the modification of material site permits when changes in operations approved in the original permit are proposed; and
- WHEREAS,** notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels pursuant to KPB 21.25.060; and
- WHEREAS,** public notice of the application was published in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion; and
- WHEREAS,** public notice was sent to the postmaster in Sterling requesting that it be posted at the post office; and
- WHEREAS,** a public hearing of the Planning Commission was held on July 12, 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

1. *Procedural Findings.*
 - A. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
 - B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
 - C. On March 27, 2017, the planning commission passed resolution 2017-08, which approved a conditional land use permit to Cook Inlet Region, Inc., for material extraction on KPB tax parcel #065-081-18.
 - D. On June 22, 2021, Cook Inlet Region, Inc., submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcel #065-081-18 to add an additional 61-acre excavation area.
 - E. A public hearing of the planning commission was held on July 12, 2021, and notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Sterling requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion.
 - F. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
2. *Parcel boundaries.* KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site. With the original permit, the property boundaries near

- proposed excavation areas in the original permit were flagged.
3. *Buffer zone.* KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. Permit condition number 2 requires that the permittee maintain the following buffers for each excavation area identified on the site plan that will provide visual and noise screening to adjacent properties:
 - 50 feet of undisturbed natural vegetation with additional 6-foot earthen berms around the expanded 61-acre excavation area.
 4. *Processing.* KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
 - A. The original permit site plan indicates a 4.8-acre processing area that is located greater than 300 feet from the parcel boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
 5. *Water source separation.* KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
 - a. The site plan shows no wells within 300 feet of an excavation area.
 - b. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement.
 6. *Excavation in the water table.* KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
 - a. This modification does not seek an exemption to excavate within the water table.
 7. *Waterbodies.* KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
 - a. There are no water bodies within 100 feet of the proposed extraction.
 8. *Fuel storage.* KPB 21.29.050(A)(7) provides that 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.
 - a. Borough staff will regularly monitor the material site to ensure compliance with this condition.
 9. *Roads.* KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
 - a. The original permit indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The modified site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
 10. *Subdivision.* KPB 21.29.050(A)(9) provides that 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.
 - a. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
 11. *Dust control.* KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - a. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
 12. *Hours of operation.* KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - a. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
 13. *Reclamation.* KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
 - a. No modification of the reclamation plan was proposed. As in the original permit, the permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 - b. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
 14. *Other permits.* KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.

- a. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
- 15. *Voluntary permit conditions.* KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - a. In addition to the 50-foot vegetation buffer, 6-foot earthen berms will be placed around the 61-acre expanded extraction area.
- 16. *Signage.* KPB 21.29.050(A)(15) provides that 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.
 - a. Borough staff will regularly monitor the material site to ensure compliance with this condition.

- SECTION 2.** That the material site operations are described and shall be conducted as follows:
- A. A portion of KPB Tax Parcel Number 065-081-18. The expanded material site area overall within the parcel is approximately 131.7 acres.
 - B. The East ½, the East ½ of the West ½, and the Northwest ¼ of the Northwest ¼, of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way.
 - C. The applicant, Cook Inlet Region, Inc., proposes to: 1. Extract gravel and sand from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

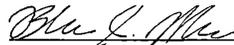
- SECTION 3.** That the existing permit conditions are hereby replaced by the following:

PERMIT CONDITIONS

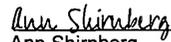
1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries as shown in the approved site plan:
 - Northern, southern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation. The addition of a 6-foot earthen berm around the perimeter for the 61-acre expanded extraction area.
 - These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall not operate any equipment which conditions or processes material within 300 feet of the property boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
9. The permittee shall ensure that fuel storage 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.
10. The permittee shall conduct operations 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.
11. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
12. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
13. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
14. The permittee shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement does 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.
15. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC

- water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
16. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
 17. The permittee shall be limited to disturbing 20 acres during the first two years of the permit. The open area shall be reclaimed upon completion of excavation activities.
 18. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
 19. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 9TH DAY OF AUGUST, 2021.


Blair J. Martin, Chairperson
Planning Commission

ATTEST:


Ann Shirnberg
Administrative Assistant

PLEASE RETURN
Kenai Peninsula Borough
Planning Department
144 North Binkley St.
Soldotna, AK 99669

**NOTICE OF DECISION
&
RECIPIENT LIST**



Planning Department

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

Charlie Pierce
Borough Mayor

August 12, 2021

«Contact»
«Attention»
«Address»
«City_State_ZIP»

NOTICE OF DECISION

At its August 9, 2021, meeting, the Kenai Peninsula Borough Planning Commission approved the modification of a conditional land use permit that was requested for KPB Parcel 065-081-18, legally described as the East ½, the East ½ of the West ½, and the Northwest ¼ of the Northwest ¼, of Section 16, Township 5 North, Range 8 West, Seward Meridian.

This decision was based on the findings of fact listed below.

Findings of Fact:

1. *Procedural Findings.*
 - A. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
 - B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
 - C. On March 27, 2017, the planning commission passed resolution 2017-08, which approved a conditional land use permit to Cook Inlet Region, Inc., for material extraction on KPB tax parcel #065-081-18.
 - D. On June 22, 2021, Cook Inlet Region, Inc., submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcel #065-081-18 to add an additional 61-acre excavation area.
 - E. A public hearing of the planning commission was held on July 12, 2021, and notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Sterling requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion.
 - F. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
2. *Parcel boundaries.* KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site. With the original permit, the property boundaries near proposed excavation areas in the original permit were flagged.
3. *Buffer zone.* KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. Permit condition number 2 requires that the permittee maintain the following buffers for each excavation area identified on the site plan that will provide visual and noise

screening to adjacent properties:

50 feet of undisturbed natural vegetation with additional 6-foot earthen berms around the expanded 61-acre excavation area.

4. *Processing.* KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
 - A. The original permit site plan indicates a 4.8-acre processing area that is located greater than 300 feet from the parcel boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
5. *Water source separation.* KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
 - a. The site plan shows no wells within 300 feet of an excavation area.
 - b. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement.
6. *Excavation in the water table.* KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
 - a. This modification does not seek an exemption to excavate within the water table.
7. *Waterbodies.* KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
 - a. There are no water bodies within 100 feet of the proposed extraction.
8. *Fuel storage.* KPB 21.29.050(A)(7) provides that 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.
 - a. Borough staff will regularly monitor the material site to ensure compliance with this condition.
9. *Roads.* KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
 - a. The original permit indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The modified site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
10. *Subdivision.* KPB 21.29.050(A)(9) provides that 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.
 - a. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
11. *Dust control.* KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - a. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
12. *Hours of operation.* KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - a. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
13. *Reclamation.* KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.

- a. No modification of the reclamation plan was proposed. As in the original permit, the permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 - b. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
14. *Other permits.* KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- a. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
15. *Voluntary permit conditions.* KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
- a. In addition to the 50-foot vegetation buffer, 6-foot earthen berms will be placed around the 61-acre expanded extraction area.
16. *Signage.* KPB 21.29.050(A)(15) provides that 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.
- a. Borough staff will regularly monitor the material site to ensure compliance with this condition.

Per KPB 21.20.250, any party of record may file an appeal of a decision of the planning commission within 15 days of the date of this notice of decision. The appeal must be filed with the borough clerk on the forms provided, and by paying the filing and records preparation fee in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. An appeal may be filed by personal delivery or mail as long as it is complete and received in the clerk's office by 5:00 p.m. on the day the notice of appeal is due. Appeal forms are available online at <https://www.kpb.us/assembly-clerk/clerks-office/clerks-forms>

Please contact the Kenai Peninsula Borough Clerk's Office at 907-714-2160 for questions regarding filing an appeal.

Contact	Attention	Address	City, State ZIP	Email	Telephone
Eric Rosenberg		5400 Kenilworth Avenue	Riverdale, MD 20737	ERosenberg@rosenberg-fayne.com	(301) 980-5598
Mark Hughes		32177 West Hills Court	Sterling, AK 99672	mrhceh@gci.net	
Cindy Hamlin		32177 West Hills Court	Sterling, AK 99672	mrhceh@gci.net	
Lisa Smith		37220 Steelhead Circle	Sterling, AK 99672	bdilisa@gmail.com	(801) 372-4479
Yulia Vassiliev		32123 West Hills Court	Sterling, AK 99672		(925) 588-4144
Alexie Vassiliev		32123 West Hills Court	Sterling, AK 99672		(408) 772-0406
Charles Clasby		32167 West Hills Court	Sterling, AK 99672	calman.ck@gmail.com	(907) 230-0516
Karol Schiefelbein		37105 Steelhead Circle	Sterling, AK 99672	karol3510@hotmail.com	(907) 260-3577
Richard Schiefelbein		37105 Steelhead Circle	Sterling, AK 99672	rick@anchorconstruction.info	(907) 260-3577
Kathleen Fogel		37065 Steelhead Circle	Sterling, AK 99672	kgfogle1951@gmail.com	(916) 539-1342
Ken Killian		37468 Samsel Road	Sterling, AK 99672	kakillian@att.net	(907) 232-6188
Gary Bailey		PO Box 1265	Sterling, AK 99672	gyb7772@hotmail.com	(907) 301-8941
Roxie Little		37455 Samsel Road	Sterling, AK 99672	lesrox3@gmail.com	(907) 262-6288
David Skieens		PO Box 421	Sterling, AK 99672	dskieens@gmail.com	(907) 242-1343
Perry Hershberger		37060 Steelhead Circle	Sterling, AK 99672	plhersh60@gmail.com	(330) 827-1022
Linda Hershberger		37060 Steelhead Circle	Sterling, AK 99672	lchersh65@gmail.com	(330) 827-1024
Claire Lewis		8046 Endicott Street	Anchorage, AK 99502	siwela.claire@gmail.com	(907) 306-6978
Dan Lewis		8046 Endicott Street	Anchorage, AK 99502	siwela.claire@gmail.com	(907) 306-6978
Cook Inlet Region, Inc.	Andrea Jacuk	PO Box 93330	Anchorage, AK 99509-3330	aiacuk@ciri.com	(907) 263-5197
Bill Elam		47320 Jefferson Ave.	Soldotna, AK 99669	belam@kpb.us	(907) 690-4339
Scarsella Bros., Inc.	Tamarah Knapp	PO Box 68697	Seattle, WA 98168-0697	tamarah@scarsellabros.com	(253) 872-7173
Marc Walch		430 N Lake Sybelia Drive	Maitland, FL 32751		
Gretchen Cuddy		7531 Sportsmens Point Circle	Anchorage, AK 99502		
Niki Pereira		37195 Steelhead Circle #14	Sterling, AK 99672	nikhuk@gci.net	
Cook Inlet Region, Inc.	Suzanne Settle	PO Box 93330	Anchorage, AK 99509-3330	ssettle@ciri.com	(907) 263-5150

**PC MEETING PACKET MATERIALS
JULY 12, 2021
&
PC MEMO JULY 27, 2021**



Planning Commission

Meeting Packet

July 12, 2021
7:30 p.m.

**KENAI PENINSULA BOROUGH
ASSEMBLY CHAMBERS
144 NORTH BINKLEY ST.
SOLDOTNA, ALASKA 99669**

E. NEW BUSINESS

- 9. Conditional Land Use Permit Modification**
Applicant/Land Owner: Cook Inlet Region Inc.
Parcel ID#: 06508118
Sterling Area

Modification of a Conditional Land Use Permit for a Material Site

STAFF REPORT

PC MEETING: July 12, 2021

Applicant: Cook Inlet Region, Inc.
Landowner: Cook Inlet Region, Inc.
Parcel Number: 065-081-18
Legal Description: East ½, East ½ of the West ½, and the Northwest ¼ of the Northwest ¼ of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way.

Property Location: Approximately at MP 79.5 of the Sterling Highway

GENERAL OVERVIEW: On June 22, 2021, the applicant submitted payment and a modification application for a material site. The applicant wishes to modify the existing conditional land use permit for material extraction on the above property, approved by the planning commission on March 27, 2017, and extended on May 4, 2021. The modification is to expand the permitted extraction area by approximately 61 acres as shown on the site plan submitted with the application. The application states that the expanded area is to support an Alaska Department of Transportation improvement project for the Sterling Highway. A copy of the application is included as **Attachment A**. Vicinity, aerial, topography, land use and ownership maps are included here as **Attachments B – F**.

KPB 21.29.030(A) REQUIRED APPLICATION ITEMS

- 1) Location of modification:** The applicant seeks to excavate and an additional area of approximately 61 acres in an area bounded by the Sterling Highway to the north, Kenai Keys Road to the east, Deniigi Way to the south, and Tikahtnu Road to the west (see Attachment A).
- 2) Lifespan:** The original permit application stated an expected lifespan of 15 years. No change is proposed.
- 3) Buffers:** In addition to buffers in the original permit, the proposed 61-acre expansion area would be buffered on all sides by 50 feet of natural vegetation and 6-foot earthen berms.
- 4) Reclamation:** No modification to the reclamation plan is proposed. The original application indicated that 5-25 acres would be reclaimed each year before the end of September using a loader and dozer. Seeding would be applied each season to areas that achieve final grade.
- 5) Depth of excavation:** The maximum depth of proposed excavation is 20 feet, the same as the original permit.
- 6) Type of material:** Gravel will be mined from the proposed expansion area.
- 7) Voluntary permit conditions:** Berms along the north, south, west, and east edges of the proposed expansion area.
- 8) Site plan:** The original site plan prepared by McLane Consulting Inc. was submitted as part of the modification application with markups and annotations indicating proposed modifications. The original plan included a north arrow, scale, and preparer's name, date and seal. The property has not been subdivided or changed ownership since the original site plan was developed in 2017, so the modified site plan was considered sufficient by staff. Required site plan elements are as follows:
 - a-b):** addressed above.
 - c) encumbrances:** In addition to Tikahtnu, Kenai Keys, and Deniigi Way roads, the site plan

shows a section line easement along the southern property boundary.

d) points of ingress/egress: The proposed modification would add a 26-foot wide ingress/egress from the excavation area directly onto the Sterling Highway.

e) haul routes: ingress/egress for the expanded extraction area would be directly onto the Sterling Highway.

f) test holes/depth of groundwater: The application states that 32 test holes have been dug throughout the property and that the water table is greater than 20 feet below original ground. The original site plan shows test well locations in the permitted excavation area.

g) location of neighboring wells: The site plan shows one well south of the property. No wells are within 300 feet of the proposed expansion area.

h) waterbodies/wetlands: no waterbodies or wetlands are indicated on the site plan.

i) surface water protection measures: No measures were indicated on the site plan.

j) processing areas: One 4.8-acre processing area was identified south of Deniigi Way on the original site plan. No modification of the processing area is proposed.

l-m): addressed above

n) boundary staking: with the original permit, the property corners were located and the property boundary flagged at visible intervals within 300 feet of the excavation areas.

PUBLIC NOTICE: Notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within ½ mile of the subject parcel, pursuant to KPB 21.25.060. A copy of the public notice and notice radius map are included as **Attachment G**. Any public comments received by the Planning Department prior to the hearing will be included as desk packet items at the July 12, 2021, meeting.

FINDINGS OF FACT:

1. *Procedural Findings.*
 - A. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
 - B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
 - C. On March 27, 2017, the planning commission passed resolution 2017-08, which approved a conditional land use permit to Cook Inlet Region, Inc., for material extraction on KPB tax parcel #065-081-18.
 - D. On June 22, 2021, Cook Inlet Region, Inc., submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcel #065-081-18 to add an additional 61-acre excavation area.
 - E. A public hearing of the planning commission was held on July 12, 2021, and notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Sterling requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion.
 - F. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
2. *Parcel boundaries.* KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site. With the original permit, the property boundaries near proposed excavation areas in the original permit were flagged.
3. *Buffer zone.* KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. Permit condition number 2 requires that the permittee maintain the following buffers

for each excavation area identified on the site plan that will provide visual and noise screening to adjacent properties:

50 feet of undisturbed natural vegetation with additional 6-foot earthen berms around the expanded 61-acre excavation area.

4. *Processing.* KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
 - A. The original permit site plan indicates a 4.8-acre processing area that is located greater than 300 feet from the parcel boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
5. *Water source separation.* KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
 - A. The site plan shows no wells within 300 feet of an excavation area.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement.
6. *Excavation in the water table.* KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
 - A. This modification does not seek an exemption to excavate within the water table.
7. *Waterbodies.* KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
 - A. There are no water bodies within 100 feet of the proposed extraction.
8. *Fuel storage.* KPB 21.29.050(A)(7) provides that 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.
 - A. Borough staff will regularly monitor the material site to ensure compliance with this condition.
9. *Roads.* KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
 - A. The original permit indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The modified site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
10. *Subdivision.* KPB 21.29.050(A)(9) provides that 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.
 - A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
11. *Dust control.* KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
12. *Hours of operation.* KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.

13. *Reclamation.* KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
 - A. No modification of the reclamation plan was proposed. As in the original permit, the permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 - B. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
14. *Other permits.* KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
 - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
15. *Voluntary permit conditions.* KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - A. In addition to the 50-foot vegetation buffer, 6-foot earthen berms will be placed around the 61-acre expanded extraction area.
16. *Signage.* KPB 21.29.050(A)(15) provides that 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.
 - A. Borough staff will regularly monitor the material site to ensure compliance with this condition.

STAFF RECOMMENDATION

In reviewing the modification application, staff has determined that the requirements for modification have been met and that the six standards contained in KPB 21.29.040 will be met. Staff recommends that the planning commission approve the modification to the conditional land use permit with listed conditions and adopt the findings of fact subject to the following:

1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicant will provide the recording fee for the resolution to the Planning Department.
4. Driveway permits must be acquired from either the state or borough as necessary prior to the issuance of the material site permit.
5. The conditions of the modified permit will replace those of the original permit.

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries as shown in the approved site plan:
 - Northern, southern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation. The addition of a 6-foot earthen berm around the perimeter

for the 61-acre expanded extraction area.

These buffers shall not overlap an easement.

3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall not operate any equipment which conditions or processes material within 300 feet of the property boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
9. The permittee shall ensure that fuel storage 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.
10. The permittee shall conduct operations 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.
11. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
12. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
13. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
14. The permittee shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement does 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.
15. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
16. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
17. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB

- 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
18. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT



Planning Department

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

Charlie Pierce
Borough Mayor

PC Resolution #. _____
App. Complete _____

KPB 21.29 Conditional Land Use Permit Modification Application

For a Sand, Gravel or Material Site

I. APPLICANT INFORMATION

Applicant <u>Cook Inlet Region, Inc.</u>	Landowner <u>Same as Applicant</u>
Address <u>PO Box 93330</u>	Address _____
City, State, Zip <u>Anchorage, AK 99509-3330</u>	City, State, Zip _____
Telephone <u>907-263-5150</u> Fax _____	Telephone _____ Fax _____
Cell Phone <u>907-240-6861</u>	Cell Phone _____
Email <u>ssettle@ciri.com</u>	Email _____

II. CURRENT PERMITTED PARCEL INFORMATION

KPB Tax Parcel ID# 065-081-18 Township 5N Range 8W Section 16

Subdivision _____ Lot _____ Block _____ Parcel acreage _____

Legal Description T 5N R 8W SEC 16 SEWARD MERIDIAN KN E1/2 & E1/2 W1/2 & NW1/4
NW1/4 EXCEPT THAT PORTION PER W/D 383 @ 681

III. INFORMATION/DOCUMENTATION "Check" boxes below to indicate items included.

- \$300.00 permit processing fee payable to: Kenai Peninsula Borough. (Include Parcel # on check comment line.)
- Site Plan Diagram, to scale, showing:
 - parcel boundaries
 - existing required buffers
 - existing and/or proposed processing area(s)

Permit Modification Worksheet

Applicant Cook Inlet Region, Inc. Owner Same as applicant

CURRENT PERMITTED KPB Tax Parcel ID # 065-081-18 Parcel Acreage appr. 600

1. Reason(s) for requesting permit modification: Excavation of material to improve the Sterling highway, competent to meet Alaska Transportation Department specifications for highway construction

2. Additional cumulative acres to be disturbed (excavation plus stockpiles, berms, etc.) 61 acres
3. Additional type(s) of material to be mined (circle all that apply): gravel sand peat other
4. Additional equipment to be used (circle all that apply): excavation processing other _____
5. Modification(s) is requested on current permit buffers: _____ yes X no

CURRENT PERMIT REQUIRED BUFFERS – “check” all types, and circle all directions that apply:

- | | | | | |
|--|----------|----------|----------|----------|
| <input checked="" type="checkbox"/> 50 ft. of natural or improved vegetation | <u>N</u> | <u>S</u> | <u>E</u> | <u>W</u> |
| <input type="checkbox"/> minimum 6 ft. earthen berm | N | S | E | W |
| <input type="checkbox"/> minimum 6 ft. fence | N | S | E | W |
| <input type="checkbox"/> other _____ | N | S | E | W |

MODIFIED BUFFER REQUEST, if applicable – “check” all types, and circle all directions that apply:

- | | | | | |
|--|----------|----------|----------|----------|
| <input checked="" type="checkbox"/> 50 ft. of natural or improved vegetation | <u>N</u> | <u>S</u> | <u>E</u> | <u>W</u> |
| <input checked="" type="checkbox"/> minimum 6 ft. earthen berm | <u>N</u> | <u>S</u> | <u>E</u> | <u>W</u> |
| <input type="checkbox"/> minimum 6 ft. fence | N | S | E | W |
| <input type="checkbox"/> other _____ | N | S | E | W |

6. Permit modification is requested due to subdivision of originally permitted parcel? _____ yes X no
7. Permit modification to enter the water table is requested? _____ yes X no
8. Additional excavation depth beyond permitted depth: 20 ft.
Depth to groundwater: More than 20 ft.

9. Voluntary permit conditions proposed (additional buffers, dust control, limited hours of operation, etc.):
- A. Berms along North (Sterling Highway), West (Tikahtnu Road) and East (Keani Keys Road) edge of excavation
- B. _____

- all encumbrances on parcel, including easements
 - points of ingress and egress
 - existing permitted extraction area(s)
 - proposed additional extraction area(s) and/or other requested permit modifications(s)
 - a north arrow and diagram scale
 - preparer's name and date
- Permit Modification Worksheet (attached)

IV. CERTIFICATION STATEMENT

The information contained on this form and attachments are true and complete to the best of my knowledge. I grant permission for borough staff to enter onto the property for the purpose of processing the permit modification request.



 Applicant Signature

June 21, 2021

 Date

 Property Owner Signature
 (required if not applicant)

 Date

Exhibit A
Map of Contract Area

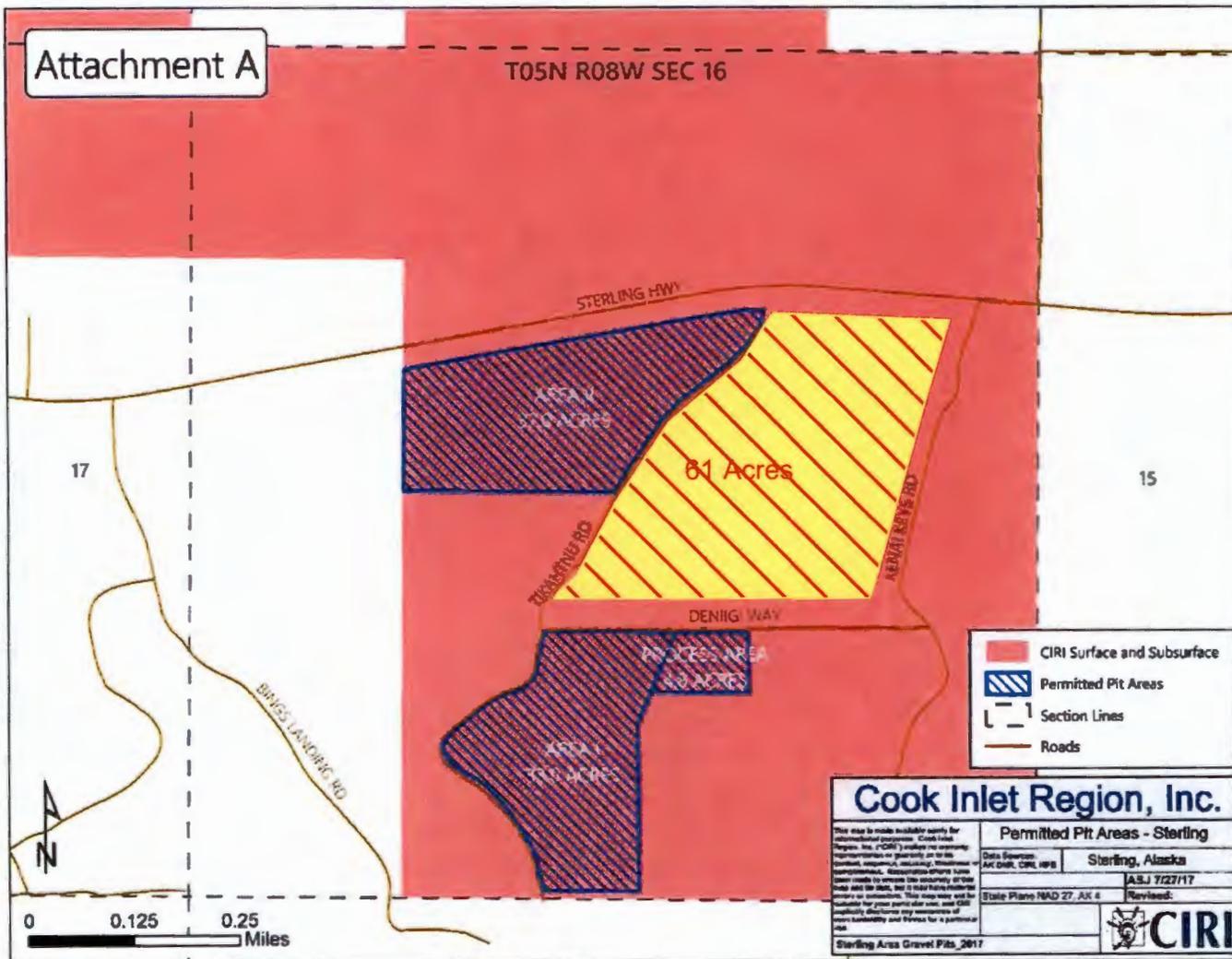
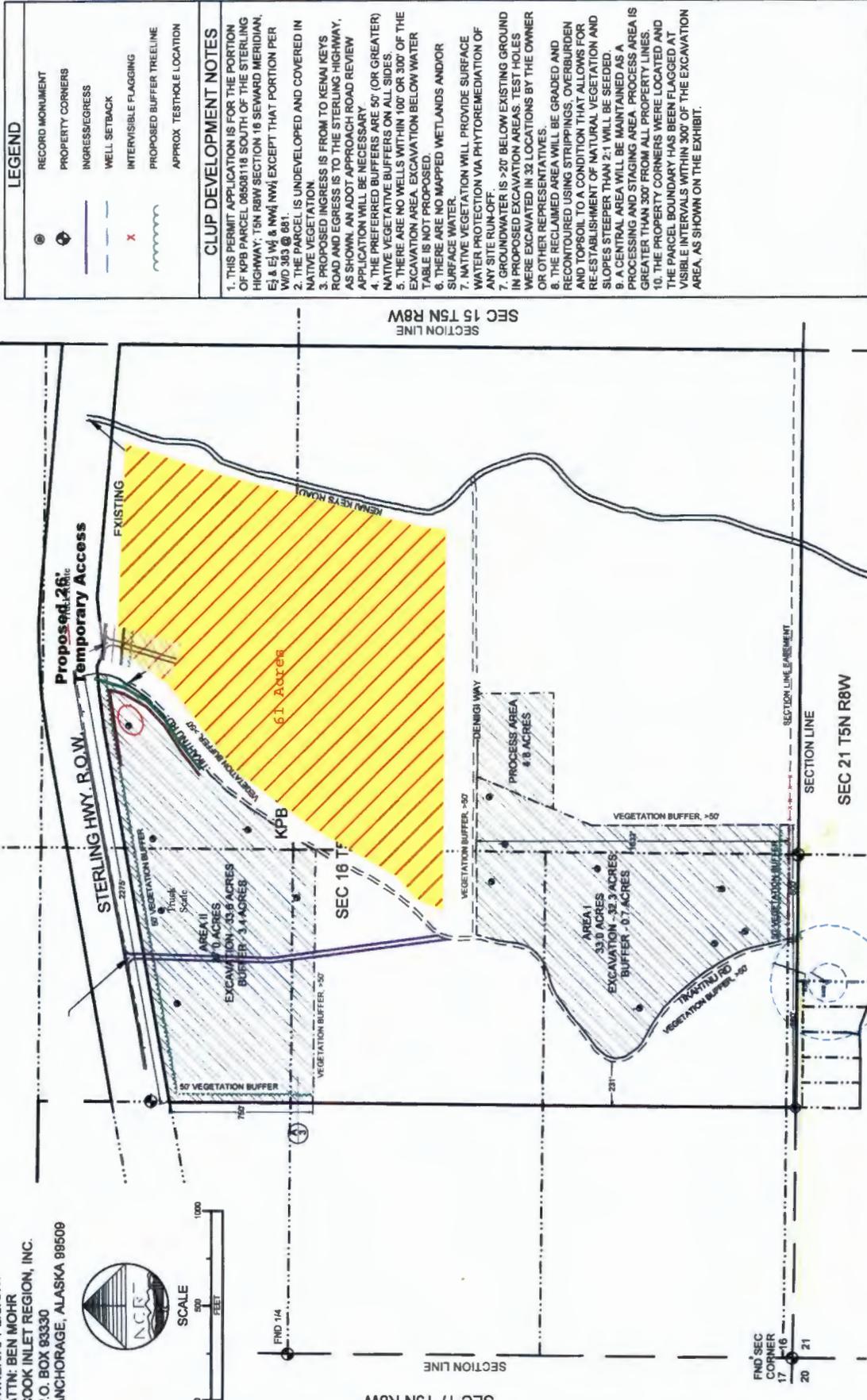


EXHIBIT A - SAND AND GRAVEL EXTRACTION CONTRACT
STERLING GRAVEL PIT

CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT:
 ATTN: BEN MOHR
 COOK INLET REGION, INC.
 P.O. BOX 83330
 ANCHORAGE, ALASKA 99509



LEGEND

- RECORD MONUMENT
- ◻ PROPERTY CORNERS
- INGRESS/EGRESS
- WELL SETBACK
- - - INTERVISIBLE FLAGGING
- - - PROPOSED BUFFER TREELINE
- ~ APPROX. TESTHOLE LOCATION

CLUP DEVELOPMENT NOTES

1. THIS PERMIT APPLICATION IS FOR THE PORTION OF MPB PARCEL 06581118 SOUTH OF THE STERLING HIGHWAY, T5N R8W SECTION 16 SEWARD MERIDIAN, E3 & E4 W3 & NW1/4 EXCEPT THAT PORTION PER WVD 303 @ 081.
2. THE PARCEL IS UNDEVELOPED AND COVERED IN NATIVE VEGETATION
3. PROPOSED INGRESS IS FROM TO KENAI KEYS ROAD AND EGRESS IS TO THE STERLING HIGHWAY, AS SHOWN. AN ADOT APPROACH ROAD REVIEW APPLICATION WILL BE NECESSARY
4. THE PREFERRED BUFFERS ARE 50' (OR GREATER) NATIVE VEGETATIVE BUFFERS ON ALL SIDES.
5. THERE ARE NO WELLS WITHIN 100' OR 300' OF THE EXCAVATION AREA. EXCAVATION BELOW WATER TABLE IS NOT PROPOSED.
6. THERE ARE NO MAPPED WETLANDS AND/OR SURFACE WATER.
7. NATIVE VEGETATION WILL PROVIDE SURFACE WATER PROTECTION VIA PHYTOREMEDIATION OF ANY SITE RUN-OFF.
8. GROUNDWATER IS >20' BELOW EXISTING GROUND IN PROPOSED EXCAVATION AREAS. TEST HOLES WERE EXCAVATED IN 32 LOCATIONS BY THE OWNER OR OTHER REPRESENTATIVES.
9. THE RECLAIMED AREA WILL BE GRADED AND RECONTOURED USING STRIPPINGS, OVERBURDEN AND TOPSOIL TO A CONDITION THAT ALLOWS FOR RE-ESTABLISHMENT OF NATURAL VEGETATION AND SLOPES STEEPER THAN 2:1 WILL BE SEEDED.
10. A CENTRAL AREA WILL BE MAINTAINED AS A PROCESSING AND STAGING AREA. PROCESS AREA IS GREATER THAN 300' FROM ALL PROPERTY LINES.
11. THE PROPERTY CORNERS WERE LOCATED AND THE PARCEL BOUNDARY HAS BEEN FLAGGED AT VISIBLE INTERVALS WITHIN 300' OF THE EXCAVATION AREA, AS SHOWN ON THE EXHIBIT.



REV	DATE	DESCRIPTION

FIELD BOOK NO. 17-02
 FIELD WORK DATE: 1/12/2017
 JOB NO. 174914
 PROJECT SUBMITTA
 DRAWING NO. 174914

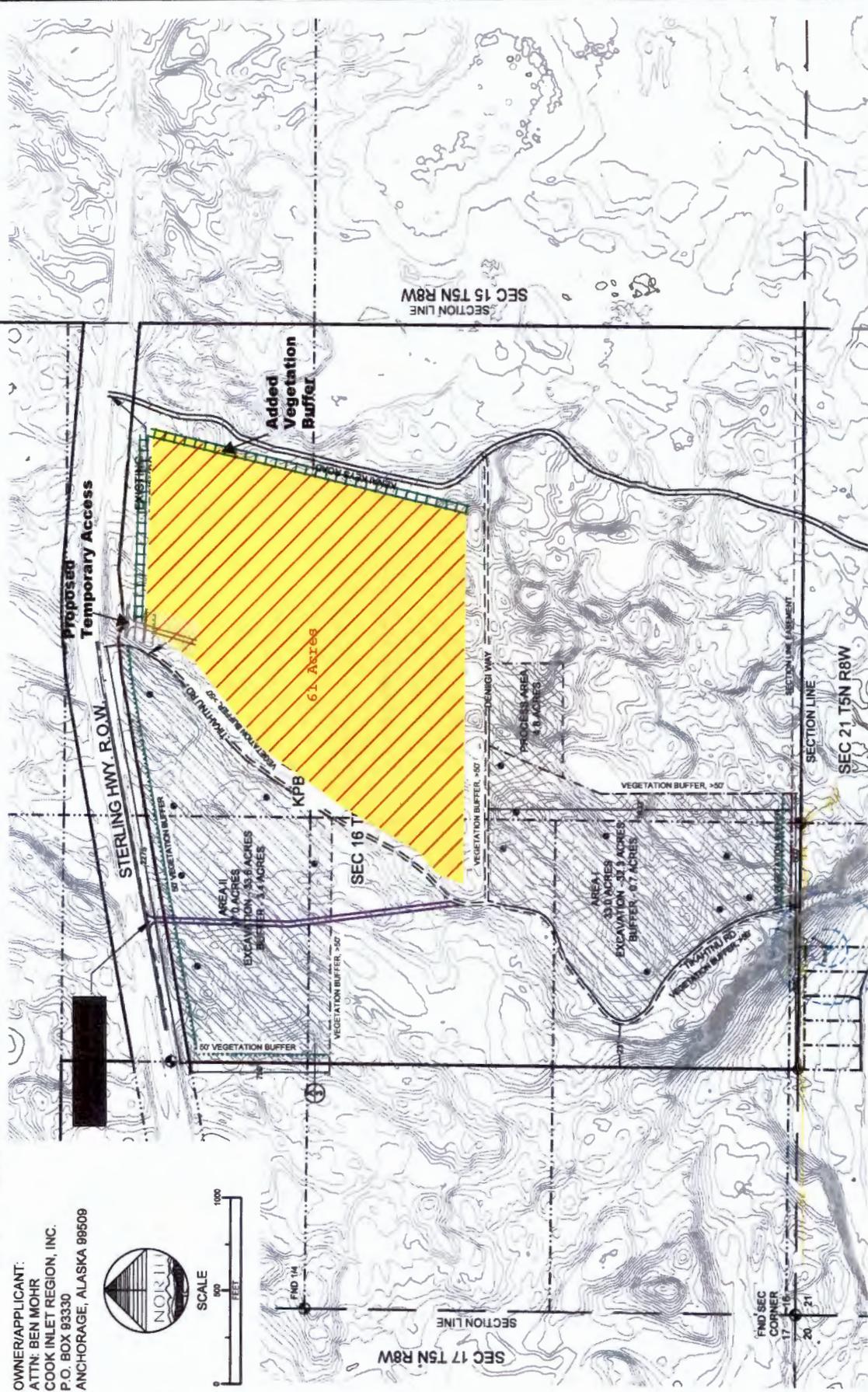
McLANE Consulting Inc
 ENGINEERING TESTING
 SURVEYING
 P.O. BOX 488
 1000 W. 10TH AVENUE
 ANCHORAGE, ALASKA 99503
 PHONE: (907) 263-2018
 FAX: (907) 263-2019
 WWW.MCLANEC.COM

DRAWN BY: BOB
 CHECKED BY: GMD
 NORTH SCALE: 1" = 80'
 SHEET: P1

CRI TIKAHATNU
 MP 79 - 80 STERLING HWY
 CONDITIONAL LAND USE PERMIT

CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT:
 ATTN: BEN MOHR
 COOK INLET REGION, INC.
 P.O. BOX 93330
 ANCHORAGE, ALASKA 99509



REV	DATE	DESCRIPTION
1	XXXX	PERMIT SUBMITTA

FIELD WORK DATE: 1/12/2017
 FIELD BOOK NO: 17203
 JOB NO: 174914
CIRI TIKAHITU
MP 79 - 80 STERLING HWY
CONDITIONAL LAND USE PERMIT

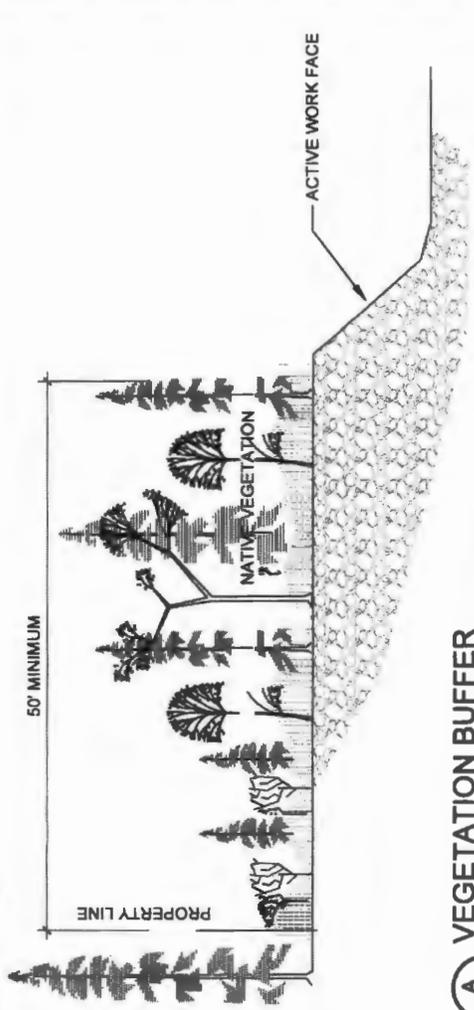


McLANE Consulting Inc
 ENGINEERING - TESTING
 SURVEYING - MAPPING
 P.O. BOX 448
 SLDOTNA, AK 99580
 TEL: (907) 783-2200
 FAX: (907) 783-2200
 WWW.MCLANECO.COM

DRAWN BY: BJB
 CHECKED BY: GMD
 HORIZ SCALE: 1" = 80'
 VERT SCALE: 1" = 40'
 SHEET: P2

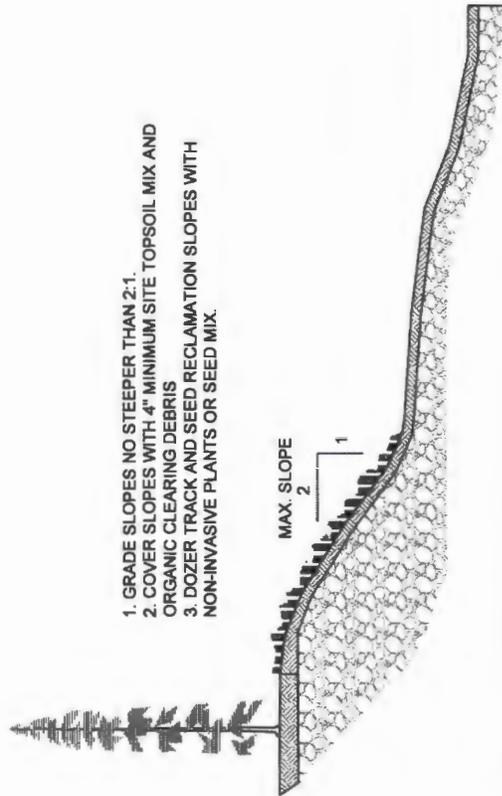
CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT:
 ATTN: BEN MOHR
 COOK INLET REGION, INC.
 P.O. BOX 93330
 ANCHORAGE, ALASKA 99509



A VEGETATION BUFFER

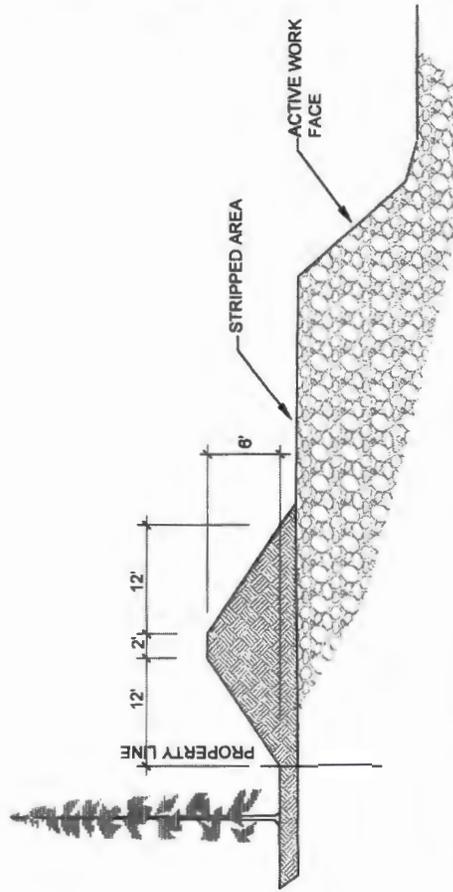
SCALE: 1" = 10 FT.



1. GRADE SLOPES NO STEEPER THAN 2:1.
2. COVER SLOPES WITH 4" MINIMUM SITE TOPSOIL MIX AND ORGANIC CLEARING DEBRIS
3. DOZER TRACK AND SEED RECLAMATION SLOPES WITH NON-INVASIVE PLANTS OR SEED MIX.

B RECLAMATION SLOPE

SCALE: 1" = 10 FT.



C EARTHEN BERM BUFFER

SCALE: 1" = 10 FT.



REV	DATE	DESCRIPTION	BY

FIELD WORK DATE: 1/13/2017
 FIELD BOOK NO. 17-03
 JOB NO. 17497A
 CARI TIKAHNU
 MP 79 - 80 STERLING HWY
 CONDITIONAL LAND USE PERMIT



McLane Consulting Inc.
 ENGINEERING - TESTING
 SURVEYING - PHOTOGRAPHY
 P.O. BOX 986
 SLODOWA, AK 99589
 TEL: (907) 833-2244
 FAX: (907) 833-2283
 WWW.MCLANECO.COM

DESIGNED BY: GMD
 HORIZ SCALE: 1" = 10'
 VERT SCALE: 1" = 10'
 SHEET: P3

A
L
A
S
K
A

2021-004891-0

Recording Dist: 302 - Kenai

5/5/2021 01:54 PM Pages: 1 of 1



Return to:
Suzanne Settle
PO Box 93330
Anchorage, AK 99509-3330

**EXTENSION OF CONDITIONAL LAND USE PERMIT
FOR MATERIAL EXTRACTION**

Pursuant to KPB 21.29, the Kenai Peninsula Borough Planning Department hereby extends for a period of 5 years the conditional land use permit for material extraction described below, subject to the conditions of the said permit and the procedures set forth in KPB code.

Permittee:
Cook Inlet Region, Inc.
PO Box 93330
Anchorage, AK 99509-3330

Legal Description: **T 5N R 8W SEC 16 SEWARD MERIDIAN KN E1/2 & E1/2 W1/2 & NW1/4
NW1/4 EXCEPT THAT PORTION PER W/D 383 @ 681**

Parcel: **065-081-18**

Property Owner:
Cook Inlet Region, Inc.
PO Box 93330
Anchorage, AK 99509-3330

Permit Information:
Permit #**2017-08**
Excavation acreage: Approximately 70.7
Date of issue: 03/27/2017 *Kenai*
Recorded as: **2017-006765-0** in the ~~Homer~~ recording district

New Expiration date: **3/27/2027**

KPB Planning Director: *[Signature]* Date: 5/4/21

SEE ORIGINAL PERMIT FOR CONDITIONS

CC



**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2017-08
KENAI RECORDING DISTRICT**

A resolution granting approval of a conditional land use permit to operate a sand, gravel, or material site for a parcel described as the East 1/4, the East 1/2 of the West 1/2, and the Northwest 1/4 of the Northwest 1/4, of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way.

- WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS,** KPB 21.25.040 provides that a permit is required for a sand, gravel or material site; and
- WHEREAS,** on February 24, 2017 the applicant, Cook Inlet Region, Inc., submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 065-081-18, which is located within the rural district; and
- WHEREAS,** public notice of the application was mailed on March 6, 2017 to the 184 landowners or leaseholders of the parcels within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS,** public notice of the application was published in the March 16, 2017 & March 23, 2017 issues of the Peninsula Clarion; and
- WHEREAS,** a public hearing was held at the March 27, 2017 meeting of the Kenai Peninsula Borough Planning Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On February 24, 2017 the applicant, Cook Inlet Region, Inc., submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 065-081-18, which is located within the rural district.
4. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
5. The proposed total disturbed area is approximately 70.7 acres, consisting of two excavation areas of about 33 acres each and a processing area of about 5 acres.
6. To meet material site standard 21.29.040(A1), the proposed activity must protect against aquifer disturbance by maintaining a 2-foot vertical separation from the seasonal high water table and by ensuring that no material extraction takes place within 100 horizontal feet of any existing water source.
7. The test holes on the property indicate that the ground water is greater than 20 feet below existing grade.
8. The applicant's intended depth of excavation is up to 20 feet below the existing grade.
9. The site plan indicates that there is a well located within 300 feet of the property but none within 100 feet of the proposed excavation.
10. To meet material site standard 21.29.040(A2), the proposed activity must be conducted in a manner to protect against physical damage to adjacent properties by complying with the required permit conditions of KPB 21.29.050.
11. To meet material site standard 21.29.040(A3), the proposed activity must be conducted in a manner which minimizes the off-site movement of dust by complying with required permit condition KPB 21.29.050(10), Dust Control.
12. The submitted site plan indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
13. To meet material site standard 21.29.040(A4), the proposed activity must be conducted in a manner which minimizes noise disturbance to other properties by complying with permit

- condition KPB 21.29.050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB 21.29.050(11), Hours of Operation.
14. The site plan and application proposes the following buffers:
 - North: 50-foot vegetated buffer.
 - South: 50-foot vegetated buffer.
 - East: 50-foot vegetated buffer.
 - West: 50-foot vegetated buffer.
 These buffers will reduce the noise disturbance to other properties.
 15. The site plan indicates that material processing will take place greater than 300 feet from the property boundaries. Rock Crushing is not allowed to take place between 10:00 p.m. and 6:00 a.m. These material processing restrictions will reduce the noise disturbance to other properties.
 16. To meet material site standard 21.29.040(A5), the proposed activity must be conducted in a manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
 17. The site plan and application proposes the following buffers:
 - North: 50-foot vegetated buffer.
 - South: 50-foot vegetated buffer.
 - East: 50-foot vegetated buffer.
 - West: 50-foot vegetated buffer.
 These buffers will reduce the visual impacts to adjacent properties.
 18. To meet material site standard 21.29.040(A6), the proposed activity must be conducted in a manner which provides for alternate post-mining land uses by complying with the permit condition KPB 21.29.050(12).
 19. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project.
 20. The inclusion of the requirements contained in KPB 21.29.060(C3) is necessary to meet the material site standard contained in KPB 21.29.040(A6).
 21. The bonding requirement of KPB 21.29.050(12b) will apply to this material site unless it qualifies for exemption from the state bond requirements pursuant to AS 27.19.050.
 22. A public hearing of the Planning Commission was held on March 27, 2017 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.

SECTION 2. That the land use and operations are described and shall be conducted as follows:

- A. A portion of KPB Tax Parcel Number 065-081-18. The material site area within the parcel is approximately 70.7 acres.
- B. The East ¼, the East ½ of the West ¼, and the Northwest ¼ of the Northwest ¼, of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way.
- C. The applicant, Cook Inlet Region, Inc., proposes to: 1. Extract gravel and sand from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

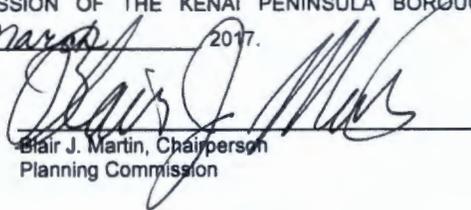
PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers:
 - North: 50-foot vegetated buffer.
 - South: 50-foot vegetated buffer.
 - East: 50-foot vegetated buffer.
 - West: 50-foot vegetated buffer.
 These buffers shall not overlap an easement.
3. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit 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.
4. Rock Crushing shall not take place between 10:00 p.m. and 6:00 a.m.
5. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
6. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
7. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
8. The permittee shall ensure that fuel storage 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.
9. The permittee shall conduct operations 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.
10. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit 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.
11. The permittee shall apply water or calcium chloride, as needed, on haul roads within the boundaries of the subject parcel.
 12. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 13. The permittee shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement does 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.
 14. The permittee is responsible for determining the need for any other municipal, state or federal permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
 15. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
 16. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
 17. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON
THIS 27 DAY OF March 2017.


Blair J. Martin, Chairperson
Planning Commission

ATTEST:

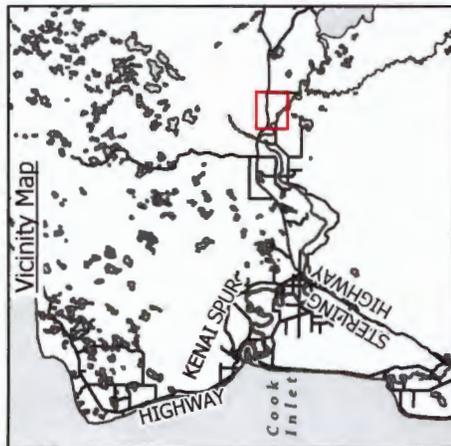
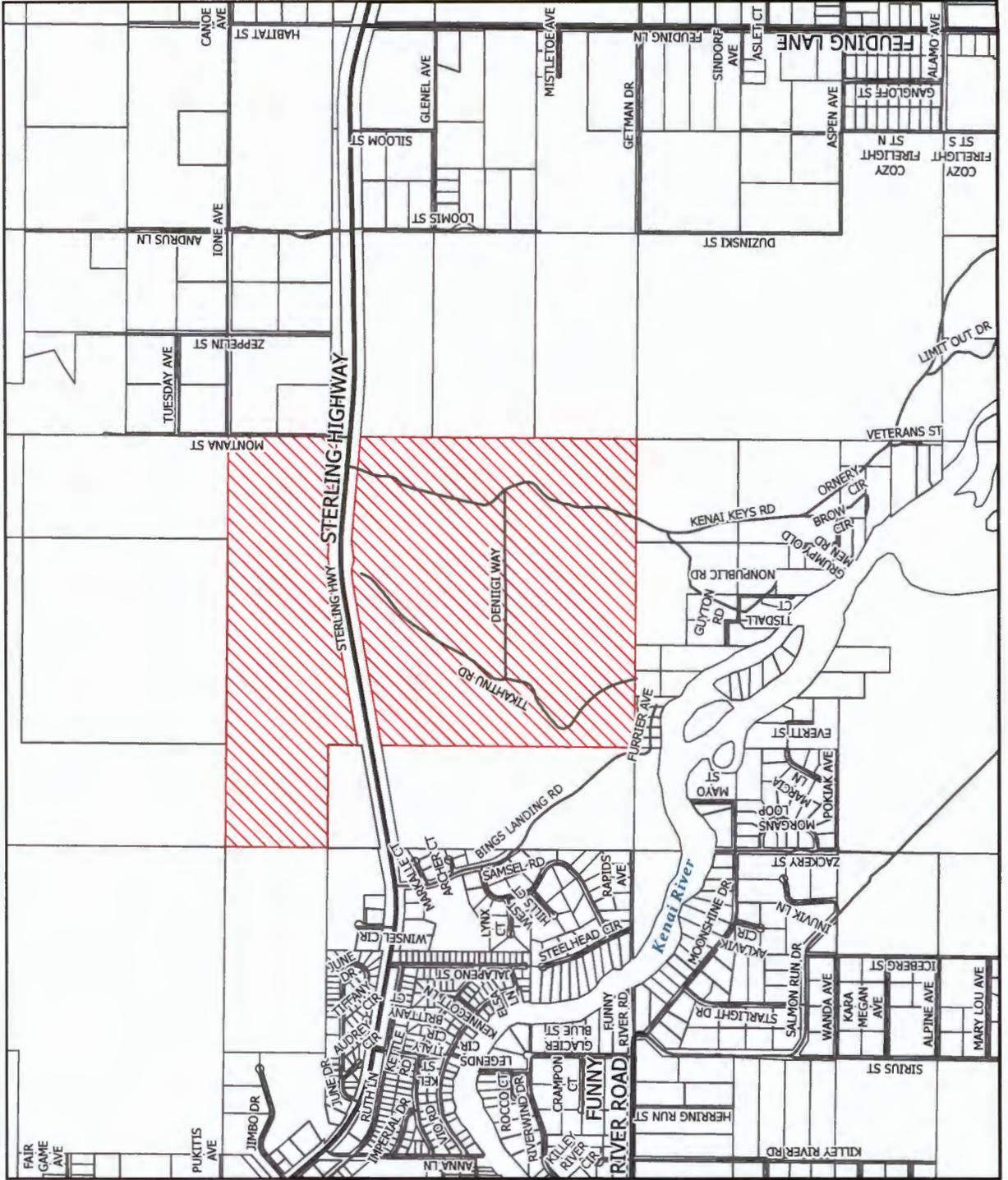

Patti Hartley
Administrative Assistant

PLEASE RETURN
Kenai Peninsula Borough Planning Department
144 North Binkley St.
Soldotna, AK 99669



**Kenai Peninsula Borough Planning Commission -- July 12, 2021
Modification to Conditional Land Use Permit for a Material Site**

**Parcels: 065-081-18
Applicant: Cook Inlet Region, Inc.**



LEGEND

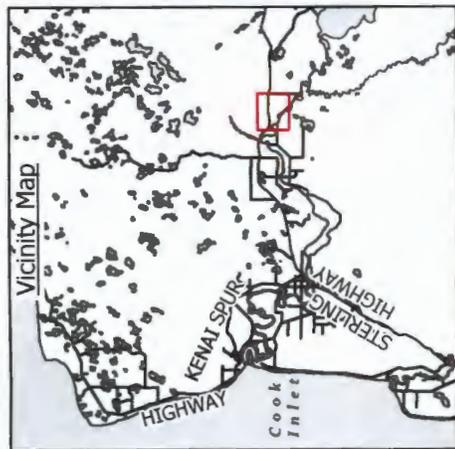
- KPB Tax Parcels
- Subject Parcel

0 0.13 0.25 0.5 Miles

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

**Kenai Peninsula Borough Planning Commission -- July 12, 2021
Modification to Conditional Land Use Permit for a Material Site**

**Parcels: 065-081-18
Applicant: Cook Inlet Region, Inc.**



LEGEND

-  KPB Tax Parcels
-  Subject Parcel

Aerial Imagery: 2016

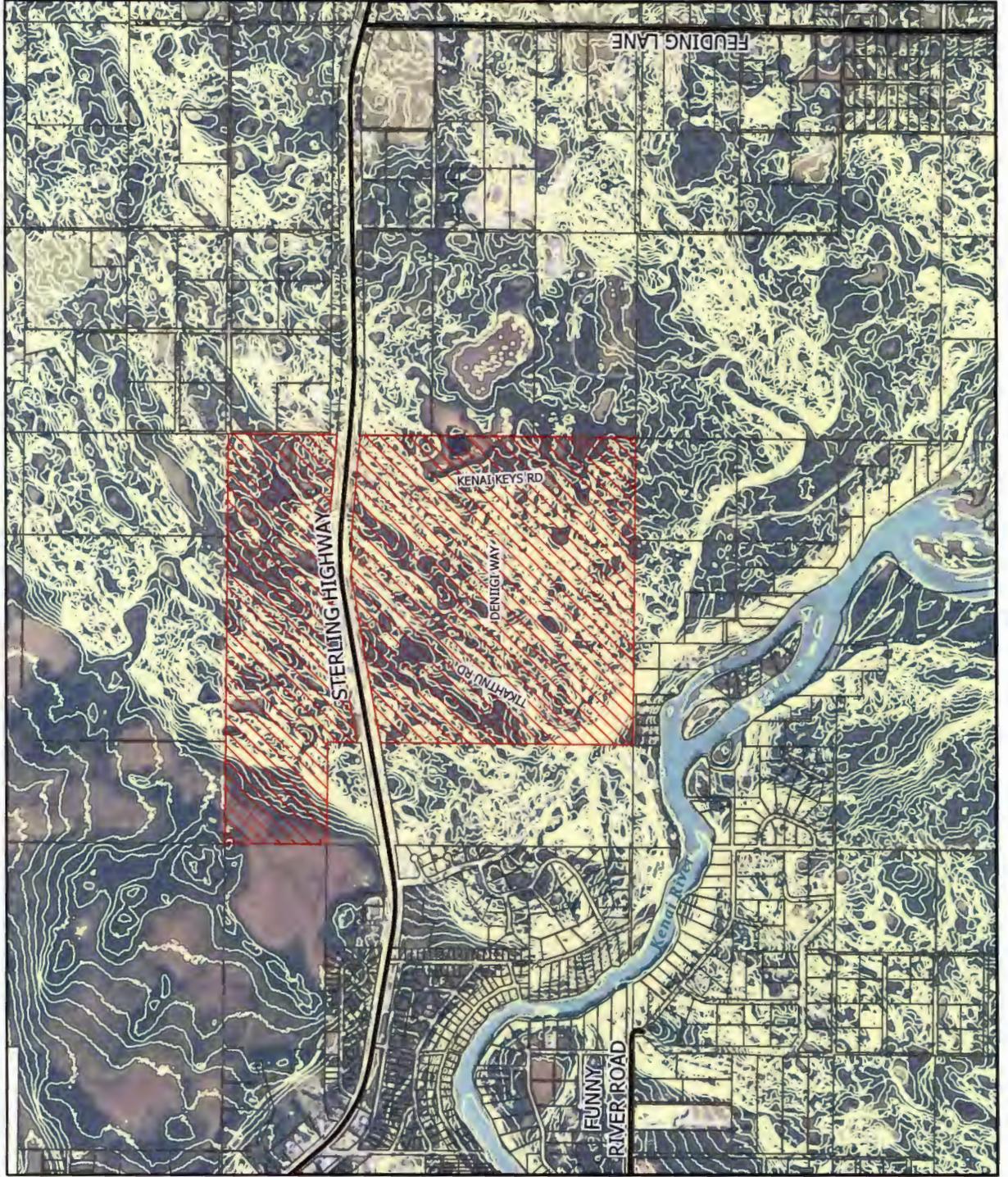
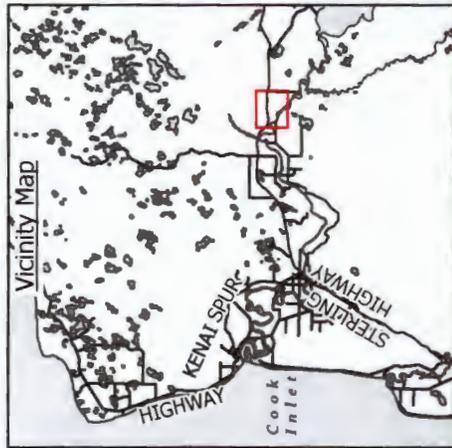
0 0.13 0.25 0.5 Miles



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**Kenai Peninsula Borough Planning Commission -- July 12, 2021
Modification to Conditional Land Use Permit for a Material Site**

**Parcels: 065-081-18
Applicant: Cook Inlet Region, Inc.**



LEGEND

-  KPB Tax Parcels
-  Contours 4 ft
-  Subject Parcel

Aerial Imagery: 2016

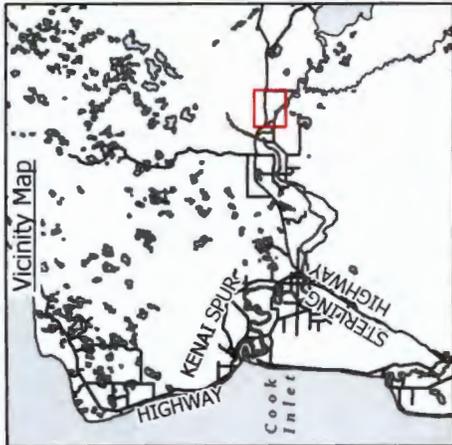
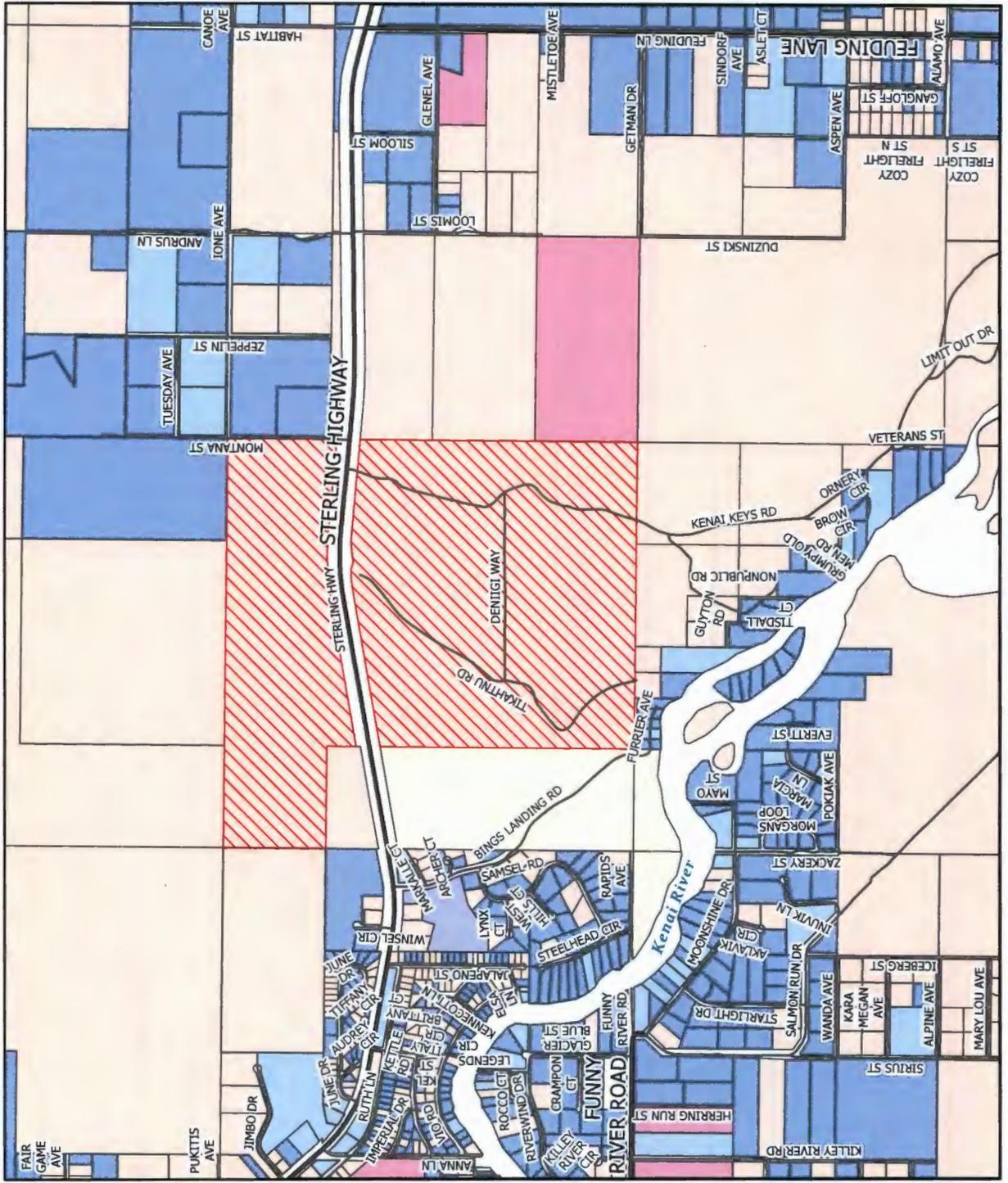


0 0.13 0.25 0.5 Miles

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**Kenai Peninsula Borough Planning Commission -- July 12, 2021
Modification to Conditional Land Use Permit for a Material Site**

**Parcels: 065-081-18
Applicant: Cook Inlet Region, Inc.**



LEGEND

- KPB Tax Parcels
- Subject Parcel

Grouped Assessor's Usage Records

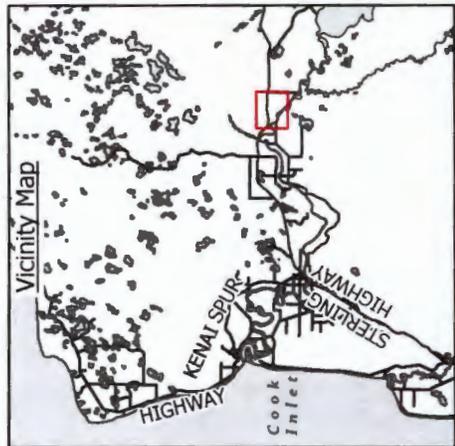
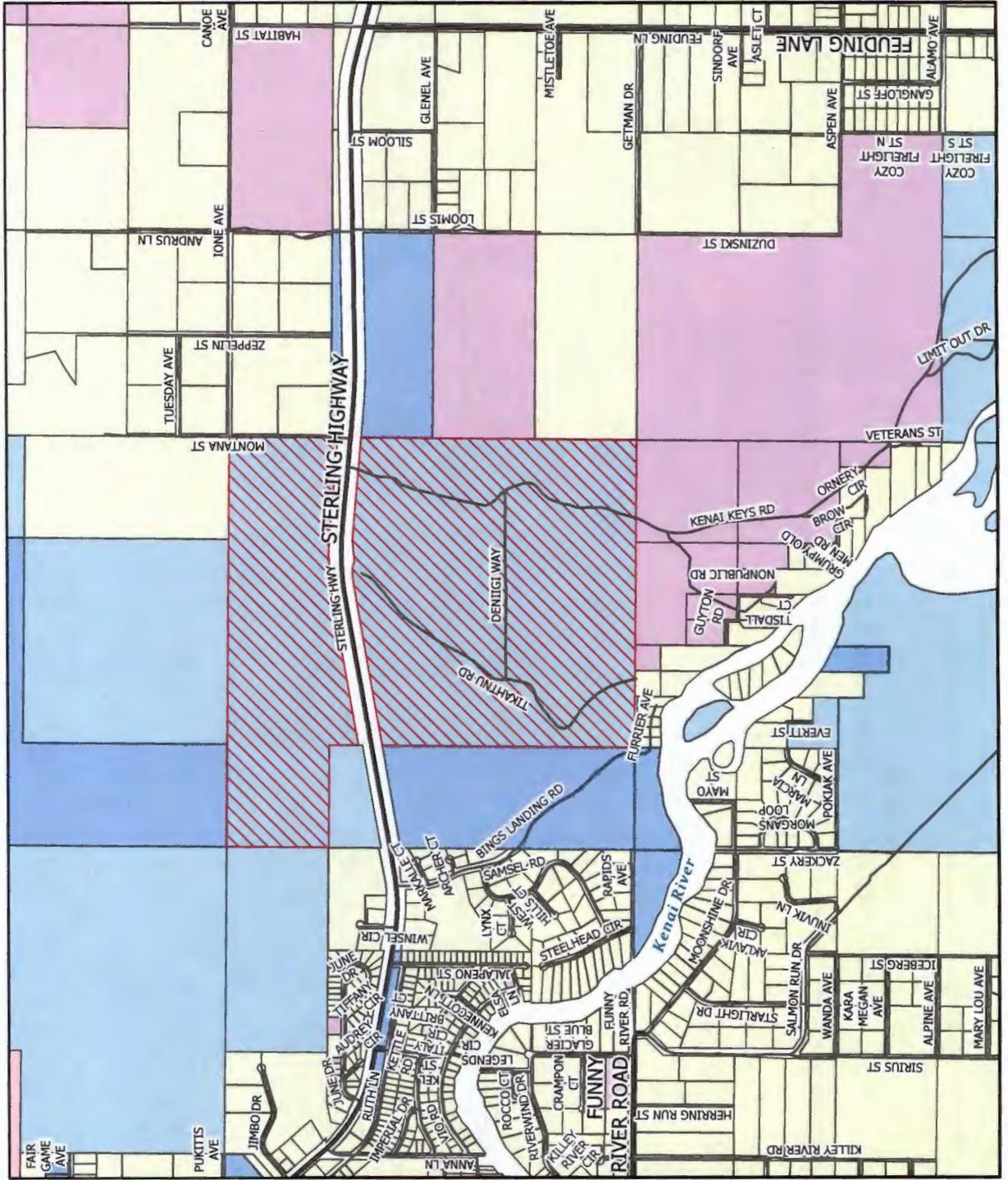
- Vacant
- Residential
- Multiple-Dwelling Residential
- Commercial
- Lodge - Multiple Cabins
- Industrial
- Institutional

0 0.13 0.25 0.5 Miles

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**Kenai Peninsula Borough Planning Commission -- July 12, 2021
Modification to Conditional Land Use Permit for a Material Site**

**Parcels: 065-081-18
Applicant: Cook Inlet Region, Inc.**



LEGEND

	KPB Tax Parcels
	Subject Parcel

Ownership

	Borough
	Native
	Native Allotment
	Private
	State

0 0.13 0.25 0.5 Miles

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



Planning Department

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

Charlie Pierce
Borough Mayor

«OWNER»
«ATTENTION»
«ADDRESS»
«CITYSTATEZIP»

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

Public notice is hereby given that an application to modify an approved conditional land use permit for material extraction has been received for a parcel in the Soldotna area. This notice is being sent to landowners located within ½ mile of the subject property. All members of the public are invited to comment. Details of the application under consideration are as follows:

Applicant: Cook Inlet Region, Inc.

Landowner: Cook Inlet Region, Inc.

Parcel Number: 065-081-18

Legal Description: T 5N R 8W SEC 16 SEWARD MERIDIAN KN E1/2 & E1/2 W1/2 & NW1/4 NW1/4 EXCEPT THAT PORTION PER W/D 383 @ 681

Location: Sterling Highway mile 79.5

Proposed Land Use: The applicant wishes to modify an existing material site permit to add an additional 61 acres to the permitted extraction area.

KPB Code: Conditional land use permit modification applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.29. Copies of these ordinances are available from the Planning Department or at: www.kpb.us

Public Hearing: A hearing will be held by the Kenai Peninsula Borough Planning Commission to consider the application on **Monday, July 12, 2021**, commencing at 7:30 p.m., or as soon thereafter as business permits.

Please be aware that due to the recent COVID-19 pandemic and based on CDC guidelines, the meeting will not be physically open to the public. Instructions are as follows: The meeting will remain open to the public. The Planning Commissioners, along with staff members, will be attending via teleconferencing. The public will be able to listen or participate with the same methods. The meeting will be held through Zoom. To join the meeting from a computer visit <https://zoom.us/j/2084259541>. To attend the Zoom meeting by telephone call toll free ~~1-888-788-0099~~ or **1-877-853-5247**. When calling in you will need the Meeting ID of **208 425 9541**. If you connect by computer and do not have speakers or a microphone, connect online and then select

phone for audio. A box will come up with the toll free numbers, the Meeting ID, and your participant number. Instructions will be posted on the Planning Commission's webpage prior to the meeting. <https://www.kpb.us/planning-dept/planning-commission>

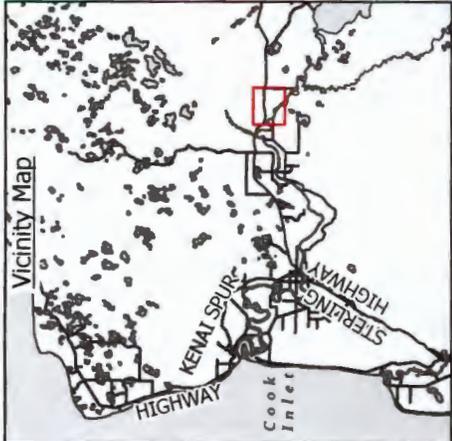
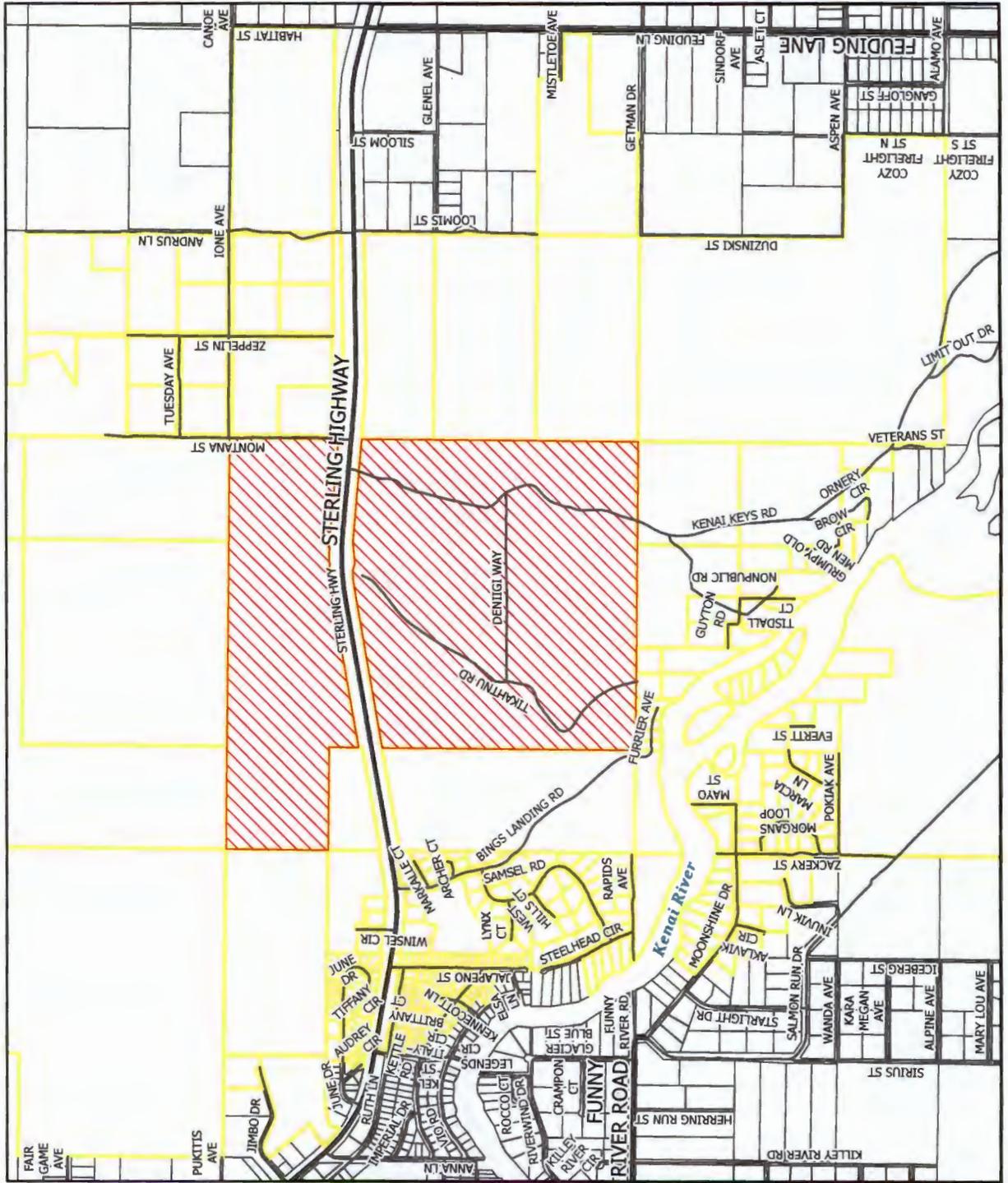
If you have question or experience technical difficulties, please contact the Planning Department at (907) 714-2200.

Public Comment: Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99669. A statement addressed to the chairman may also be emailed to btaylor@kpb.us. Please provide written statements by Thursday, July 9, 2021.

The staff report will be available on the Planning Commission website a week prior to the meeting. For additional information please call the planning department at (907) 714-2200, or 1-800-478-4441 (toll free within the Borough).

**Kenai Peninsula Borough Planning Commission -- July 12, 2021
Modification to Conditional Land Use Permit for a Material Site**

**Parcels: 065-081-18
Applicant: Cook Inlet Region, Inc.**



LEGEND

- KPB Tax Parcels
- Subject Parcel
- Properties within 1/2 mile

0 0.13 0.25 0.5 Miles

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Kenai Peninsula Borough

PLANNING COMMISSION DESK PACKET

**July 12, 2021
7:30 p.m.**

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2021-26
KENAI RECORDING DISTRICT**

A resolution granting modification to a conditional land use permit for a material site to allow for additional excavation are on property described as the East ½, the East ½ of the West ½, and the Northwest ¼ of the Northwest ¼, of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way

- WHEREAS,** the KPB Planning Commission approved PC Resolution 2017-08 on March 27, 2017, which established a conditional land use permit for material extraction on KPB tax parcel ID# 065-081-18; and
- WHEREAS,** on June 22, 2021, the applicant, Cook Inlet Region, Inc., submitted an application to modify the existing conditional land use permit by expanding the area for excavation by 61-acres south of the Sterling Highway within KPB Parcel 065-081-18; and
- WHEREAS,** KPB Chapter 21.29.090 provides for the modification of material site permits when changes in operations approved in the original permit are proposed; and
- WHEREAS,** notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels pursuant to KPB 21.25.060; and
- WHEREAS,** public notice of the application was published in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion; and
- WHEREAS,** public notice was sent to the postmaster in Sterling requesting that it be posted at the post office; and
- WHEREAS,** a public hearing of the Planning Commission was held on July 12, 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

1. *Procedural Findings.*
 - A. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
 - B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
 - C. On March 27, 2017, the planning commission passed resolution 2017-08, which approved a conditional land use permit to Cook Inlet Region, Inc., for material extraction on KPB tax parcel #065-081-18.
 - D. On June 22, 2021, Cook Inlet Region, Inc., submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcel #065-081-18 to add an additional 61-acre excavation area.
 - E. A public hearing of the planning commission was held on July 12, 2021, and notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Sterling requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion.
 - F. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
2. *Parcel boundaries.* KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site. With the original permit, the property boundaries near

- proposed excavation areas in the original permit were flagged.
3. **Buffer zone.** KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. Permit condition number 2 requires that the permittee maintain the following buffers for each excavation area identified on the site plan that will provide visual and noise screening to adjacent properties:
 - 50 feet of undisturbed natural vegetation with additional 6-foot earthen berms around the expanded 61-acre excavation area.
 4. **Processing.** KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
 - A. The original permit site plan indicates a 4.8-acre processing area that is located greater than 300 feet from the parcel boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
 5. **Water source separation.** KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
 - a. The site plan shows no wells within 300 feet of an excavation area.
 - b. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement.
 6. **Excavation in the water table.** KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
 - a. This modification does not seek and exemption to excavate within the water table.
 7. **Waterbodies.** KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
 - a. There are no water bodies within 100 feet of the proposed extraction.
 8. **Fuel storage.** KPB 21.29.050(A)(7) provides that 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.
 - a. Borough staff will regularly monitor the material site to ensure compliance with this condition.
 9. **Roads.** KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
 - a. The original permit indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The modified site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
 10. **Subdivision.** KPB 21.29.050(A)(9) provides that 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.
 - a. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
 11. **Dust control.** KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - a. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
 12. **Hours of operation.** KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - a. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
 13. **Reclamation.** KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
 - a. No modification of the reclamation plan was proposed. As in the original permit, the permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 - b. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
 14. **Other permits.** KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.

- a. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
- 15. *Voluntary permit conditions.* KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - a. In addition to the 50-foot vegetation buffer, 6-foot earthen berms will be placed around the 61-acre expanded extraction area.
- 16. *Signage.* KPB 21.29.050(A)(15) provides that 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.
 - a. Borough staff will regularly monitor the material site to ensure compliance with this condition.

SECTION 2. That the material site operations are described and shall be conducted as follows:

- A. A portion of KPB Tax Parcel Number 065-081-18. The expanded material site area overall within the parcel is approximately 131.7 acres.
- B. The East ½, the East ½ of the West ½, and the Northwest ¼ of the Northwest ¼, of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way.
- C. The applicant, Cook Inlet Region, Inc., proposes to: 1. Extract gravel and sand from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

SECTION 3. That the existing permit conditions are hereby replaced by the following:

PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries as shown in the approved site plan:
 - Northern, southern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation. The addition of a 6-foot earthen berm around the perimeter for the 61-acre expanded extraction area.
 - These buffers shall not overlap an easement.
- 3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
- 4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
- 5. The permittee shall not operate any equipment which conditions or processes material within 300 feet of the property boundaries.
- 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 8. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
- 9. The permittee shall ensure that fuel storage 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.
- 10. The permittee shall conduct operations 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.
- 11. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
- 12. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 13. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 14. The permittee shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement does 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.
- 15. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC

water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.

16. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
17. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
18. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 2021.

Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg
Administrative Assistant

PLEASE RETURN
Kenai Peninsula Borough
Planning Department
144 North Binkley St.
Soldotna, AK 99669

Taylor, Bryan

From: Eric F. Rosenberg <ERosenberg@rosenberg-fayne.com>
Sent: Thursday, July 1, 2021 9:08 AM
To: Taylor, Bryan
Subject: <EXTERNAL-SENDER>Fwd: Commnets on 065-081-18

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.

Can you confirm receipt.

Eric F. Rosenberg
Rosenberg & Fayne
5400 Kenilworth Avenue
Riverdale, Maryland 20737
301-864-2900
301-864-2903--fax
301-980-5598--mobile
erosenberg@rosenberg-fayne.com

*This electronic mail transmission contains information from the law firm of **Rosenberg & Fayne, LLP** which may be privileged or confidential. The information contained herein is for the exclusive use of the addressee named herein. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this information is prohibited. If you have received this electronic transmission in error, please notify us by telephone ([301-864-2900](tel:301-864-2900)) or by electronic mail. Thank you.*

Begin forwarded message:

From: "Eric F. Rosenberg" <ERosenberg@rosenberg-fayne.com>
Date: June 30, 2021 at 9:03:57 AM AKDT
To: btaylor@kpb.com
Cc: Rick Scheifelbien <rick@anchorconstruction.info>, Meatzbart@aol.com, Christine Price <4rosenbergs@gmail.com>
Subject: **Commnets on 065-081-18**

Chairman Blair Martin
Kenai Peninsula Borough Peninsula Planning Board

Re: 065-081-18
Cook Inlet Region, inc

Dear Chairman Martin:

I am writing you with regard to the proposal to allow CIR to expand the gravel pit directly in eye sight and down from the commercial property I own and operate at 3235 Moonshine Drive, Soldotna, Alaska 99669. This project is in Full view of my commercial property and not a single person though to reach out which is deep concerning to me how this process is being undertaken.

This expansion is a poor idea for the following reason and needs to be rejected outright.

1. My property elevation is 292 feet and would look directly into the Pit in violation of 21.29 and is a visual disturbance that cannot be abated. No one has taken the time to evaluate these issues prior to an expansion request which is disturbing at best but shows putting profits over people. I trust my rights, are equal to those of others and if that is accurate, there can be no way to approve the expansion without suggesting, there is favoritism to CIR. Are you not troubled by the lack of preparation? How hard would it have been to travel to affected areas beforehand and talk to us. It tells me that someone is rushing or undue influence is in play. I am interested in the influence CIR has over the board or its independence but before I go asking these questions, I will allow you time to respond.

2. My property can already hear the the traffic from Sterling Highway. A gravel pit will amplify the sounds and there is no noise abatement that can be done to rectify this. Has the audio calculation been done pursuant to the federal MSHA guidelines? Again, why hasn't anyone asked for the effects of the noise. Are you concerned about the PIT noise to residents or the river and wildlife or has that been overlooked. Again, is this profits over people? When is someone going to come and do the audio testing or is that not a requirement?

3. I can tell you from personal experience that any ground disturbance within .75 miles of the river causes major wash outs on the bluff. Are you concerned what a washout or an environmental hazard could cause and damage the River. What environmental studies have been done on the issues of noise, accidents, and traffic. The Kenai River is famous and in pristine condition, why is the Board willing to take a chance on a project so close to the River and risk it. I am worried that there is something else going on that we would approve a project so close to our most Prized River. Please do not let a quick dollar influence the decision to risk Nature. Does the board want to over look the River and what it means to Alaska? What is the point of expanding the road to Kenai if you are going to risk destroying the River? What is being done to prevent environmental issues? There are others areas to get gravel that can benefit CIR, please vote to have them use their other subsidies.

I ask that you reject this project as it cannot be done with any acceptable risk and my Rights are Equal to others and there is no way to follow the statutory requirements. What about my neighbors and the issues that they have?

Should this project not be rejected I will file an Injunction in Federal Court for the Environmental Concerns and in State Court for breaches of my right to Quiet Enjoyment so I would ask that you pass this along to the Project Manager who didn't think to even contact the folks most affected in Soldotna let alone Sterling.

Please don't allow Profits to Come before People..

I am available anytime to discuss this further.

I can be reached at 301-980-5598.

Eric F. Rosenberg

Eric F. Rosenberg
Rosenberg & Fayne LLP
5400 Kenilworth Avenue
Riverdale, Maryland 20737
Telephone: (301) 864-2900
Facsimile: (301) 864-2903

ERosenberg@rosenberg-fayne.com
www.rosenberg-fayne.com



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Taylor, Bryan

From: Mark and Cindy <mrhceh@gci.net>
Sent: Wednesday, July 7, 2021 10:23 PM
To: Taylor, Bryan; Hibbert, Brent; Derkevorkian, Richard; Bjorkman, Jesse; Cox, Tyson; Elam, Bill; Carpenter, Kenn; Johnson, Brent; Ichesle@kpb.us; Dunne, Willy; Pierce, Charlie
Cc: Niki Pereira; cindy Hamlin E; stutzer@gci.net
Subject: <EXTERNAL-SENDER>Land Use Permit for Material Extraction - Sterling Highway mile 79.5
Attachments: Gravel Pit 2021.docx

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.

Kenai Peninsula Borough Planning Commission Chairman, Assembly Members, and Mayor:

Thank you for notifying us by US Postal Service mail, at our primary residence in Anchorage, regarding the Cook Inlet Region, Inc. application to modify an approved conditional land use permit for material extraction near our recently constructed home in Sterling. The information in the letter has taken us by surprise as we were never informed, nor given any opportunity to comment about the original land use permit that was granted in this area for material extraction.

For the past 28 years, we have enjoyed recreating on the property at West Hills Court and the beautiful surrounding area. So much so that we decided to build a home on the property and make it part of our retirement plan. Construction on our home at West Hills Court was completed in March 2018 and we have been residing there on a part-time basis for vacations, weekends and holidays year round. Upon my retirement in September 2022, our plan was to downsize from our home in Anchorage and relocate to our home in Sterling. Your public notice letter has come as a shock to us. An expansion of a material extraction project (gravel pit) near our home will threaten our financial investment and disrupt our dream of a safe, quiet, peaceful retirement.

We have many questions and concerns about this short-notice request to expand the “material extraction” site. Two weeks notice for public comment is unfair and insufficient. Have there been any studies performed regarding noise, air quality, water/well disruption, roadway degradation, traffic hazards, impact on wildlife, fisheries, the river? Why is an Alaska Native corporation harvesting gravel from this beautiful, pristine area? Isn’t there another area with less impact on people, fish, wildlife, the river? One of CIRI’s values includes “honor - do the right thing the right way. Honor is the heartbeat of the company.” This project doesn’t align with honor and isn’t prudent stewardship of Alaska resources?

We join our Bing’s Landing Subdivision neighbors (see attachment) and strongly object to the application to modify (expand) the land use permit for material extraction for the parcel number 065-081-18. Please consider our concerns and please be prepared to respond to our questions at the upcoming public hearing scheduled July 12, 2021 at 7:30pm via Zoom.

Thanks for your time and attention to this important matter.

Respectfully submitted,
Cindy E. Hamlin and Mark R. Hughes
32177 West Hills Court
Sterling, AK 99672

Taylor, Bryan

From: Claire Lewis <siwela.claire@gmail.com>
Sent: Thursday, July 8, 2021 11:42 AM
To: Taylor, Bryan
Cc: Aeschliman, Melanie; Elam, Bill; ray@longlivethekings.com; krpga1@gmail.com; ben@krsa.com; shannon@krsa.com; Planning Dept.; kakillian@att.net
Subject: <EXTERNAL-SENDER>Fwd: Kenai Borough Planning 7/12/21 Meeting Agenda Parcel Number 065-081-18

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.

Subject: Kenai Borough Planning 7/12/21 Meeting Agenda Parcel Number 065-081-18

July 8, 2021

Brian Taylor, Borough Planner
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK, 99669

Dear Brian,

This is a request to delay the planned agenda item at the Borough Planning meeting scheduled Monday, July 12th at 1930. My husband and I received our notification on 6/24/21 in the mail, since our home is in Anchorage, yet we own two undeveloped acres in the Bings Landing Subdivision. Our lots are within a ½ mile of the planned gravel/ “material extraction” from 61+ acres. The time line of 2 ½ weeks from when we received our letter, is not enough time to voice concerns for this planned development by CIRI.

Our current Anchorage home is on well and septic and water preservation is dear to our neighbors and us. We live within a ½ mile of a past gravel excavation that took place in the 1970’s, in the now neighborhood called Westpark Subdivision. It is unknown if our well water is linked to the 7+acre aquifer that was exposed during the 1970s gravel mining in Westpark; yet, many reports and data collection exist due to this aquifer exposure and wells impacted. In the 1970s, 2 private wells noticed sediment and contamination that occurred within weeks of gravel excavation in Westpark. When the gravel excavation went below the water table, disturbing the clay/soil/ and sand layers, their clear well water turned, brown, silty and sandy within weeks of excavation. I understand the developer did not intend harm to drinking water, yet it happened.

When my husband and I met 4 years ago with other Bings Landing neighbors, we expressed concern for the potential impact to well water to the CIRI, Kenaitze Tribe, and Foster Brother representatives (all reaping the benefit of money from the most recent gravel excavation). Our concern for impact to well water with “material excavation”/gravel has **Not** changed.

The meeting delay request, is so all stakeholders concerned by this development have time to gather information and voice concerns. I have cc:d key members of the Borough and other Kenai River water stewards in this letter. Presumably, these below members do not drink water from the Kenai River; however, their enjoyment of the Kenai River via fishing guide services and preservation of the river is at risk of impactation by noise, erosion of the embankment, and other known side effects when this proposed extensive gravel excavation takes place nearby.

We cannot personally afford to legally fight CIRI on their proposed development, but the Kenai Borough can and should be observant of existing home/Well owners, land owners, and Kenai River users, (all tax payers to the Borough), and take time to listen to concerns before bulldozing the issue forward. Again, we ask the meeting be delayed, and necessary time outside the busy summer season, be given to concerned citizens impacted by the proposed development.

Respectfully,

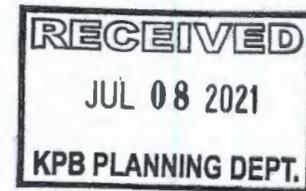
Claire and Dan Lewis

Land owners of Bings Landing Sub Part 1 Lot 1 and 6, Blk 3
907-306-6978

cc: Melanie Aeschliman, Planning Director, Kenai Borough
Bill Elam, Assembly Representative, Bings Landing
Ray Debardeleben, President of Kenai River Professional Guide Association/KRPGA
Ben Mohr, Director of Kenai River Sports Fishing Association/ KRSA
Shannon Martin, KRSA

and **Ken Sterling, Bings homeowner (whose 7/8 submitted letter we support!!)**

July 8, 2021



Melanie Aeschliman, Planning Director
Brian Taylor, Borough Planner
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK. 99669

Cc: Jeremy Brantley
PO Box 1444
Soldotna, AK. 99669

We, some residents of the Bing's Landing subdivision, are writing to you to ask for a postponement of agenda item E.9 on July 12th, Conditional Land Use Permit Modification, Parcel ID #06508118.

The first permit issued several years ago was highly contested by surrounding residents. After many meetings with CIRI and Foster Construction where our concerns were placated then never fully addressed, the borough planning commission forged ahead and released the permit. Now CIRI has come back with plans to grow the gravel pit.

We have MANY concerns with the borough process and timeline from permit application to public notice and, finally, permit approval. This permit application was filed on June 22, 2021. Public notice started hitting mailboxes near the end of June and into the first of July. The planning commission meeting to address the permit is July 12, 2021. The brief timing of this, from application to approval, is no small matter! We are the residents saddled with the impact of this for many years. It's rare you will find a lawyer among us. We are common citizens who have worked hard, and many have put their life savings into where we live and our preferred way of living in this quiet, pristine area. **WE CANNOT MOUNT A PROPER RESPONSE TO THESE ASSAULTS ON OUR WAY OF LIVING IN LESS THAN THREE WEEKS!!!**

This permit application comes at the beginning of our busiest season for us common folks! It's summer. The fish are coming in. Families are coming in. Many of us travel around our state to enjoy the short summer we experience up here. Even the planning commission takes time off from its' duties in the summer to do the very thing we are trying to do. We write this letter to you on Thursday before the upcoming meeting on Monday. It took us this long to get a few of our ducks in a row just to mount a request for a postponement. We are asking you to postpone this until AT LEAST August. September would be better as that moves us more out of the busy summer season.

Our concerns related to the permit you originally extended to CIRI for the original gravel pit were brushed aside; the noise, the dust, the water table issues, etc. It is our understanding that

residents surrounding the big gravel pit south of us (used to facilitate roadwork) are having well and water problems. We are in the process of verifying that information. This was one of our biggest concerns. If true, the borough is complicit in approving material extraction sites without allowing enough time for testing, environmental and other impact studies, nor the requirement thereof.

We Alaskans hate zoning and regulation. However, when our elected and appointed official's side with business in a way that excludes or minimizes the impact to residential and recreational users, we must address it. This issue happens all over the Kenai Peninsula Borough and in other non-incorporated areas of Alaska.

There is plenty of gravel in areas that are not adjacent to residential and pristine designated recreational areas. We understand they are more expensive to utilize, but something must give here. We, the taxpayers of this borough, need more of an opportunity to have a voice in what happens around us.

In addition to all the above-mentioned issues, this upcoming meeting is not even available for face-to-face public comment. It is now only open to phone or zoom as an option. Many of us do not have capability for zoom meetings. Hearing our voices over the phone reduces the impact of our testimony as you do not have the capability to see our facial expressions. Just because the meeting room was occupied the night of the planning commission meeting does not excuse you from making accommodations for the public to address you personally.

We are imploring you to give this permit application more time before approving it. The borough's rules do not give sufficient time to mount a defense against one of the biggest corporation's in Alaska. It's time to decide who you serve, the small taxpayers, or the big corporations?

Please postpone this meeting at least one month, if not two!

Ken Killian
Bing's Landing Subdivision
Sterling, Alaska
907-232-6188

Bing's Landing Subdivision
Sterling, Alaska

Name Lisa Smith Signature
Lisa Smith

Address
37220 Steelhead Circle
Sterling, AK 99672

Phone 801-372-4479 Email
bdilisa@gmail.com

Name _____ Signature

Address

Phone _____ Email

Name Yulia Vasilyeva Signature 

Address 32123 W Hills Ct, Sterling AK

Phone 925-588-4144 Email u.litka@sbptobal.net

Name Alexei Vassiliev Signature 

Address 32123 W Hills Ct Sterling AK

Phone 408-772-0406 Email avassiliev@sbptobal.net

Name _____ Signature _____

Address _____

Phone _____ Email _____

Name _____ Signature _____

Address _____

Phone _____ Email _____

Name _____ Signature _____

Address _____

Phone _____ Email _____

Name _____ Signature _____

Address _____

Phone _____ Email _____

Name Tim and Denise Martin Signature [Signature]
Address 37865 ~~Bohannon~~ Steelhead Ct
Phone (907) 2607564 Email tmartin@vele.net

Name John & Linda Halsea Signature [Signature]
Address 32151 Rapier Ave
Phone 907-252-1707 Email lnehodson@gmail.com

Name ROBERT PERZINA Signature [Signature]
Address 37195 STEELHEAD CIR STERLING AK 99672
Phone (907) 830-0888 Email fishcrazy@reagan.com

Name Niki Pereira Signature [Signature]
Address 37195 Steelhead Cir. Sterling, AK 99672
Phone 907-830-6543 Email niklnuk@qci.net

Name _____ Signature _____
Address _____
Phone _____ Email _____

Name _____ Signature _____
Address _____
Phone _____ Email _____

Name Charles K. Clasby Signature Charles K. Clasby
Address 32167 West Hills Ct. Sterling, AK 99672
Phone 907-230-0516 Email Calman.CK@gmail.com

Name Karol Schiefelbein Signature Karol Schiefelbein
Address 37105 Steelhead Circle Sterling, AK 99672
Phone 907-260-3577 Email Karol3510@hotmail.com

Name Richard Schiefelbein Signature Richard Schiefelbein
Address 37105 Steelhead Circle Sterling, AK
Phone 907 260-3577 Email KickAnchorConstruction.info

Name Kathleen G. Fogle Signature Kathleen G. Fogle
Address 37065 Steelhead Circle Sterling AK 99672
Phone 916-539-1342 Email Kgfogle1951@gmail.com

Name Ken Killian Signature Ken Killian
Address 37468 SAMSEL Rd STERLING AK 99672
Phone 907-232-6188 Email KAKILLIAN@ATT.NET

Name _____ Signature _____
Address _____
Phone _____ Email _____

Subject: Land Use Permit for Material Extraction - Sterling Highway mile 79.5
Date: Wednesday, July 7, 2021 at 10:22:31 PM Alaska Daylight Time
From: Mark and Cindy
To: btaylor@kpb.us, bhibbert@kpb.us, rderkevorkian@kpb.us, jbjorkman@kpb.us, tysoncox@kpb.us, belam@kpb.us, kcarpenter@kpb.us, bjohnson@kpb.us, lchesle@kpb.us, wdunne@kpb.us, cpierce@kpb.us
CC: Niki Pereira, cindy Hamlin E, stutzer@gci.net
Attachments: Gravel Pit 2021.docx

Kenai Peninsula Borough Planning Commission Chairman, Assembly Members, and Mayor:

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We have many questions and concerns about this short-notice request to expand the "material extraction" site. Two weeks notice for public comment is unfair and insufficient. Have there been any studies performed regarding noise, air quality, water/well disruption, roadway degradation, traffic hazards, impact on wildlife, fisheries, the river? Why is an Alaska Native corporation harvesting gravel from this beautiful, pristine area? Isn't there another area with less impact on people, fish, wildlife, the river? One of CIRI's values includes "honor - do the right thing the right way. Honor is the heartbeat of the company." This project doesn't align with honor and isn't prudent stewardship of Alaska resources?

We join our Bing's Landing Subdivision neighbors (see attachment) and strongly object to the application to modify (expand) the land use permit for material extraction for the parcel number 065-081-18. Please consider our concerns and please be prepared to respond to our questions at the upcoming public hearing scheduled July 12, 2021 at 7:30pm via Zoom.

Thanks for your time and attention to this important matter.

Respectfully submitted,
Cindy E. Hamlin and Mark R. Hughes
32177 West Hills Court
Sterling, AK 99672

Name Mary L. Bailey Signature Mary L. Bailey
Address PO Box 1265 Sterling AK 99672
Phone 907-301-8941 Email 9467772@hotmail.com

Name Roxie Little Signature Roxie Little
Address 37455 Samuel Sterling, AK 99672
Phone 262-6288 Email lesrox3@gmail.com

Name David Skieens Signature D
Address PO Box 421 Sterling AK 99672
Phone 907 242 1343 Email dskieens@gmail.com

Name _____ Signature _____

Address _____

Phone _____ Email _____

Name _____ Signature _____

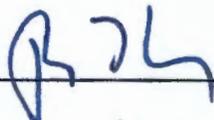
Address _____

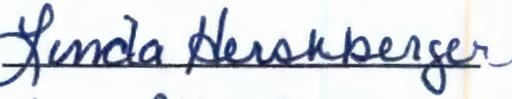
Phone _____ Email _____

Name _____ Signature _____

Address _____

Phone _____ Email _____

Name Penny Hershberger Signature 
Address 37060 Steelhead Circle, Sterling, AK 99672
Phone 330-827-1022 Email p/hersh60@gmail.com

Name Linda Hershberger Signature 
Address 37060 Steelhead Circle Sterling AK 99672
Phone 330 827 1024 Email lchersh65@gmail.com

Name _____ Signature _____

Address _____

Phone _____ Email _____

Name _____ Signature _____

Address _____

Phone _____ Email _____

Name _____ Signature _____

Address _____

Phone _____ Email _____

Name _____ Signature _____

Address _____

Phone _____ Email _____



Planning Commission

Meeting Packet

August 9, 2021

7:30 p.m.

**KENAI PENINSULA BOROUGH
ASSEMBLY CHAMBERS
144 NORTH BINKLEY ST.
SOLDOTNA, ALASKA 99669**

***Please Note:
Packet Materials for August 9, 2021 PC
Meeting Contained the Meeting Materials
from the July 12, 2021 PC Meeting with
the Addition of the August 27, 2021
Planning Commission Memo**

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

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

FROM: Bryan Taylor, Planner

DATE: July 27, 2021

RE: Addendum to CIRI CLUP Modification Application PC Resolution 2021-26

On July 27, 2021, we received an addendum to the above application. The applicant proposes the following voluntary condition be added to their application:

Applicant shall be limited to disturbing 20 acres during the first two years of the permit. The open area shall be reclaimed upon completion of excavation activities.

MISCELLANEOUS INFORMATION

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

} SS:

Doug Munn, being first duly sworn, on oath deposes and says:

That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Peninsula Clarion, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

PC NPH
07/01/21

x Doug Munn

SUBSCRIBED AND SWORN before me on this

8th day of July, 2021.

Elizabeth A. McDonald
NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 3-6-24.

Elizabeth A. McDonald
Notary Public, State of Alaska
Commission #200306009
My Commission Expires March 6, 2024

KENAI PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF PUBLIC HEARINGS
Monday, July 12, 2021

The following items are scheduled for public hearings to be held by the Kenai Peninsula Borough Planning Commission on Monday, July 12, 2021 commencing at 7:30 p.m., or as soon thereafter as business permits. Due scheduling conflicts, the meeting will not be physically open to the public. The public is invited to participate via teleconferencing. The meeting will be held through Zoom. To join the meeting from a computer, visit <https://zoom.us/j/2084269541>. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-863-5247. When calling in you will need the Meeting ID of 208 426 9541. If you connect by computer and do not have speakers or a microphone, connect online and then select phone for audio. A box will come up with toll free numbers, the Meeting ID, and your participant number. Detailed instructions will be posted on the Planning Commission's webpage prior to the meeting:
<https://www.kpb.us/planning-dept/planning-commission>

1. Ordinance 2021-__: An ordinance authorizing communication tower lease agreements at certain locations with SPITwSPOTS Inc.
Written comment for the above item may be submitted to the Land Management Division, Kenai Peninsula Borough, 144 N. Binkley St., Soldotna, AK 99689 or by email to lmweb@kpb.us. It is recommended that comments be received by 1:00 P.M., Friday July 9, 2021.
2. Public notice is hereby given that an application to modify an approved conditional land use permit for material extraction has been received for a parcel in the Soldotna area. Applicant & Landowner: Cook Inlet Region, Inc. Location: Sterling Hwy. mile 79.5. Parcel ID#: 06508118.
Written comment for the above item may be submitted to the Planning Commission Chairman, 144 N. Binkley St., Soldotna, AK 99669 or by email to btaylor@kpb.us. It is recommended that comments be received by 1:00 P.M., Friday July 9, 2021.

2587330

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

} SS:

Jeff Hayden, being first duly sworn, on oath deposes and says:

That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Peninsula Clarion, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

PC agenda
07/08/21

x Jeff Hayden

SUBSCRIBED AND SWORN before me on this

13th day of July, 2021.

Elizabeth McDonald

NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 3-6-24.

Elizabeth A. McDonald
Notary Public, State of Alaska
Commission #200306009
My Commission Expires March 6, 2024



**Kenai Peninsula Borough
Planning Commission
JULY 12, 2021 TENTATIVE AGENDA**

The next regularly scheduled Planning Commission meetings will be held Monday, July 12, 2021. Please note this meeting will be conducted online only. The Planning Commission and staff members will be attending via teleconferencing. The public may listen or participate in the meeting via Zoom. To join the meeting via Zoom from a computer visit:

<http://zoom.us/j/2084259541>

To attend the meetings by telephone call toll free 1-888-788-0099 or 1-877-853-6247. When calling in you will need the Meeting ID number of 208 425 9541. Detailed instructions will be posted on the Planning Commission webpage prior to the meeting:

<https://www.kpb.us/planning-dept/planning-commission>

PLAT COMMITTEE – 6:00 P.M.

New Business

1. Tide View Heights #2; KPB File 2021-088; Johnson Surveying/Padget & Smith; Location: Ames Road; City of Kenai
2. Kenai Landing Subdivision 2021 Addition; KPB File 2021-089; Edge Survey & Design LLC/PRL Logistics Inc. & Kenai Landing Inc.; Location: Bowpicker Lane, Seacatch Drive & Columbia Street; City of Kenai
3. Birchwood Subdivision Sherman Addition No. 2; KPB File 2021-090; McLane Consulting Inc./Ciuffo & Seymour; Location: Reger Road & Edgington Road; Sterling Area
4. Bay View subdivision 2018; KPB File 2021-087; Ability Surveys/Freeman Holdings of Arkansas LLC; Location: Lake Shore Drive; City of Homer
5. Spruce Woods Subdivision 1975 Addition, Tract 1 Replat; KPB File 2021-091; Ability Surveys/Roth; Location: Saber Avenue E., Yukon Street & East End Road; Fritz Creek Area; Kachemak Bay APC

PLANNING COMMISSION – 7:30 P.M.

New Business

1. Utility Easement Vacation; KPB File 2021-084V; PC Resolution 2021-22; Location; Vacate the 10' wide utility easement on the north boundary of Lot 14 Block 1 excluding the portion within 10' of Barbara Drive, granted by Banta Subdivision Addition No 1 and Resubdivision of Lot 4 Block 1 Plat HM 78-21; Petitioner(s)/Owner(s): Mark and Micki Salinas of Ninilchik, AK.
2. Right-Of-Way Vacation; KPB File 2021-085V; Location; Vacates a portion of C Street right of way adjoining Lot 1 Block 2 and Lot 3 Block 3 as dedicated on U.S. Survey No 4901 Tracts A through D, Townsite of English Bay, Plat SL 71-62; Petitioner(s): Nanwalek Village C/O Village Council of Nanwalek, AK.
3. Right-Of-Way Vacation; KPB File 2021-086V1; Location: Vacates a 60' right of way and cul-de-sac on adjoining lots 8-A, 9-A, 10-A and 18A per Stanley's Meadow Subdivision No 11 ADEC Power-Trip Replat (Plat HM 93-60) as dedicated on Stanley's Meadow No 11 (Plat HM 91-47); Petitioner(s): Ina L., Cecil R., Stephanie J. and Billy R. Jones of Fritz Creek, AK.
4. Conditional Use Permit; PC Resolution 2021-24; Petitioner: USDA Forest Service; PINs: 125-324-07 & 12532404; Location: Moose Pass Area
5. Ordinance 2021-27: An ordinance authorizing communication tower lease agreements at certain locations with SPITwSPOTS Inc.
6. Ordinance 2021-28: An ordinance authorizing a lease to Robert Gibson, DBA Alaska Land & Cattle Company for approximately 280 acres of Borough land in the Basargin Road area for agricultural use.
7. Resolution 2021-046: A resolution classifying 420 acres of Borough land located within Section 1, T05S, R14W, Seward Meridian, Alaska as rural & agriculture.
8. Marijuana Concentrate Manufacturing Facility License; Applicant: Leaf & Larf, LLC dba Purgatory Cannabis; Landowner: Zan Inc.; Location: 43280 Kenai Spur Hwy., Kenai, AK 99611
9. Conditional Land Use Permit Modification; Applicant: Cook Inlet Region Inc. / Land Owner: Cook Inlet Region; Parcel ID#: 06508118; Sterling Area

Anyone wishing to testify may attend in person or via Zoom to give testimony. It is highly recommended that at this time written statements be submitted by email (planning@kpb.us) or fax (907-714-2378). Written comments may be submitted by hand-delivery or mail (Planning Department, 144 N. Binkley St., Soldotna, AK 99690).

FUTURE MEETINGS

The next regularly scheduled Plat Committee meeting will be held Monday August 9, 2021. The Plat Committee meeting will begin at 5:30 p.m. The next regularly scheduled Planning Commission meeting will be held Monday August 9, 2021. The Planning Commission meeting will begin at 7:30 p.m.

KPB PLANNING DEPARTMENT
Ann Shimberg, Administrative Assistant
Phone: (907) 714-2215 / Fax: (907) 714-2378
Toll free within the Borough 1-800-478-4441

2589845

PUBLISHER'S AFFIDAVIT

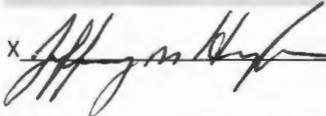
UNITED STATES OF AMERICA,
STATE OF ALASKA

}
SS:

Jeff Hayden, being first duly sworn, on oath deposes and says:

That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Peninsula Clarion, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

PC agenda
08/05/21

x  _____

SUBSCRIBED AND SWORN before me on this

5th day of August, 2021.

 _____

NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 3/6/2024.

Elizabeth A. McDonald
Notary Public, State of Alaska
Commission #200306009
My Commission Expires March 6, 2024



**Kenai Peninsula Borough
Planning Commission
August 9, 2021 TENTATIVE AGENDA**

The next regularly Planning Commission meetings will be held Monday, August 9, 2021 at the KPB George A Navare Administration Building, 144 N. Binkley St., Soldotna, AK. The public may also listen or participate in the meeting via Zoom. To join the meeting via Zoom from a computer visit:

<http://zoom.us/j/2084259541>

To attend the meetings by telephone call toll free 1-888-788-0099 or 1-877-853-5247. When calling in you will need the Meeting ID number of 208 425 9541. Detailed instructions will be posted on the Planning Commission webpage prior to the meeting:

<https://www.kpb.us/planning-dept/planning-commission>

PLAT COMMITTEE – 5:30 P.M.

New Business

1. Stanleys Meadow 2021; KPB File 2021-086; Ability Surveys / Jones; Location: Off Perkins Road & Cove View Court; Fitz Creek Area
2. Tulin West Highlands Green 2021 Replat; KPB File 2021-104; Seabright Surveying / Green; Location: Joe Super Street & West Highlands Blvd.; Diamond Ridge Area
3. Self Subdivision Bilben Replat; KPB File 2021-092; Peninsula Surveying LLC / Bilben & Gregory; Location: Stol Road; Cohoe Area
4. Ninilchik Airport Heights 2021 Replat; KPB File 2021-103; Geovera LLC / Terrastar Properties LLC; Location: Tailwind Road, Cessna Street & Smart Street; Ninilchik Area
5. Fireweed Meadows 2021 Replat; KPB File 2021-095 Geovera, LLC / Emmitt & Mary Trimble Revocable Trust, Home Grown Construction LLC; Location: Milo Fritz Avenue & Granross Street; Anchor Point Area
6. McReed Subdivision 2021 Replat; KPB File 2021-093; Johnson Surveying / Hame; Location: Cohoe Loop Road; Cohoe Area
7. Melickian Subdividing 2021 Addition; KPB File 2021-094; Johnson Surveying / Waggoner, Jaso, Munter & Rinck; Location: Resurrection Creek Road & Katday Court; Hope Area
8. Horse Creek Subd 2021 Addition; KPB File 2021-099; Johnson Surveying / Deford; Location: Resurrection Creek Road; Hope Area
9. Hinz subdivision No. 2; KPB File 2021-102; Segesser Surveys / Hinz; Location: Irish Hills Avenue & Bethula Street; Kalifornsky Area
10. Mac McGahn Subdivision 2020 Replat; KPB File 2021-096; Segesser Surveys / The Estate of Dolores Mae McGahan, The Estate of Dolores M. McGahan, Merrill M. McGahan, Carmen M. McGahan, Dolores M. Rappe, The Estate of Merrill Mazie McGahan; Location Nikishika Beach Road & Kenai Spur Highway; Nikiski Area
11. Boen Landing Subdivision Marlow Replat; KPB File 2021-101; Segesser Surveys / Marlow; Location: Stephens Drive; Sterling Area
12. Emery Subdivision; KPB File 2021-100; Segesser Surveys / Emery; Location: Wendy Lane; Kalifornsky Area

PLANNING COMMISSION – 7:30 P.M.

Old Business

1. Conditional Land Use Permit Modification; Applicant/Landowner: Cook Inlet Region Inc.; Tax Parcel ID# 06508118; Location: Sterling Area

New Business

1. Utility Easement Vacation; KPB File 2021-086V; Vacate a 20' utility easement within Lot 10A Stanley's Meadow No. 11 (HM 93-60); Petitioners/Owners: Cecil R., Ina L., Billy Ray, Stephanie Joy Jones; Location: Fritz Creek Area
2. Utility Easement Vacation; KPB File 2021-054V; Vacate 10' utility easements along the side lot lines of Lots 19, 20, 21, Block 13 Carl F. Ahlstrom Subdivision (KN-216) & Lot 22A, Block 13, Carl F. Ahlstrom Subdivision RPM's Replat (KN 2017-66), excluding the 15' adjoining the Kenai Spur Hwy & the 10' adjoining the northeast boundary; Petitioners/Owners: RPM's LLC & John Mellish; Location: City of Kenai
3. Street Naming Resolution; SN 2021-04; Naming a certain private road within Section 24, T04S, R11W, Seward Meridian; within Emergency Service Number (ESN) 202
4. Ordinance 2021-32: An ordinance authorizing a negotiated lease at fair market value with Edward & Kathleen Martin, DBA Cozy Inn, in Kenai for a parking area.
5. Ordinance 2021-31: An ordinance authorizing an amendment to a master land lease development agreement with the Alaska Department of Transportation & Public Facilities in support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing to include a staging area at Tract C Quartz Creek Subdivision and appraisal provisions.

Anyone wishing to testify may attend in person or via Zoom to give testimony. Written statements should be submitted by 1:00 PM Friday August 6, 2021. Written statements may be submitted by email (planning@kpb.us) or fax (907-714-2378). Written comments may also be submitted by hand-delivery or mail (Planning Department, 144 N. Binkley St., Soldotna, AK 99609).

FUTURE MEETINGS

The next regularly scheduled Plat Committee meeting will be held Monday August 23, 2021. The Plat Committee meeting will begin at 5:30 p.m. The next regularly scheduled Planning Commission meeting will be held Monday August 23, 2021. The Planning Commission meeting will begin at 7:30 p.m.

KPB PLANNING DEPARTMENT

Ann Shimberg, Administrative Assistant
Phone: (907) 714-2215 / Fax: (907) 714-2378
Toll free within the Borough: 1-800-478-4441

2596123

**PLANNING COMMISSION
MEETING MINUTES
JULY 12, 2021**

Kenai Peninsula Borough Planning Commission

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

**JULY 12, 2021
7:30 P.M.
APPROVED MINUTES**

CALL TO ORDER

Chair Martin called the meeting to order at 7:32 p.m.

ROLL CALL

Commissioners Present

Syverine Bentz, Anchor Point/ Ninilchik
Paulette Bokenko-Carluccio, City of Seldovia
Jeremy Brantley, Sterling
Davin Chesser, Northwest Borough
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

With 10 members of an 11-member commission in attendance, a quorum was present.

Staff Present

Melanie Aeschliman, Planning Director
Scott Huff, Platting Manager
Marcus Mueller, Land Management Officer
Samantha Lopes, River Center Manager
Bryan Taylor, Planner
Ann Shirnberg, Administrative Assistant
Julie Hindman, Platting Specialist

AGENDA ITEM B. ROLL CALL

AGENDA ITEM C. CONSENT AGENDA

- *3. Plat Granted Administrative Approval
 - a. Baranoff Terrace Subdivision Johnson-Quale Addition; KPB File 2019-082
 - b. Big Dipper Ranch; KPB File 2020-153
 - c. Bremond Farms Estates Bella Woods Phase 2; KPB File 2016-022P2
 - d. Gerhart Homestead 2020 Replat; KPB File 2020-149
 - e. Lakewood Estates 2021 Replat; KPB File 2021-035
 - f. Rex W. Eagle Homestead 2021 Replat; KPB File 2021-033
 - g. Seater View Subdivision; KPB File 2009-085
 - h. Surreal Subdivision 2021 Replat; KPB File 2021-002
 - i. Valhalla Heights 2021 Replat; KPB File 2021-077

- *6 Commissioner Excused Absences
 - a. Pamela Gillham, Ridgeway

- *7 Minutes
 - a. June 28, 2021 Planning Commission Meeting Minutes

Chair Martin asked if anyone present wanted to speak to or had concerns about any of the items on the consent or regular agendas. Hearing no one wishing to comment, Chair Martin returned the discussion to

3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).

END OF STAFF REPORT

Chair Martin opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Venuti to forward to the Assembly the application for a marijuana cultivation facility license for Leaf & Larf, LLC., dba Purgatory Cannabis with staff’s findings and recommending the three conditions be placed on the state license.

Commissioner Fikes noted there have been an increase in new marijuana businesses like this in the area. She asked staff if there is any way to gather information on the health effects of edible marijuana products. Mr. Taylor replied he could not answer that but h could contact AMCO and see if they have any data on this topic.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

9. Conditional Land Use Permit Modification; PC Resolution 2021-26
Applicant: Cook Inlet Region Inc. / Land Owner: Cook Inlet Region
Parcel ID#: 06508118
Sterling Area

Staff report given by Bryan Taylor.

GENERAL OVERVIEW: On June 22, 2021, the applicant submitted payment and a modification application for a material site. The applicant wishes to modify the existing conditional land use permit for material extraction on the above property, approved by the planning commission on March 27, 2017, and extended on May 4, 2021. The modification is to expand the permitted extraction area by approximately 61 acres as shown on the site plan submitted with the application. The application states that the expanded area is to support an Alaska Department of Transportation improvement project for the Sterling Highway. A copy of the application is included as **Attachment A**. Vicinity, aerial, topography, land use and ownership maps are included here as **Attachments B – F**.

KPB 21.29.030(A) REQUIRED APPLICATION ITEMS

- 1) Location of modification:** The applicant seeks to excavate and an additional area of approximately 61 acres in an area bounded by the Sterling Highway to the north, Kenai Keys Road to the east, Deniigi Way to the south, and Tikahtnu Road to the west (see Attachment A).
- 2) Lifespan:** The original permit application stated an expected lifespan of 15 years. No change is proposed.
- 3) Buffers:** In addition to buffers in the original permit, the proposed 61-acre expansion area would be buffered on all sides by 50 feet of natural vegetation and 6-foot earthen berms.
- 4) Reclamation:** No modification to the reclamation plan is proposed. The original application indicated that 5-25 acres would be reclaimed each year before the end of September using a loader

and dozer. Seeding would be applied each season to areas that achieve final grade.

5) Depth of excavation: The maximum depth of proposed excavation is 20 feet, the same as the original permit.

6) Type of material: Gravel will be mined from the proposed expansion area.

7) Voluntary permit conditions: Berms along the north, south, west, and east edges of the proposed expansion area.

8) Site plan: The original site plan prepared by McLane Consulting Inc. was submitted as part of the modification application with markups and annotations indicating proposed modifications. The original plan included a north arrow, scale, and preparer's name, date and seal. The property has not been subdivided or changed ownership since the original site plan was developed in 2017, so the modified site plan was considered sufficient by staff. Required site plan elements are as follows:

a-b): addressed above.

c) encumbrances: In addition to Tikahtnu, Kenai Keys, and Deniigi Way roads, the site plan shows a section line easement along the southern property boundary.

d) points of ingress/egress: The proposed modification would add a 26-foot wide ingress/egress from the excavation area directly onto the Sterling Highway.

e) haul routes: ingress/egress for the expanded extraction area would be directly onto the Sterling Highway.

f) test holes/depth of groundwater: The application states that 32 test holes have been dug throughout the property and that the water table is greater than 20 feet below original ground. The original site plan shows test well locations in the permitted excavation area.

g) location of neighboring wells: The site plan shows one well south of the property. No wells are within 300 feet of the proposed expansion area.

h) waterbodies/wetlands: no waterbodies or wetlands are indicated on the site plan.

i) surface water protection measures: No measures were indicated on the site plan.

j) processing areas: One 4.8-acre processing area was identified south of Deniigi Way on the original site plan. No modification of the processing area is proposed.

l-m): addressed above

n) boundary staking: with the original permit, the property corners were located and the property boundary flagged at visible intervals within 300 feet of the excavation areas.

PUBLIC NOTICE: Notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within ½ mile of the subject parcel, pursuant to KPB 21.25.060. A copy of the public notice and notice radius map are included as **Attachment G**. Any public comments received by the Planning Department prior to the hearing will be included as desk packet items at the July 12, 2021, meeting.

FINDINGS OF FACT:

1. *Procedural Findings.*

- A. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- C. On March 27, 2017, the planning commission passed resolution 2017-08, which approved a conditional land use permit to Cook Inlet Region, Inc., for material extraction on KPB tax parcel #065-081-18.
- D. On June 22, 2021, Cook Inlet Region, Inc., submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcel #065-081-18 to add an additional 61-acre excavation area.
- E. A public hearing of the planning commission was held on July 12, 2021, and notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster

- in Sterling requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion.
- F. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
2. *Parcel boundaries.* KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site. With the original permit, the property boundaries near proposed excavation areas in the original permit were flagged.
 3. *Buffer zone.* KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. Permit condition number 2 requires that the permittee maintain the following buffers for each excavation area identified on the site plan that will provide visual and noise screening to adjacent properties:
 - 50 feet of undisturbed natural vegetation with additional 6-foot earthen berms around the expanded 61-acre excavation area.
 4. *Processing.* KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
 - A. The original permit site plan indicates a 4.8-acre processing area that is located greater than 300 feet from the parcel boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
 5. *Water source separation.* KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
 - A. The site plan shows no wells within 300 feet of an excavation area.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement.
 6. *Excavation in the water table.* KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
 - A. This modification does not seek and exemption to excavate within the water table.
 7. *Waterbodies.* KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
 - A. There are no water bodies within 100 feet of the proposed extraction.
 8. *Fuel storage.* KPB 21.29.050(A)(7) provides that 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.
 - A. Borough staff will regularly monitor the material site to ensure compliance with this condition.
 9. *Roads.* KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
 - A. The original permit indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The modified site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
 10. *Subdivision.* KPB 21.29.050(A)(9) provides that 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.
- A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
11. *Dust control.* KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
 12. *Hours of operation.* KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
 13. *Reclamation.* KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
 - A. No modification of the reclamation plan was proposed. As in the original permit, the permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 - B. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
 14. *Other permits.* KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
 - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
 15. *Voluntary permit conditions.* KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - A. In addition to the 50-foot vegetation buffer, 6-foot earthen berms will be placed around the 61-acre expanded extraction area.
 16. *Signage.* KPB 21.29.050(A)(15) provides that 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.
 - A. Borough staff will regularly monitor the material site to ensure compliance with this condition.

STAFF RECOMMENDATION

In reviewing the modification application, staff has determined that the requirements for modification have been met and that the six standards contained in KPB 21.29.040 will be met. Staff recommends that the planning commission approve the modification to the conditional land use permit with listed conditions and adopt the findings of fact subject to the following:

1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicant will provide the recording fee for the resolution to the Planning Department.
4. Driveway permits must be acquired from either the state or borough as necessary prior to the issuance of the material site permit.
5. The conditions of the modified permit will replace those of the original permit.

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries as shown in the approved site plan:
 - Northern, southern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation. The addition of a 6-foot earthen berm around the perimeter for the 61-acre expanded extraction area.
 - These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall not operate any equipment which conditions or processes material within 300 feet of the property boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
9. The permittee shall ensure that fuel storage 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.
10. The permittee shall conduct operations 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.
11. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
12. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
13. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
14. The permittee shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement does 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.
15. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
16. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
17. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50,

a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.

18. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A “party of record” is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

Andrea Jacuk, Land Manager; Cook Inlet Region Inc., POB 93330, Anchorage, AK 99509-3330: Ms. Jacuk noted she and her family are members of the Kenaitze Tribe. Her grandfather grew up fishing the Kenai River, as did his father. The Kenai River is especially important to her and her family. CIRI owns 7% of the bank space on the Kenai River, which is a cultural cornerstone for their shareholders. CIRI has been a good steward of these privately held lands for decades. CIRI is the largest private landowner on the Kenai Peninsula, owning over 33,000 acres of surface estate. Of these 33,000 acres, only 600 acres have been developed for resource or other commercial development purposes, which is less than 2% of CIRI landholdings. The other 98% of these lands have been kept in a raw and undeveloped state. She understands community members have concerns about the development of this material site. They met with community members in 2017 to hear and address their concerns and as a result implemented additional mitigation efforts. None of the mitigation efforts will change with their proposed modification. This is a simple modification to an already approved permit. The sole purpose for modifying this permit is to provide low cost sand and gravel resources for the Sterling Highway reconstruction project. This material site is the best currently permitted source available for the project. The proximity to the project will minimize impact to borough maintained roads, ultimately increasing the life of these roads compared to other resources in the Kenai or Soldotna areas. This modification seeks to move the excavation area. The area for excavation under the prior CLUP has shown to have insufficient structurally competent gravel resources. This modification meets all conditions of KPB code. Scarcella Construction is a respected and experienced operator who has met not only all KPB requirements but also all the additional requirements within the CIRI lease agreement. Scarcella has submitted their operation plans to CIRI, which either meets or exceeds the requirements of the already approved CLUP. CIRI will have direct oversight of the operator to ensure their interests as landowners are met. Scarcella is contractually obligated to comply with borough code at all times. The revised extraction area is 30 feet higher vertically from the water table and is further away from the Kenai River and residential neighborhoods as well as being closer to the Sterling Hwy. CIRI has met all the requirements of borough code and state statute in regards to this permit modification.

Bill Elam, KPB Assemblyman: Mr. Elam stated appreciates all the efforts CIRI has put in to meet all the requirements of code with this CLUP modification application. He noted over the last several weeks he has been contacted by a number of the folks that live in the area of this gravel pit and they have expressed concerns about this application. Some have concerns about surface water issues as well as potential issues for their well water. They have also expressed concerns about the increase in traffic and dust in their neighborhoods. He told them that he would reach out to the commission to request a delay in this process to allow the residents time to get their water tested to create some benchmarks. This information would be important if there were to be any water issues in the future. This seems to be a reasonable request to him.

Marc Walch; 32280 Moonshine Drive, Soldotna, AK 99669: Mr. Walch stated he owns property across the river from this material site. Moonshine Drive is directly across the river from Bings Landing. He noted he is a professional environmental engineer. One page 335 of the meeting packet under the heading of *Surface Water Protection Measures* he noted it states that *no measure were indicated on the site plan*. He expressed concerns that a 60+ acre gravel mine within the drainage basin of the Kenai River would have significant impact. He reviewed the topo map provided in the report and it was not sufficient for him to determine the true slope and elevations of the area. As a resident, he is as concerned about gravel pits as the applicant made it sound like they are environmentally conscience and prepared. Putting a gravel pit in this area sets a dangerous precedent and he and his neighbors are opposed to it.

Mark Hughes; 11094 Bluff Creek Circle, Anchorage, AK 99515: Mr. Hughes and his wife just recently built their retirement home in the Bings Landing Subdivision. They have owned their lot there since 1993. He wanted to know if most of the gravel that will be mined would be go to the Cooper Landing Bypass project. If so he noted there is a gravel pit, about four miles east from Cooper Landing near the power substation where Scarcella Construction is currently staged. It appears to him there is still plenty of gravel in that area that could be used. The area is not heavily populated and it does not border the Kenai River. Why truck gravel over 30 miles? If this pit is not acceptable, why can't a pit be put in along the bypass area instead? If the gravel from the CIRI pit is not only going to be used for the bypass project, what other large-scale project are planned? What has been approved already in 2017 was a late night deal because nobody in Bings Landing Subdivision knew it was approved until this new application was received. It feels to him that somebody is trying to do this thing without tell everyone and that is not right. This pit does not make environmental sense; there is a lot of gravel in other places. This shows no respect to the surrounding community and to those that want to enjoy the river. Who wants to see a gravel pit while they are floating the river? This gravel pit should have never been approved and he would ask that the commission not approve this modification and repeal the approval that was granted by in 2017.

Gretchen Cuddy; 2439 Karluc Street, Anchorage, AK 99508: Ms. Cuddy stated she owns property on Furrier Ave., which is near this gravel pit. Her father built the cabin on this property in 1983. She would question the statement made by the applicant that the water table in the area is 30 feet higher. She stated on her property, they have issues with their well; it is almost like an artesian well. She has concerns how this gravel pit will affect their well. She agrees with what others have testified to about not knowing that this pit was approved in 2017. She only learned about this pit when she received notice about this current application. She is not in favor of this application. Commissioner Fikes asked Ms. Cuddy when was the last time she had her well water tested. She asked if she had observed any changes in her well since the material site was approved in 2017. Ms. Cuddy replied her well is not running at this time. Commissioner Fikes then asked if this was a seasonal property, or did they live on it year round. Ms. Cuddy replied that it was a season property but that they did visit it throughout the year.

Eric Rosenberg; 32350 Moonshine Drive, Soldotna, AK 99669: Mr. Rosenberg runs a business on his property called Kings of the Kenai Fishing Cabins. When this was approved back in 2017, area one of the material site had a buffer zone of .7 acres that directly butts the river. He is concerned because there has not been a hydrology report. There are environmental concerns, noise issues and the lack of visual buffers. His property sits high on a bluff and he is concerned he will be able to look directly down into this proposed pit. When he asked Mr. Taylor about this issue, he could not tell him if folks on Moonshine were going to experience any visual disturbances. He reached out to CIRI with some of his concerns and questions and was not pleased with the answers he received. He believes the planning that has gone into this project is lacking. There has been a lack of noticing to and input from area residents. It would have helpful if they had done this before presenting their application for modification. He recognizes that regulations here in Alaska are not as stringent as in other places in the US, but he would ask that the commission deny this application for modification.

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

MOTION: Commissioner Ruffner moved, seconded by Commissioner Bentz to adopt PC Resolution 2021-26 granting a modification to a conditional land use permit issued to Cook Inlet Region, Inc.

Commissioner Fikes stated she would support a motion to postpone allowing further testimony from folks living along Furrier Avenue. She would like to know whether or not they have experienced any impacts from the material site since it was approved in 2017. They have heard from several folks who live on Moonshine but she would like to hear from others in the area.

Commissioner Brantley stated he would also support postpone action on this item. He had received several phone calls from people in the Sterling area who did not received notice on this and thought they should have. There were also folks who were not able to join the Zoom meeting this week because of technology issues or were out of town.

Commissioner Ruffner noted the closest section of this material site to residential housing and the river is area one. He was curious if there has been any activity in that area to date. CIRI Representative Ms. Jacuk stated they have concluded the gravel sources in that area is not structurally competent gravel for the current phase of the Sterling Highway Reconstruction project. That is why they submitted the modification application. Since the permit has been approved in 2017, there have been no operations on this land whatsoever. Commissioner Ruffner then asked if CIRI had considered relinquishing those undeveloped areas where the gravel was not up to competency. Ms. Jacuk stated they had considered that but have not come to a conclusion yet. Commissioner Ruffner noted area one is the closest area to residential housing and the river, which are the two main concerns expressed by the testifiers tonight. He would encourage CIRI to consider relinquishing that area.

Commissioner Ecklund said she thought area one, which Commissioner Ruffner referred to, was one of the new sites being proposed for development. Ms. Jacuk replied the application before them tonight is adding a regarding third area, it is the third area that they are proposing to develop. Commissioner Ecklund then stated the CLUP approved in 2017 states that five acres a year would be reclaimed and she asked if that had been done. Ms. Jacuk replied there has been no operations on areas one or two, so no reclamation has been required. Commissioner Ecklund then asked staff whose responsibility is it to mail out notices. Mr. Taylor replied code requires notice to be sent to property owners within a ½-mile radius of the site. Two hundred and fifty-five notices were mailed out to area property owners. The addresses used are the ones the borough has on file for tax notices and to date only two notices had been returned. Commissioner Ecklund then stated she would be in support of postponing action on this item, to at least allow residents time to get their wells tested. She too has concerns about how close this material site is to the river.

Commissioner Fikes asked that since no activity has taken place on this material site, she wondered if there was any bonding required on the first permit. Mr. Taylor replied since there has been no operations conducted on the site no bond required has been required. He then noted if there is an approved permit and operations began, it would disqualify them from the State exemption and bonding would be required.

Commissioner Brantley stated if the applicant relinquished area one he believes it would go a long way with public. He would encourage them to consider that option.

Commissioner Ruffner agreed with Commissioner Brantley and he would encourage the applicant to consider relinquishing area one.

AMEMDMENT: Commissioner Ruffner moved, seconded by Commissioner Brantley to postpone this item until it is brought back by staff.

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

AMENDMENT MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

**PLANNING COMMISSION
MEETING MINUTES
AUGUST 9, 2021**

Kenai Peninsula Borough Planning Commission

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

August 9, 2021

7:30 P.M.

APPROVED MINUTES

CALL TO ORDER

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

ROLL CALL

Commissioners Present

Syverine Bentz, Anchor Point/ Ninilchik
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Pamela Gillham, Ridgeway
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Franco Venuti, City of Homer

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

Staff Present

Melanie Aeschliman, Planning Director
Huff, Platting Manager
Marcus Mueller, Land Management Officer
Samantha Lopez, River Center Manager
Bryan Taylor, Planner
Ann Shirnberg, Administrative Assistant
Avery Harrison, Administrative Assistant
Julie Hindman, Platting Specialist

AGENDA ITEM B. ROLL CALL

1. Oath of Office

Ms. Shirnberg informed the commission the Commissioner Martin and Brantley were reappointed by the Mayor to serve another 3-year term on the commission. She then invited both commissioners to recite the oath of office for the Planning Commission.

2. Election of Officers

Commissioner Fikes nominated, seconded by Commissioner Ecklund, Commissioner Martin for the position of Chairman. Seeing and hearing no objections, discussion or other nominations, Commissioner Martin was appointed Chairman.

Commissioner Venuti nominated, Commissioner Ecklund for Vice Chair. Commissioner Ecklund then declined the nomination.

Commissioner Ecklund nominated, seconded by Commissioner Fikes, Commissioner Ruffner for the position of Vice Chairman. See and hearing no objections, discussion or other nominations, Commissioner Ruffner was appointed Vice Chairman.

Commissioner Ecklund nominated, seconded by Commissioner Fikes, Commissioner Bentz for the position of parliamentarian. Seeing and hearing no objections, discussion or other nominations, Commissioner was

AGENDA ITEM E. NEW BUSINESS

- 5. Ordinance 2021-31: An ordinance authorizing an amendment to a master land lease development agreement with the Alaska Department of Transportation & Public Facilities in support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing to include a staging area at Tract C Quartz Creek Subdivision and appraisal provisions.

Staff report given by Marcus Mueller.

Alaska Department of Transportation and Public Facilities (DOT&PF) is actively working on the Sterling Highway MP 45-60 Construction Project which follows the Juneau Creek Alternative near Cooper Landing.

KPB Land Management has been working with the project team as it seeks to implement this major project. DOT&PF has entered into a Master Lease that includes three project staging and disposal sites on borough owned or managed land. A fourth site related to the project had been proposed to be leased by a DOT&PF contractor. However, DOT&PF now requests that the lease of this fourth site, located at Tract C Quartz Creek Subdivision, be included in DOT&PF's Master Lease.

In discussions, DOT&PF has indicated that it would like to have the ability to go through an appraisal process on Tract C as well as the other sites. An appraisal process would conform to DOT standards and would protect KPB's interests in receiving a fair market rent for the surface use of the KPB land.

This ordinance would authorize an amendment to DOT's Master Lease to include Tract C Quartz Creek Subdivision and to provide for rental rates to be adjusted to the appraised fair market rental value once DOT completes such appraisals.

Mr. Mueller noted that the Cooper Landing APC chose not to review this item as they believed that this amendment was administrative in nature and declined to meet.

END OF STAFF REPORT

Chair Martin opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Morgan moved, seconded by Commissioner Ecklund to forward to the assembly a recommendation to approve Ordinance 2021-31.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Ecklund, Fikes, Gillham, Martin, Morgan, Venuti				
Absent	Chesser, Ruffner				

AGENDA ITEM D. OLD BUSINESS

- 1. Conditional Land Use Permit Modification
 Applicant/Landowner: Cook Inlet Region Inc. (CIRI)
 Parcel ID# 06508118
 Location: Sterling Area

Staff report given by Bryan Taylor.

Mr. Taylor stated there had been no changes to the staff report as presented at the July 12, 2021 Planning Commission meeting. He then gave a brief overview of the modification request before them. He noted at the last meeting the commission began deliberations on the application and then voted to postpone the item until brought back by staff. Because the application had already been determined sufficient by staff, it was placed on the next available meeting, which was tonight. CIRI did volunteer to include an additional condition limiting to disturbing only 20 acres during the first two years of the permit and that the open area

would be reclaimed upon completion of excavation activities. He stated staff finds that the modification application and the proposed site and reclamation plans meets the standards of KPB 21.29.40 and recommends approval of the application. He then noted the commission might wish to amend the motion on the floor to include the voluntary condition put forth by CIRI. Mr. Taylor then informed the commission that due to the postponement of this application CIRI had applied for and had been granted a counter permit to remove gravel within the same location. This was done so that they could commence work on the site this season. He noted that no further comments had been received on this application.

END OF STAFF REPORT

Chair Martin noted that public comment was closed on this item at the July 12, 2021 meeting. He stated that he would entertain a motion to reopen public comment if the commission so desired.

MOTION: Commissioner Brantley moved, seconded by Commission Ecklund to reopen public testimony for item D1.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Ecklund, Fikes, Gillham, Martin, Morgan, Venuti				
Absent	Chesser, Ruffner				

Chair Martin opened the meeting for public comment.

Andrea Jacuk, Land Manager; Cook Inlet Region Inc., POB 93330, Anchorage, AK 99509-3330: Ms. Jacuk represents the applicant, CIRI. Before she shared comments from CIRI, she wanted to make a personal comment. She and her family have a long history with the Kenai River. She noted that this river and the land surrounding it is very important to her family. As is the safety of her family and all Alaskans who find themselves navigating the Sterling Hwy. She would not be here today advocating for this project if she did not believe that it was in the best for her family, tribe and all Alaskans. There are three main points that she would like to address on behalf of CIRI.

Point One: She understands the neighbors have concerns about this gravel pit and the water table. CIRI has met with area residents, heard their concerns and address them with the original permit application back in 2017 and again more recently in 2021. They have implemented additional migration efforts. CIRI had five experienced operators dig over 50 test pits on this new area. All the pits were dug to a maximum of 20' below ground, showed a uniform overburden and not once did they encounter the water table.

Point Two: The currently permitted area has been proven to comply with all borough and state regulations and has been approved for development. The additional area they are seeking to add is at least 50' higher vertically above the water table than the currently permitted areas. The new area is farther away from residential areas and is farther away from the river. She believes that this modification provides a win/win situation for area residents by addressing the concerns related to the already approved permit and for CIRI's right to develop their privately owned lands for a public works project.

Point Three: This gravel pit improves access to resources. This gravel pit will have a shorter distance for the bypass project vs. other resources in the Kenai & Soldotna areas. It will reduces congestion and hazards along the Sterling Hwy. ultimately increasing the life of the highway and other borough maintained roads in the area. It will also lower costs for this project. The main purpose CIRI had for modifying this permit is to provide low cost sand and gravel resources for the Sterling Hwy. Reconstruction Project. This will ultimately reduce the amount of public funds used on the project.

Nicki Pereira; 37195 Steelhead Circle, Sterling AK, 99672: Ms. Pereira stated that she finds this whole process very frustrating. These gravel pit issues continue to be a problem for residential areas not just here in the borough but around our state. She understands that Alaskans hate zoning however, we are getting to a point where she believes zoning will be necessary. As an example, she noted that the Bings Landing Subdivision created a R1 zone as the marijuana industry started to move in. They are now very

glad they did. There is now a big grow operation going in on the other side near Feuding Lane and the residents in the area are jumping up and down trying to figure out how to fix it. They only thing that she can tell them is that they are too late to do anything about it. When is this issue with gravel pit going to be fixed? She then stated that with all due respect, Ms. Jacuk, does not live next door to this pit, they do. She stated that they did not know about the 50 test holes being drilled, no one told them that. They had a very hard time getting folks to get back to them. She does not believe anyone tells the area residents what is going on before, during or after these pits go in. At the last meeting, there were numerous questions brought forward and all they heard was that it was postponed until brought back by staff. Staff brought it back tonight but what else did staff do? Their questions still have not been answered. She noted there were other gravel pits closer to this project, why does the project need to use this specific pit. She then wondered was it the weigh station they wanted to avoid, which is what CIRI told them in a meeting four years ago. It is clear that the current ordinance does not work. It has not worked for years except for the material site operators. It does not work for the area residents. The commission has heard the concerns from residents about gravel pits for years and years and yet nothing is done. It is time for this to change. The commission has to look at getting this fixed. She understands that several years ago, an attempt was made to update this section of code and it was the Assembly who held it up. Area residents are mad and something has to change. She is aware of a case on this subject in the superior courts right now and she hopes something good comes out of it. She hopes something happens to help residential areas that are facing these gravel pit issues. She ended by saying she would like to see some answers to the questions that were raised at the last meeting.

Commissioner Brantley ask Ms. Pereira in her opinion what would be an acceptable distances from a house to a gravel pit. Ms. Pereira replied she felt that was a bit of a loaded question, it would depend on what kind of activities were going on in the pit. In her opinion, it should be miles. She then stated that where she lives on the river they are in a canyon. Sound just bounces back and forth. She really cannot answer that question because she would need to understand the topography of the area.

Mark Hughes: 11094 Bluff Creek Circle, Anchorage, AK 99515: Mr. Hughes owns property in this area. He noted at the last meeting he testified to all the reasons why he feels that this pit is not appropriate for this area. He used to work in the gravel industry before he retired. Since the last meeting, he noticed that Granit had been working in Mystery Creek area. He also had the opportunity to talk with some others in the gravel business and he believe there is plenty of good gravel in the Mystery Creek area. This would be a better option for this project than CIRI pit. Last week he drove the distance from the proposed entrance of the CIRI pit to the project area and it was 24 miles one way, 48 miles for a round trip. 48 miles is not a short gravel haul. He then noted it was 17 miles round trip to haul gravel from the Mystery Creek area. He noted that the CIRI representative stated this pit was a win/win for the people and for CIRI. He does not agree, he believe it is a win for CIRI and a lose for the area residents and the river. There has to be a better solution here. There must be gravel in the bypass area, like at Mystery Creek, which could be used instead of opening this new pit. There has to be another area for this pit that does not have a community right beside it and a river running along it.

Eric Rosenberg; 32350 Moonshine Drive, Soldotna, AK 99669: Mr. Rosenberg stated he had a photo that he wished to share with the commission and asked if it could be put up on the screen. He said the photo would be helpful in showing some of the concerns, such as auditory issues, related to this project. Chair Martin said it would not be possible to put the image up on the screen. Mr. Rosenberg then stated there were numerous questions brought up at the last meeting that have not been addressed. The commission is allowing this permit to go forward without answering the concerns of the folks who actually live in the area. Ms. Jacuk states that CIRI is concerned about the river, well the Naptown rapids are in that area. We heard from a geologist at the last meeting and he stated he had concerns if there is a failure at the pit what happens to the mixture? That particular section is in a very busy part of the river and all that runoff and could mix in. No one has come over to the Soldotna side of the river to study the potential auditory issues for the residents there. He noted he could hear his neighbors on the Sterling side of the river talking. These are issues that borough codes states should be addressed. There will be a visual disturbance. No one from CIRI thought it was important to check and see what the pit will look like, looking down into the pit from 304'. He stated that he is a lawyer and has experience with land use issues. He believes CIRI has not done their due diligence by coming and meeting with the residents to listen to their concerns. He believes this modification should be denied because CIRI has not done anything other than to come in and tell us how wonderful the project is and how it will help Alaskans. There are Alaskans here, today, before the commission, that are neighbors to this project, and CIRI has done nothing for us other than tell us how

great this project is. He does not believe this pit is great.

Commissioner Venuti noted Mr. Rosenberg stated he was an attorney and asked if he was representing anyone associated with this pit. Mr. Rosenberg replied he was representing himself and he has just as much standing in this case as CIRI. He then noted at the last meeting Commissioner Brantley put a question to CIRI regarding area one, which is the area closet to the river, of this permit. CIRI stated the gravel in area one was not good gravel. Commissioner Brantley suggested that they might relinquish that area in favor of this new one as a show of good will to the area residents. CIRI never responded to that suggestion. He would ask that this process be slowed down and that they take a measured approach, rather than just approving this permit tonight. Make CIRI work for this, make them do their job. Make CIRI have to approach the area residents that live there and make them do the right thing.

Commissioner Brantley want to make sure the area residents understood that areas one and two on the map have already been approved and have a permit. Those two areas can be mined. Mr. Rosenberg replied he understood that. Commissioner Brantley asked Mr. Rosenberg if the gravel produced in areas one and two was just so-so, but better gravel was found in an area that was closer to the highway, further away from residential areas and the river, would he not want to encourage development in that area? Would mining in that area be a better trade-off opposed to mining closer to the river? Mr. Rosenberg replied yes. He stated he understands that CIRI has not mined in the areas currently permitted. However, he also noted that his adjunctive relief would not come into play until they do so.

Cindy Hamlin: 11094 Bluff Creek Circle, Anchorage, AK 99515: Ms. Hamlin also noted none of the questions raised at the last meeting have been answered. They expressed their concerns about their well water, specifically for the Cuddy family on Furrier Ave. This was supposed to be postponed until the Cuddy's had time to do some base line testing on their well. She has not heard that addressed tonight. They had questions about road hazards and dust and noise problems, which have not been addressed. Questions about threats to the wildlife and fisheries have not be addressed. CIRI has done nothing to answer these questions.

Rick Schiefelbein: 37105 Steelhead Circle, Sterling, AK 99672: Mr. Schiefelbein stated he agrees with everything that has been said so far. He is very familiar with the process of water testing. He knows the company that has be hired to do the water testing on the Sterling Hwy. project. They are required to test the water before and after the completion of project. He asked if any water testing had been done by CIRI on this material site. If they have not, why not? They are going to be tearing up that place. He has not seen an environmental impact study or any type of water study done on this project. He noted the water for many of the residents in Bing's Landing comes down the hill from the CIRI property. They have no idea if this pit will affect their water and no studies have been done on this. The length the material will have to be trucked from this pit to the Cooper Landing project is ridiculous. We have a brand new highway in the area and they will be rolling these trucks down and tearing it up. There are other gravel sources closer to the Cooper Landing project that could be used. He believes it is time for the commission to shut down this pit. The commissioners heard the concerns from the residents in 2017 and now 2021; none of the issues have been addressed. He would ask the commission to stop this project until those concerns are addressed. CIRI has stated this pit is good for Alaska, well Bing's Landing is in Alaska and it is not good for us. This pit is not good for the folks across the River in Soldotna. Are they going to be crushing rocks in this pit? Are they going to be any limits back-up buzzers? This is all noisy stuff and is very disturbing to area residents.

Commissioner Brantley noted that what is before them tonight is a modification to an already existing permit. He then went onto say the area where this new pit is proposed is further way from Mr. Schiefelbein's home on Steelhead and the area that is already permitted is much closer to his home. He wanted to make sure that Mr. Schiefelbein understood that if the modification was denied, CIRI is still has a permit for the areas that are closer to his home. Mr. Schiefelbien stated he understood that. He then noted if the commission approves the modification there will still be significant wear and tear on the new part of the Sterling Hwy.

Commissioner Fikes asked Mr. Schiefelbein the location to the entry of his property. He replied he comes of Bings Landing Rd on to Samsel Rd. to connect with Steelhead Circle.

Charles Clasby: 32167 W. Hills Court, Sterling AK, 99672: Mr. Clasby stated that he agreed with all the testimony from his neighbors. Gravel pits are never something that folks want to see in their backyard. He

noted Commissioner Brantley stated areas one and two have already been approved. If the commission has approved them, can they not be unapproved? CIRI made their comment that this pit being a win/win. He would agree with Mark that it is not a win/win situation. This is a money maker for CIRI and does nothing financially for the area residents. He noted that KTUU TV recently had a story about a gravel pit in the Wasilla area that had been disapproved because of the potential impact on area residents. One property owner in the area had been trying to sell their property and had an offer to purchase withdrawn because the proposed pit. Commissioner Brantley made it sound like CIRI's permit cannot be undone; he does not believe that is true. He thinks the commission can deny the permits. He would ask the commission if they would want this pit in their backyard. CIRI stated they had dug 20' test holes and never hit water. His well is 70' deep and the Hamlin has had to go even deeper to find usable water. All of this water is flowing toward the Kenai River. He is concerned about how this pit will affect his property value in the future. He is concerned about the noise this pit will create. This pit will leave a scar on the ground, which will be seen by tourists that flight sightsee around the Kenai River. The map that was in the meeting packet shows how close this pit will be to residential areas. He asks the commission not to approve this modification.

Barry Perry Hershberger: 37060 Steelhead Circle, Sterling AK, 99672: Mr. Hershberger stated he has not really been involved in this process as he and his wife just purchased their property last fall. They had no idea there were these type of issues going on. Had they known they might not have purchased the property. Given that this a residential area he would think their property values and water issues would be protected. They love their property and the neighborhood. If expanding the pit turns out to be a bad thing for the neighborhood by affecting property values and the water table, who will want to purchase these properties in the future. Who would want to live next to an open gravel pit? He agrees with everything that has been said by his neighbors and would ask that the commission not approve the modification.

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

MOTION ON THE FLOOR: Commissioner Ruffner moved, seconded by Commissioner Bentz to adopt PC Resolution 2021-26 granting a modification to a conditional land use permit issued to Cook Inlet Region, Inc.

Commissioner Ecklund said she believed one of the reason they choose to postpone this item was the short time timeline for the residents to have their wells assessed. She wondered if any of the residents that testified at the last meeting had their wells tested. She recognizes that this cost is bore by the area residents but it is important to have this baseline information should anything happen down the road. This information could be used to prove that damage had been done to their wells. She wanted the residents to know that several years ago they did a lot of work on rewriting this section of code. Code and ordinances are approved by the Assembly and not the Planning Commission. The Assembly did not pass the ordinance that would have allow the Planning Commission to deny a permit if they did not meet the new requirements. Current code makes it hard to prove things such as visual and noise impacts. Current code makes it difficult to address concerns with health and road safety issues. She agrees with much of what has been stated tonight. This new pit has the potential to damage the highway. Forty-eight miles is a long round trip to move gravel. She too believes there are closer sources of gravel for the bypass project. She noted code does not require environmental impact studies (EIS). The borough is not going to pay for an EIS to be done nor will they pay to have area residents wells tested. She wants the testifiers to know she has heard them and she would encourage them to talk to the Assemblyperson so they hear you as well.

Commissioner Brantley stated there is nothing the commission can do about the two areas that have already been approved. He noted the approved areas are much closer to residential areas and to the river. The new area is further away. Just because CIRI states that the materials in area one & two are not quite what they wanted does not mean that it is not usable. It just might require more processing. What CIRI is trying to do is find a better quality of material closer to the highway. He wished CIRI had considered the suggestion from the last meeting to relinquish area one for the new proposed area, but they have not. hat The commission cannot force them to do that. He believes approving this modification might encourage CIRI not to develop areas one and two. He supports this modification because from what he can tell this new area is over ½ mile further away from residential areas and believes that it would be a better location to process materials.

Commissioner Ecklund looking at the meeting packet materials noted she does not see where we asked for any additional voluntary conditions, such as white noise backup beepers or limiting the hours, they could crush rock. She asked Mr. Taylor if there were any voluntary conditions like that which were offered by CIRI. Mr. Taylor replied the only voluntary condition that was offered by CIRI is the one listed in the memo before them tonight. Commissioner Ecklund then asked if the commission could impose additional conditions like using white noise back-up alarms and limiting the hours that rock crushing could occur. Mr. Taylor replied he believed the commission was limited to only imposing conditions that are in code. Commissioner Ecklund then asked if Mr. Taylor could outline what conditions are in code. Mr. Taylor replied KPB 21.29.50 lists the mandatory conditions. He then asked if there were something specific, she would like him to check. Commissioner Ecklund replied that in the past they have requested operators take off equipment beepers and use white noise alarms on their equipment. Mr. Taylor stated those are voluntary conditions and are not required by code. KPB 21.29.040 states the standards for sand and gravel material sites. These standards must be met when applying conditions. He noted that the second sentence in 21.29.40 state "Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards..." He then noted there are conditions in 21.29.050 that can be taken inclusively, such as buffers. For instance code states that a 50' buffer of natural vegetation or a six' earthen berm or a 6' fence are required. In some cases, these conditions have been stacked together as a condition. Commissioner Ecklund then noted when this permit came before them in 2017 they looked at this section of code very closely and determined that CIRI had meet all of those conditions. There are new technologies that have come along since this section of code was written, such as white noise backup alarms, that they addressed in a code rewrite, which was never passed the Assembly.

Commissioner Bentz noted the operation times are addressed in the permit conditions, which would limit the times that rock crushing could occur. Code states that rock-crushing equipment shall not be operated between the hours of 10PM and 6AM. Asking for anything more than that would be a voluntary condition by the applicant. She noted this permit is not proposing to excavate into the water table. The application states the 32 test holes were dug and they did not encounter the water table in any of them. Code does state that for water source separation, there must be a 2' vertical separation from the seasonal high water table. Water monitoring is not required unless the operator is applying to excavate into the water table. It would be at that point the operator would be required to install water-monitoring tubes to ensure that they understand ground water elevations, flow rates and direction for the excavation area. The operator would be required to monitor this for one year before they could submit an application. She just wanted to make sure that the testifiers were aware of this and the conditions that the planning commission has to work with.

AMENDMENT MOTION: Commissioner Bentz moved, seconded by Commissioner Brantley to amend the motion to add the voluntary condition outlined in the Planner's July 27, 2021 memo.

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

AMENDMENT MOTION PASSED BY MAJORITY VOTE:

Yes	5	No	3	Absent	2
Yes	Bentz, Brantley, Gillham, Martin, Morgan				
No	Ecklund, Fikes, Venuti				
Absent	Chesser, Ruffner				

Commission Bentz asked if the applicant would be willing to add another voluntary condition and require the use of white noise alarms on their equipment. Ms. Jacuk replied the use of white noise alarms is something they would be willing to discuss with their operator. She then noted that white noise alarms are not something required by MSHA but they would be willing to explore this suggestion. She then stated that she herself does not have the authority to make that decision but she is more than happy to discuss this with those that do.

Commissioner Ecklund stated she does not know any other way to get the point across to the Assembly that this section of code has to be fixed. The commission does not have to tools to address concerns with noise and road safety expressed by the public. Government is supposed to serve the people, not just those that would make money off building a new road. It is supposed to be for the good of the people as a whole. Yes, the Cooper Landing bypass project is going to be a big improvement for the people as a whole. In the meantime who is the commission listening to when we cannot place reasonable conditions on these permits. Something needs to be done to help mitigate some of the challenges the residents in the areas

around these material sites have to go through. She know the commission is required to uphold code but she just does not know how to get across to the Assembly that this needs to be fixed.

Chair Martin stated that he what Commissioner Ecklund is saying loud and clear. It is critical regardless of which way that one votes that we have sound findings that will pass muster in the courts.

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

MOTION PASSED BY MAJORITY VOTE:

Yes	6	No	2	Absent	2
Yes	Bentz, Brantley, Gillham, Martin, Morgan, Venuti				
No	Ecklund, Fikes				
Absent	Chesser, Ruffner				

AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Ecklund informed the commission the plat committee had 12 plats on the agenda, approved eleven and postpone one.

AGENDA ITEM G. OTHER

1. Plat Committee members for August/September 2021.
 - Cindy Ecklund (8/23 & 9/13)
 - Virginia Morgan (8/23)
 - Pamela Gillham (8/23)
 - Franco Venuti (8/23)

AGENDA ITEM H. PUBLIC PRESENTATION

AGENDA ITEM I. DIRECTOR'S COMMENTS

Ms. Shirnberg spoke briefly to one of the points in the director's report. She ask the commission if they would support the idea of establishing a hard deadline for desk packet items. The reason for the deadline would be to ensure that the commission has plenty of time to review items before a meeting. Currently the desk packet is produced the day of the meeting and Planning would like to make the deadline the Friday before the meeting. This would allow the packet to be post on the Friday before the meeting, giving the PC the weekend to review the information. If the commission were supportive of this idea then we would move forward with drafting a resolution for their consideration.

AGENDA ITEM J. COMMISSIONER COMMENTS

All commissioners spoke in favor of setting a hard deadline for desk packet materials, requested Planning move forward, and draft the ordinance.

AGENDA ITEM M. ADJOURNMENT – Commissioner Ecklund moved to adjourn the meeting at 9:11 p.m.



Ann E. Shirnberg
Administrative Assistant

VERBATIM TRANSCRIPT / INDEX
JULY 12, 2021

KENAI PENINSULA BOROUGH PLANNING COMMISSION**LOCATION**

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

July 12, 2021
7:30 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 28, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Syverine Bentz, Anchor Point/Ninilchik
Cindy Ecklund, City of Seward
Davin Chesser, Northwest Borough
Diane Fikes, City of Kenai
Jeremy Brantley, Sterling
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Franco Venuti, City of Homer
Robert Ruffner, Clam Gulch/Kasilof

Staff Present:

Melanie Aeschliman, Planning Director
Bryan Taylor, Planner
Ann Shirnberg, Administrative Assistant
Julie Hindman, Platting Specialist
Scott Huff, Platting Manager
Samantha Lopez, River Center Manager
Marcus Mueller, Land Management Officer

Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP

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1 PROCEEDINGS
2 0:00
3 (This portion not requested)
4 53:17
5 **CHAIRMAN MARTIN:** ... and that would bring
6 us to item E-9. Staff report, please.
7 **BRYAN TAYLOR:** Thank you. Through the
8 chair.
9 We've received a modification application
10 from Cook Inlet Region, Incorporated. And this is for
11 an -- the existing permit is on a large tract of land,
12 over 400 acres. Roughly Mile 79.5 of the Sterling
13 Highway is where the modification is being applied for.
14 So we received the application on June
15 22nd. The applicant wishes to modify the existing
16 conditional land use permit for material extraction on
17 the above property, approved by the Planning Commission
18 on March 27th, 2017. It was recently extended this
19 past May for an additional five years.
20 The modification is to expand the
21 permitted extraction area by approximately 61 acres as
22 shown on the site plan. The application states that
23 the expanded area is to support an Alaska Department of
24 Transportation improvement project for the Sterling
25 Highway.

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1 And you can find attachments to my staff
2 report, you'll find a copy of the application as
3 Attachment A. And they have got vicinity area
4 topography -- aerial topography land use and ownership
5 maps attached as B through F.
6 If you're looking at -- if you're
7 familiar with the Kenai Keys Road, that would form the
8 eastern boundary of this new expanded area, and the
9 Sterling Highway forms the northern boundary. So
10 it's -- just south of the Sterling Highway is the
11 proposed 61 acres. Deniigi Way to the south and
12 Tikahtnu Road to the west also bound the modified
13 expanded area.
14 The life span of the original permit was
15 15 years, and there has not been any proposed change
16 there.
17 For buffers, the original buffers had 50
18 foot of natural vegetation. The expanded area here,
19 they are also proposing 50 feet of natural vegetation,
20 but they are also volunteering six-foot berms in
21 addition to the 50 feet.
22 Reclamation plan. There has been no
23 proposed modification to the reclamation plan here.
24 The original application indicated 5 to 25 acres would
25 be reclaimed each year before the end of September

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1 using a loader and dozer. Seeding would be applied
2 each season to areas to achieve final grade.
3 Depth of excavation is being proposed at
4 20 feet, and this is the same as the original permit.
5 Gravel mined -- the type of material would just be
6 gravel from the proposed expansion area.
7 And the site plan was originally prepared
8 by McLane Consulting, and that was submitted again with
9 some modifications, markups on it and annotations
10 indicating where the proposed modifications are.
11 The original plan was sufficient, had the
12 preparer's name, date, and seal. The property has not
13 been subdivided or changed ownership since the original
14 plan in 2017. So this was considered sufficient.
15 And specifics of the site plan, in
16 addition to Tikahtnu, Kenai Keys, and Deniigi Way
17 Roads, there is a section line easement shown on the
18 southern property boundary.
19 The proposed modification would add a
20 26-foot wide ingress and egress from the excavation
21 area directly onto the Sterling Highway to the north,
22 and that would be all it proposed, ingress and egress,
23 for the work on the Sterling Highway at this point.
24 Test holes -- the original application
25 had -- there were 32 test holes dug in the area, and

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1 those can be seen on the site plan.
2 Neighboring wells, there is the -- the
3 site plan showed one well south of the property, but
4 there are no wells within 300 feet of the proposed
5 expansion area.
6 No water bodies or wetlands are indicated
7 on the site plan, and therefore there are no measures
8 indicated for protection.
9 Processing area, the originally permitted
10 processing area, there was one of 4.8 acres just south
11 of Deniigi Way, and there has been no modification
12 proposed there.
13 And the original permit, the property
14 corners were located and flagging within 300 feet of
15 the excavation areas was placed.
16 There has been public notice that was
17 mailed out on June 22nd to 255 land owners or
18 leaseholders within half a mile of the subject parcel.
19 And a copy of the public notice and the radius map that
20 you can find as Attachment G in the staff report. And
21 any public comments received have been provided in your
22 desk packet at this point.
23 And I have here -- we have findings of
24 fact, procedural findings, parcel boundaries, buffer
25 zone.

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1 And there have not been changes except
2 for the expanded 61 acres. And then the addition of --
3 or the buffers, the voluntary six-foot berms have been
4 added to those conditions.
5 And in reviewing the modification
6 application, we have determined that the requirements
7 for modification have been met, and the six standards
8 of KPB 21.29.40 will be met.
9 Staff recommends that the Planning
10 Commission approve the modification to the conditional
11 land use permit with the listed conditions and adopt
12 the findings of fact subject to the following: Filing
13 of the PC resolution in the appropriate recording
14 district after deadline to appeal the Planning
15 Commission's approval has expired, so 15 days from the
16 notice of decision unless there are no parties with
17 appeal rights; the planning department is responsible
18 for filing the Planning Commission resolution; the
19 applicant will provide the recording fee for the
20 resolution to the planning department; any driveway
21 permits must be acquired from either the state or
22 borough as necessary prior to the issuance of a
23 material site permit modification; and the conditions
24 of the modified permit will replace those of the
25 original permit.

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1 And that's the end of the staff report.
2 **CHAIRMAN MARTIN:** Thank you. At this
3 time I'll open the meeting to public comment starting
4 with the petitioner.
5 **ANDREA JACUK:** Hi, thank you. That is
6 Andrea Jacuk speaking on behalf of CIRI today.
7 First, I just wanted to thank you for the
8 opportunity to speak today about this application for
9 modification.
10 My name is Andrea Jacuk, CIRI's land
11 manager. I am also a tribal citizen of the Kenaitze
12 Indian Tribe and of the Dolchok family. My grandfather
13 grew up fishing the Kenai River, as did his father.
14 This river is especially important to me now, as it has
15 been to my family for many generations.
16 As you may know, CIRI owns 7 percent of
17 the bank space on the Kenai River, a cultural
18 cornerstone for our shareholders, and CIRI has been a
19 good steward of these privately owned lands for
20 decades.
21 CIRI is the largest private land owner on
22 the Kenai Peninsula, owning over 33,000 acres of
23 surface estate within the borough. Out of that
24 acreage, less than 600 acres have been developed for
25 resource and other commercial development purposes.

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1 That is less than 2 percent of all CIRI land holdings
2 within the Kenai Peninsula Borough.
3 The remaining 98 percent of the CIRI land
4 has been kept in a raw, undeveloped state for moose,
5 bear, and other wildlife habitat. This raw land is
6 also managed to allow permitted access to the public
7 and subsistence hunting opportunities for CIRI
8 shareholders and descendents.
9 I understand the community has
10 apprehensions about this gravel pit. CIRI has met with
11 community members, heard their concerns, and addressed
12 them in 2017 by implementing additional mitigation
13 efforts. Neither these concerns nor CIRI's mitigation
14 efforts have since changed. CIRI seeks a simple
15 modification to an already approved permit.
16 The sole purpose CIRI has for modifying
17 the existing permit is to provide low cost sand and
18 gravel resources for the Sterling Highway
19 reconstruction project.
20 As many of us know, this highway project
21 has been stalled for 40 years to improve environmental
22 conditions around the river and preserve the most
23 significant archeologic district in Southcentral
24 Alaska.
25 This material site before the commission

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1 today is the best currently permitted source available
2 for the project. Its proximity to the project will
3 minimize impact to borough maintained roads, ultimately
4 increasing the life of these roads compared to other
5 sources located in Kenai or Soldotna.
6 This CLUP modification is simply that, to
7 move the excavation area as the prior areas under the
8 CLUP proved to have insufficient structurally competent
9 gravel resources.
10 This permit modification meets all
11 conditions of the KPB code. Scarcella is a respected
12 and experienced operator who has met not only all KPB
13 requirements, but all those additional requirements
14 within the CIRI lease agreement. Scarcella has
15 submitted its operations plan to CIRI, of which meets
16 or exceeds the requirements of the already approved
17 conditional land use permit.
18 CIRI has direct oversight of the operator
19 to ensure that our interests as a land owner are
20 protected, and Scarcella is contractually obligated to
21 be in compliance with borough code at all times.
22 Additionally, the revised extraction area
23 is 30 feet higher vertically from the water table,
24 further away from the Kenai River, further away from
25 residential neighborhoods, and closer to the Sterling

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1 Highway.
 2 Borough Code 21.29.70 states that an
 3 application shall be processed pursuant to KPB Code
 4 21.29.30 through .50.
 5 CIRI has met all of its requirements
 6 outlined in the aforementioned sections and is
 7 compliant with both state and KPB code.
 8 The Sterling Highway realignment will
 9 bring long awaited safety improvements for residents
 10 and visitors to the Kenai Peninsula.
 11 In closing, I commend and thank the
 12 Planning Commission for taking the time to hear from us
 13 today and request the amendment be approved so that
 14 construction of the highway realignment may commence.
 15 Thank you.
 16 **CHAIRMAN MARTIN:** Thank you. Are there
 17 any questions from commissioners?
 18 **ANN SHIRNBERG:** I see no hands,
 19 Commissioner Martin.
 20 **CHAIRMAN MARTIN:** Thank you. Next
 21 testifier, please.
 22 **ANN SHIRNBERG:** I see that assemblyman
 23 Bill Elam has his hand raised.
 24 **CHAIRMAN MARTIN:** Mr. Elam, go ahead.
 25 **BILL ELAM:** Thank you, thank you. And I

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1 just was going to make a few comments.
 2 I do appreciate all the effort that CIRI
 3 has done to be within the code and all of the
 4 permitting requirements.
 5 I have received over the few couple of
 6 weeks now quite a few calls from folks that live in the
 7 area of the gravel pit with some concerns, and some of
 8 them have concerns over their surface water, their
 9 wells, traffic, noise, dust, you know, all the various
 10 things that typically come with the gravel pits.
 11 So I told them that I would reach out.
 12 It didn't seem unreasonable. They were requesting to
 13 have the process delayed just a little bit so that they
 14 could get their waters tested and have some benchmarks
 15 to go on in case there were any kind of problems in the
 16 future.
 17 And I'm sure you guys have already
 18 received some of the e-mails and the phone calls, but I
 19 thought I would come in and comment and just ask if you
 20 guys would be interested in possibly delaying it.
 21 They were, again, looking to just get
 22 some tests done locally there for their sites, and it
 23 seemed reasonable to me.
 24 **CHAIRMAN MARTIN:** Thank you. Any
 25 questions, commissioner questions?

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1 **BILL ELAM:** Thank you.
 2 **ANN SHIRNBERG:** Seeing no hands,
 3 Commissioner Martin.
 4 **CHAIRMAN MARTIN:** Thank you. Next
 5 testifier, please.
 6 **ANN SHIRNBERG:** Mark Walch has his hand
 7 raised.
 8 **CHAIRMAN MARTIN:** Go ahead, Mr. Walch.
 9 **MARC WALCH:** Commissioner Martin and
 10 commissioners, I'm a resident, I'm a homeowner across
 11 the river on Moonshine Drive. If you look on your map
 12 in your packet on page 351, Moonshine Drive is directly
 13 across from Bing Landing.
 14 We are a community of about nine
 15 homeowners that are on the bluff that overlook Bings
 16 Landing and this property.
 17 So I'm also, just for the record, a
 18 registered professional environmental engineer, and I
 19 have a question to staff. Because in looking at the
 20 report, there is an item on page 335 under the category
 21 "surface water protection measures," the comment is,
 22 "No measures were indicated on the site plan."
 23 So as an environmental engineer, I'm
 24 concerned that a 60-plus acre gravel mine within the
 25 drainage basin of the Kenai River is going to have a

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1 significant impact.
 2 The topo map that was provided in the
 3 packet wasn't sufficient for me to determine the actual
 4 topo and slope and elevations. But as an engineer, as
 5 a resident, I'm concerned about gravel pits. As much
 6 as the applicant made it sound they were
 7 environmentally conscious and prepared, as a homeowner
 8 and as a resident, I think this is a dangerous
 9 precedent and we object to it.
 10 **CHAIRMAN MARTIN:** Thank you for your
 11 testimony.
 12 **ANN SHIRNBERG:** Mr. Walch, could I please
 13 get your address.
 14 **MARC WALCH:** Yes. We have two
 15 properties, 32280 Moonshine Drive, and 32260 Moonshine
 16 Drive in Soldotna.
 17 **CHAIRMAN MARTIN:** Thank you. Anyone else
 18 in the public wishing to testify?
 19 **ANN SHIRNBERG:** Cindy Hamlin has her hand
 20 raised.
 21 **CHAIRMAN MARTIN:** Go ahead, Ms. Hamlin.
 22 **MARK HUGHES:** Yes, this is Mark Hughes
 23 and Cindy Hamlin. Currently reside at 11094 Bluff
 24 Creek Circle, Anchorage, Alaska.
 25 Cindy and I just recently built our

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1 future retirement home in Bings Landing Subdivision at
 2 32177 West Hills Court. We have enjoyed that lot since
 3 1993. It was previously owned by our good friends the
 4 Barns.
 5 We aren't new to the local community and
 6 how very special the location is. I wrote this out in
 7 questions, I'm kind of new to this.
 8 But is most of the gravel that is planned
 9 to be mined going to the Cooper Landing projects? And
 10 if so, there is a pit about four miles east of Cooper
 11 Landing near the power substation that Scarcella has
 12 trucks staged -- currently staged at. It appears that
 13 there is plenty of gravel still available. I was just
 14 there this weekend. There is no population issues, and
 15 it's not bordering the famous Kenai River, the river
 16 that can never be replaced.
 17 Why truck the gravel for over 30 miles?
 18 If this pit is not acceptable, why can't a pit go in
 19 along the bypass at Cooper Landing? If the gravel
 20 isn't planned for there, what large projects are
 21 planned for the use of approximately 400-plus acres of
 22 gravel that no one knows about?
 23 What has been approved already in 2017
 24 was a late night deal somehow, because nobody in our
 25 Bings Landing subdivision knew it was approved until

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1 the 60-acre addition was there. So somebody has just
 2 swept this under the rug without telling anybody, and
 3 that's not right.
 4 This makes no environmental sense. There
 5 is a lot of gravel. It shows no respect for the
 6 surrounding community and all the people that come to
 7 Alaska and live nearby in Soldotna and surrounding
 8 areas that enjoy the river. Who wants to go by a
 9 gravel pit when they are floating a pristine river?
 10 And it borders -- it goes all the way
 11 down to a row of houses there at Furrier. So however
 12 the first 340 acres got approved, that was entirely
 13 wrong.
 14 Please don't let this happen, and repeal
 15 the 2017 March passage of the original gravel pit.
 16 It's not right, what you're doing is not right. Thank
 17 you very much.
 18 **CHAIRMAN MARTIN:** Thank you. Next
 19 testifier, please.
 20 **ANN SHIRNBERG:** Gretchen has her hand
 21 raised.
 22 **CHAIRMAN MARTIN:** Go ahead testifier,
 23 state your name and address for the record.
 24 **GRETCHEN CUDDY:** My name is Gretchen
 25 Cuddy. My address is 2439 Karluk, Anchorage, Alaska.

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1 According to your map, our property would
 2 be at the southwest corner of this gravel pit. It's
 3 the first one on Furrier Road right past the gate.
 4 My father built it in '83. And I would
 5 question the statement by Andrea about the water table
 6 being at 30 feet.
 7 We do have a problem with water. It's
 8 almost an artesian well that comes up behind our cabin,
 9 or house, whatever you want to say it is. So I would
 10 question what that would do to bringing up the water
 11 table with a gravel pit directly behind our place.
 12 I agree with both the two Marks with
 13 their comments about not knowing anything about the
 14 2017 development. And we were only advised when this
 15 new 61 acres were added. That's about all I have to
 16 say. We are not in favor of this.
 17 **CHAIRMAN MARTIN:** Thank you for your
 18 testimony. Is there anyone else out there?
 19 **UNIDENTIFIED SPEAKER:** Chair Martin, Ms.
 20 Fikes have a question.
 21 **CHAIRMAN MARTIN:** Ms. Fikes, go ahead.
 22 **COMMISSIONER FIKES:** Yes, through the
 23 chair to the applicant that just testified, Ms. Cuddy.
 24 How recently have you had your wells
 25 tested? If you were in the area in '83 and then this

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1 also was recently approved in 2017, from '17 until now,
 2 have you observed any changes in your well?
 3 **GRETCHEN CUDDY:** Not that I could
 4 substantiate anything. But I do have to say at this
 5 point our well is not running. So I have no data to
 6 give you at this point.
 7 **COMMISSIONER FIKES:** And is that property
 8 that you're speaking of, is that a seasonal property or
 9 is that a full-time, year-round property?
 10 **GRETCHEN CUDDY:** It is seasonal, but we
 11 do use it year round. But nobody lives there year
 12 round.
 13 **COMMISSIONER FIKES:** Okay, super, thank
 14 you.
 15 **GRETCHEN CUDDY:** You're welcome.
 16 **CHAIRMAN MARTIN:** Anyone else in the
 17 public wishing to testify?
 18 **ANN SHIRNBERG:** If you're on the phone,
 19 star 9 will raise your hand. I see no hands,
 20 Commissioner Martin.
 21 **UNIDENTIFIED SPEAKER:** Ann, I do see Mr.
 22 Rosenberg has his hand raised.
 23 **CHAIRMAN MARTIN:** Mr. Rosenberg, state
 24 your name and address for the record.
 25 **ERIC ROSENBERG:** Commissioner Martin --

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1 Chairman Martin, my name is Eric Rosenberg. I live at
 2 32350 Moonshine Drive in Soldotna.
 3 **CHAIRMAN MARTIN:** Thank you, go ahead.
 4 **ERIC ROSENBERG:** Chairman, I run a
 5 business called Kings Of the Kenai Fishing Cabins. As
 6 you know, I have e-mailed you. I lost Internet
 7 somehow, and I apologize, but I've got several
 8 concerns.
 9 One of my concerns that, as I've listened
 10 to the testimony today, is when this was approved in
 11 2017, and we have Area 1 -- if you look at the map --
 12 Area 1 has a buffer zone of .7 acreage, 32 acres that
 13 directly abuts the river right behind me.
 14 I'm concerned, as you've heard from
 15 others in my e-mails, that we haven't had a hydrologist
 16 come out. I'm concerned about the environmental
 17 concerns. I'm concerned about noise issues and the
 18 visual buffers that just don't exist.
 19 I'm 292 feet in the air on a bluff. I'm
 20 going to look directly down into it. When I spoke with
 21 Mr. Taylor, Mr. Taylor was unable to tell me whether or
 22 not there is going to be any disturbance, a visual
 23 disturbance for the folks here on Moonshine.
 24 I did reach out to the people at CIRI. I
 25 don't appreciate the response I got, and I let them

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1 know that I didn't appreciate the response I got. I
 2 asked them, why didn't they come out to the folks at
 3 Moonshine and speak to us prior to this. And the
 4 response was, "Well, why would I? Would you be there?"
 5 And I'm not casting any aspersions, maybe
 6 it's a great organization. But my concern is the
 7 planning that's gone into this, or the lack thereof,
 8 the lack thereof of the notice of folks, the lack
 9 thereof giving us an opportunity to be heard prior to
 10 doing this modification.
 11 I realize that oftentimes why people are
 12 here in Alaska is to -- regulations are not as
 13 stringent as they are in other areas, but here I would
 14 ask that this board deny this application and deny the
 15 modification.
 16 **CHAIRMAN MARTIN:** Thank you for your
 17 testimony. Anyone else in the public wishing to
 18 testify?
 19 **ANN SHIRNBERG:** I see no hands,
 20 Commissioner Martin.
 21 **CHAIRMAN MARTIN:** That being the case,
 22 we'll close public comment and bring it to the
 23 commission for a motion.
 24 **COMMISSIONER RUFFNER:** I'll move to adopt
 25 PC Resolution 2021-26 granting a modification to a

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1 conditional land use permit issued to CIRI.
 2 **COMMISSIONER BENTZ:** Second.
 3 **CHAIRMAN MARTIN:** We have a motion and a
 4 second. Discussion?
 5 **ANN SHIRNBERG:** Commissioner Fikes has
 6 her hand raised.
 7 **CHAIRMAN MARTIN:** Ms. Fikes.
 8 **COMMISSIONER FIKES:** Yes, I would be for
 9 coming up with a motion to postpone so we can have
 10 further testimony from some of those closer. I'd like
 11 to hear some more folks that are on Furrier Avenue and
 12 what kind of impacts since 2017 to now. And having
 13 only heard from one so far, I heard from several on
 14 Moonshine, and not have any kind of impact study, that
 15 would be something worth, I think, hearing from.
 16 I understand you can't really unring the
 17 bell. This permit has already been granted, but it's a
 18 modification that's before us today. So seeing how big
 19 the area is and how much it's going to impact folks
 20 around there, I would like to -- I would certainly be
 21 for more a motion to postpone to have more opportunity
 22 to study more things, it may impact a greater number of
 23 folks. That's just my two cents.
 24 **ANN SHIRNBERG:** Commissioner Brantley has
 25 his hand raised.

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1 **CHAIRMAN MARTIN:** Mr. Brantley.
 2 **COMMISSIONER BRANTLEY:** I would also be
 3 in favor of postponement. I got a few phone calls from
 4 people out in Sterling that either didn't get a notice
 5 that thought they should or weren't able to join the
 6 Zoom meeting this week because of technology or just
 7 out of town. So I would support a postponement.
 8 **ANN SHIRNBERG:** Commissioner Ruffner has
 9 his hand raised.
 10 **CHAIRMAN MARTIN:** Mr. Ruffner.
 11 **COMMISSIONER RUFFNER:** Thank you, Mr.
 12 Chairman. So I was kind of curious either to hear from
 13 staff or the applicant about -- in looking at this and
 14 listening to the testimony tonight, the closest
 15 residential housing and closest to the river is in Area
 16 1, and that was a 33-acre portion of the previous
 17 permit. But I was just kind of curious, what's
 18 happened in that area?
 19 **ANDREA JACUK:** May I address that
 20 question, Chairman Martin?
 21 **CHAIRMAN MARTIN:** Please, go ahead.
 22 **ANDREA JACUK:** So I will go ahead and say
 23 that due to certain test pits, we have come to the
 24 conclusion that those gravel resources located in those
 25 other areas are not structurally competent gravel

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1 resources for this phase of the project, and so that's
 2 why we submitted this modification to add on this area
 3 that would actually be processed through.
 4 And for other questions that have been
 5 raised, since this permit has been approved since 2017,
 6 there has been no operations on this land whatsoever,
 7 thank you.
 8 **COMMISSIONER RUFFNER:** So if I could
 9 follow up. Did CIRI consider relinquishing that
 10 portion if the material is not of competency and
 11 nothing has happened yet?
 12 **ANDREA JACUK:** That is something that
 13 we've thought about, given the two separate areas.
 14 It's something that we would potentially consider, but
 15 we have not come to a final conclusion on that yet.
 16 **COMMISSIONER RUFFNER:** Okay. Well, you
 17 know what, I'm not sure what's going to happen tonight
 18 with voting or postponing or so forth, but it does seem
 19 like that's an area that's closer to the residents and
 20 closer to the river, which are the two concerns we
 21 heard. So it's just something I would encourage you to
 22 consider it at least.
 23 **ANN SHIRNBERG:** Commissioner Ecklund has
 24 her hand raised.
 25 **CHAIRMAN MARTIN:** Ms. Ecklund.

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1 **COMMISSIONER ECKLUND:** Thank you.
 2 Through the chair, I just want right now to clarify.
 3 Mr. Ruffner's comment is about the property that's
 4 closest to the river. And the way I read the
 5 application, that was one of the new sites they wanted
 6 to go to, is that correct?
 7 **ANDREA JACUK:** If I may address this. So
 8 we have Areas 1 through 3, and Area 3, that's the area
 9 that we're adding with this modification that is closer
 10 to the highway, it's directly adjacent to the highway.
 11 So Area 1 and Area 2 and the process area were approved
 12 by the 2017 conditional land use permit.
 13 **COMMISSIONER ECKLUND:** Okay, thank you.
 14 A couple of followups, and this could be for staff or
 15 the applicant.
 16 According to the original application,
 17 five acres a year were supposed to be reclaimed. Has
 18 that been done?
 19 **ANDREA JACUK:** No operations have taken
 20 place on any of the area. So no reclamation has been
 21 required since. It's still in a raw, undeveloped
 22 stage.
 23 **COMMISSIONER ECKLUND:** Then I guess my
 24 last one is to staff.
 25 Whose responsibility is it to mail out

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1 notices, and when were the notices mailed for this
 2 application?
 3 **BRYAN TAYLOR:** Thank you Commissioner
 4 Ecklund. Through the chair.
 5 Staff mails the notices out to property
 6 owners, and these notices were mailed on June 22nd, as
 7 it states in the report, to 255 property owners and
 8 leaseholders.
 9 We're using record information, what's in
 10 the property records. So it's mailed to the address on
 11 file. And I received two back, two letters back that
 12 were not deliverable to the address, even though it was
 13 correct based on what's in our system, but otherwise I
 14 didn't receive any back.
 15 **COMMISSIONER ECKLUND:** Thank you. I'll
 16 just state that I'm going to vote for a postponement
 17 when that motion is made due to timing so that people
 18 can at least get test wells done so they know if their
 19 water has been affected. And I too am concerned about
 20 how close all of this work has been to the river, thank
 21 you.
 22 **CHAIRMAN MARTIN:** Further discussion?
 23 **ANN SHIRNBERG:** Commissioner Fikes has
 24 her hand raised.
 25 **COMMISSIONER FIKES:** Yes, through the

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1 chair and to the applicant or possibly staff.
 2 Since no activity has taken place on the
 3 original permit, is anybody aware of any bonding that
 4 is required or was there any bonding required of that
 5 first permit?
 6 **BRYAN TAYLOR:** Through the chair, this is
 7 staff.
 8 On the first permit, since there wasn't
 9 any operations conducted, there hasn't been bonding
 10 required. That would be required if there is an
 11 approved permit and operations began, that would
 12 disqualify them from the state exemption.
 13 **CHAIRMAN MARTIN:** Is there any more
 14 comment? Mr. Brantley has your hand up.
 15 **COMMISSIONER BRANTLEY:** Yeah, I would
 16 just like to add to the applicant that I really think
 17 that if they relinquished Area 1, it would go a long
 18 way with the public in general, and it would be
 19 something I think that should be looked into before the
 20 next meeting if this is postponed.
 21 **COMMISSIONER RUFFNER:** This is Robert
 22 again. I'll reiterate that same thing that Mr.
 23 Brantley said and hope that they will consider it.
 24 And with that, I'll move to postpone this
 25 until the next meeting -- no, rather I'll move to

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VERBATIM TRANSCRIPT / INDEX
AUGUST 9, 2021

KENAI PENINSULA BOROUGH PLANNING COMMISSION**LOCATION**

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

August 9, 2021
7:30 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 47, inclusive

Commissioners Present:

Syverine Bentz, Anchor Point/Ninilchik
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Jeremy Brantley, Sterling
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Franco Venuti, City of Homer
Pamela Gillham, Ridgeway

Staff Present:

Melanie Aeschliman, Planning Director
Bryan Taylor, Planner
Ann Shirnberg, Administrative Assistant
Julie Hindman, Platting Specialist
Scott Huff, Platting Manager
Samantha Lopez, River Center Manager
Marcus Mueller, Land Management Officer

Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP

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1 P R O C E E D I N G S
 2 0:00
 3 (This portion not requested)
 4 34:03
 5 **CHAIRMAN MARTIN:** That will bring us down
 6 to Item D-1 that we moved to this part of the meeting.
 7 There currently is a motion on the floor,
 8 and public testimony has been closed. If anyone on the
 9 commission decides to reopen public testimony, a motion
 10 will be required.
 11 So at this time staff will give a report
 12 and any updates.
 13 **BRYAN TAYLOR:** Thank you. Through the
 14 chair.
 15 There hasn't been any changes to the
 16 staff report, so I'll just give a brief overview and a
 17 few updates.
 18 Subject property, again, this is roughly
 19 a 500-acre property. It's between Mile 79 and 80 of
 20 the Sterling Highway. It straddles the highway there
 21 near Kenai Keys Road.
 22 And the Planning Commission did approve
 23 this permit back in March 27th of 2017. So what you
 24 have in front of you is a modification request that was
 25 received on June 22nd this year. And that modification

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1 is just -- it's expanding the extraction area by 61
 2 acres to include an area of land directly adjacent to
 3 the Sterling Highway.
 4 A properly noticed public hearing was
 5 held by this commission at your July 12th meeting.
 6 After closing public hearing, the Planning Commission
 7 began deliberations and voted to postpone further
 8 consideration of the application until it was brought
 9 back by staff. Because the application had already
 10 been determined sufficient by staff, it was just put on
 11 tonight's agenda, which was the next available meeting.
 12 Updates would be on July 27th, CIRI did
 13 submit an addendum to the modification application to
 14 include an additional volunteer condition.
 15 The applicant volunteers to add a
 16 condition that excavation activities would be limited
 17 to disturbing only 20 acres during the first two years
 18 of the permit, and that open area would be reclaimed
 19 upon completion of excavation activities. And I did
 20 send you a memo providing their wording on that
 21 volunteer condition.
 22 No changes to the staff report. Staff
 23 finds that the application and proposed site and
 24 reclamation plans meet the standards of KPB 21.29.040
 25 and recommends approval of the application. Resolution

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1 21-26 has been prepared with the staff finding
 2 supporting approval.
 3 In order to incorporate the additional
 4 volunteer condition of the permit, I would just
 5 recommend you take Resolution 21-26, and then the
 6 amendment would need to be made to insert the voluntary
 7 condition under Section 3 where the conditions on the
 8 permit are. And you could insert that as permit
 9 condition No. 17 and just renumber the following
 10 conditions.
 11 Due to the postponement of the decision
 12 on this application, and in order to allow some work to
 13 commence on the property this season, CIRI did apply
 14 for a counter permit. They were applied -- and granted
 15 a counter permit for a 2.5 acre material site in the
 16 same location as the expansion.
 17 No further comments have been received
 18 regarding the modification application. And that's all
 19 I have.
 20 **CHAIRMAN MARTIN:** Thank you. Before we
 21 move, are there any questions for staff to help us
 22 decide whether to open public testimony or not?
 23 **COMMISSIONER ECKLUND:** What was the
 24 location of the additional two-and-a-half that you
 25 approved?

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1 **BRYAN TAYLOR:** It was within the 60-acre
 2 modification area that was applied for. It was within
 3 that, directly adjacent to the Sterling Highway.
 4 **COMMISSIONER ECKLUND:** Was it in the
 5 center? Was it on the northwest corner? South corner?
 6 **BRYAN TAYLOR:** It was about in the center
 7 of that 60-acre.
 8 **COMMISSIONER ECKLUND:** Center of that 60
 9 acres?
 10 **BRYAN TAYLOR:** I'd say in the middle
 11 right adjacent to the highway. So it's right up
 12 against the Sterling Highway, but in the center from
 13 east to west, yeah.
 14 **CHAIRMAN MARTIN:** Any other questions?
 15 Mr. Venuti? No, okay. I'll bring it to the commission
 16 for a decision to open public testimony or not. Mr.
 17 Brantley.
 18 **COMMISSIONER BRANTLEY:** I move to open up
 19 public testimony for Item D-1.
 20 **COMMISSIONER ECKLUND:** Second.
 21 **CHAIRMAN MARTIN:** Roll call, please.
 22 **ANN SHIRNBERG:** Bentz?
 23 **COMMISSIONER BENTZ:** Yes.
 24 **ANN SHIRNBERG:** Ecklund?
 25 **COMMISSIONER ECKLUND:** Yes.

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1 **ANN SHIRNBERG:** Fikes?
 2 **COMMISSIONER FIKES:** Yes.
 3 **ANN SHIRNBERG:** Gillham?
 4 **COMMISSIONER GILLHAM:** Yes.
 5 **ANN SHIRNBERG:** Morgan?
 6 **COMMISSIONER MORGAN:** Yes.
 7 **ANN SHIRNBERG:** Brantley?
 8 **COMMISSIONER BRANTLEY:** Yes.
 9 **ANN SHIRNBERG:** Venuti?
 10 **COMMISSIONER VENUTI:** Yes.
 11 **ANN SHIRNBERG:** Martin?
 12 **CHAIRMAN MARTIN:** Yes.
 13 Motion to open the public testimony
 14 passes unanimously. Therefore, I will offer the first
 15 opportunity to the petitioner or the applicant.
 16 **ANDREA JACUK:** Great. This is Andrea
 17 Jacuk. Thank you for the opportunity to speak today
 18 about this conditional land use permit application for
 19 modification on behalf of CIRI.
 20 As I said previously, my name is Andrea
 21 Jacuk, CIRI's land manager. I'm speaking on behalf of
 22 CIRI, but before I launch into their remarks, I want to
 23 speak personally.
 24 I'm a member of the Kenaitze Indian
 25 Tribe, and my late grandfather grew up subsistence

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1 fishing the Kenai River as did his father. This river
 2 and the land surrounding it are especially important to
 3 me, as is the safety of local residents and all
 4 Alaskans who find themselves navigating the Sterling
 5 Highway, especially during the busy fishing season.
 6 I've listened to the testimony both as a
 7 representative of CIRI, but also as a stakeholder
 8 looking at how this project will impact future
 9 generations of my tribe as well as all of Alaska's
 10 people.
 11 I wouldn't be here today advocating for
 12 this project if I didn't believe it was in the best
 13 interest of my family and all of yours.
 14 On behalf of CIRI, there are three key
 15 points I would like to cover today. First the concerns
 16 about the water table; second, permit regulation
 17 compliance; and third, why this particular gravel pit
 18 matters.
 19 So my first key point. I understand the
 20 community has apprehensions about this gravel pit.
 21 CIRI met with community members, heard their concerns,
 22 and addressed them in 2017 and now in 2021 by
 23 implementing additional mitigation efforts. These
 24 claims have not since changed.
 25 CIRI has had five separate experienced

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1 operators dig over 50 test pits on this additional area
 2 as well as the currently permitted areas. All of the
 3 test pits were dug at a maximum of 20 feet below
 4 ground, showed a uniform overburden, and the water
 5 table was not once encountered in any of these 50-plus
 6 test pits.
 7 My second point, compliance. The
 8 currently permitted areas have proven to abide by
 9 borough and state guidelines and regulations and have
 10 been approved for development. This additional area we
 11 are speaking about today is at least 50 feet higher
 12 vertically above the water table than the currently
 13 permitted areas, farther away from residential areas,
 14 and farther away from the Kenai River.
 15 This modification provides a win/win
 16 situation for local residents by addressing their
 17 claims on this already preapproved project and for
 18 CIRI's right to develop it's privately owned land for a
 19 public works and safety improvement project that has
 20 been stalled for over 40 years.
 21 And my third point, why this particular
 22 gravel pit does matter. First off, it improves access
 23 to resources. It's a shorter distance versus
 24 alternatives in Kenai or Soldotna, which would create
 25 hazards and congestion along the Sterling Highway

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1 ultimately decreasing the life of borough maintained
 2 roads.
 3 It also lowers costs. As stated in the
 4 last Planning Commission meeting, the main purpose CIRI
 5 has for modifying this existing permit is to provide
 6 low cost sand and gravel resources for the Sterling
 7 Highway reconstruction project. This ultimately
 8 reduces public funds expended on the project, which is
 9 the longest running EIS in our nation's history.
 10 This Sterling Highway realignment project
 11 will bring long awaited safety improvements for
 12 residents and visitors to the Kenai Peninsula.
 13 In closing, I commend and thank the
 14 Planning Commission for taking the time to hear from us
 15 today and request the amendment be approved so that
 16 construction of the highway realignment may commence.
 17 Thank you.
 18 **CHAIRMAN MARTIN:** Thank you. Next
 19 testifier, please. Anyone from the public? Anyone in
 20 the audience? Please state your name and address at
 21 the microphone for the record.
 22 **NICKI PEREIRA:** My name is Nicki Pereira.
 23 I live hat 37195 Steelhead Circle in Bings Landing
 24 Subdivision.
 25 This is very frustrating. I think I'm

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1 going to start with an overall look at what's been
 2 going on on the Kenai Peninsula and elsewhere in this
 3 state for a long time.
 4 This gravel pit issue has been and
 5 continues to be a problem for residential areas around
 6 our state, not just here. We're Alaskans. We hate
 7 zoning. We're not into it. However, we're getting to
 8 a point where I think that's going to be necessary.
 9 As an example, our subdivision decided to
 10 get an R-1 zone as the marijuana industry moved in, and
 11 now we're darn glad we did because there is a big grow
 12 going in on the other side near Feuding, and the
 13 residents are jumping up and down saying, "How do we
 14 fix this?" And all we can say is, "You're too late."
 15 You're too late."
 16 Well, when is the issue going to be fixed
 17 with gravel pits for the residents? Ms. Andrea, with
 18 all due respect, you don't live next door. We do.
 19 Thank you for what you have done. Apparently, we
 20 didn't know about the 50 test holes. Gee, nobody ever
 21 gets back to us. Nobody tells the residents what's
 22 going on before, during, or after.
 23 And there are some things that
 24 happened -- I'm sorry if I'm being passionate, but I'm
 25 pretty upset.

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1 With the last meeting, there were a lot
 2 of things that were brought forward, and all we heard
 3 at the end was it's going to be brought back by staff.
 4 Well, apparently it was just brought back by staff.
 5 What does staff do to answer any of the questions that
 6 came up in the last meeting? I didn't hear any answers
 7 here.
 8 So this is really frustrating for those
 9 of us who have to live near this stuff, when we know
 10 that there are other gravel pits -- Mystery Creek, for
 11 example, is closer to the project. Why does it have to
 12 be right where it is? Is there something going on with
 13 CIRI we need to know about? I mean, does something
 14 make them special?
 15 Yeah, it's further away from the Cooper
 16 Landing site. Why not go closer? Why not go somewhere
 17 else? Oh, is it the weigh station for the state that
 18 they want to avoid, which is what CIRI told us four
 19 years ago in a meeting, that they wanted it on that
 20 side of the weigh station. That was an interesting
 21 comment that happened. Sorry.
 22 So here we are. It's clear that the
 23 current ordinance does not work and has not been
 24 working for years except for those who develop the
 25 gravel pits. It doesn't work for the residents.

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1 You guys have seen countless -- we're
 2 just faces in the crowd that come through here
 3 constantly, I'm sure, residents who are having to
 4 listen to this and put up with this. And it goes on
 5 year after year after year. And it's time for it to
 6 stop.
 7 I'm not a lawyer. I don't have time to
 8 be competent enough to understand the nuances of all
 9 the ordinances and the scientific intricacies of a
 10 surface mine near my home. I'm a mom and a grandma and
 11 I work and I'm busy.
 12 The commission has got to take a look at
 13 fixing this. I know that something did happen several
 14 years ago and it went to the assembly, and I'm not sure
 15 that whole story. But I know you guys have tried to
 16 fix some of this, and the assembly has something to
 17 bear in terms of blame.
 18 But I want you to know that we're mad
 19 now, and I know a lot of other people that are mad. I
 20 know that there is one of these cases in Superior Court
 21 right now. And I'm hoping that something good comes
 22 out of that that's going to help residential areas,
 23 because this is really frustrating for all of us. And
 24 I really want some answers from some of those questions
 25 that were raised at the last meeting that I heard

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1 nothing about tonight. Thank you.
 2 **CHAIRMAN MARTIN:** Thank you. Next
 3 testifier, please. Oh, Mr. Brantley has a question,
 4 ma'am. Ma'am, would you mind returning? And one
 5 online. So go ahead, Mr. Brantley.
 6 **COMMISSIONER BRANTLEY:** Thank you. What
 7 do you think would be an acceptable distance from a
 8 house to a gravel pit, in your opinion?
 9 **NICKI PEREIRA:** Well, that's a loaded
 10 question. It depends on what the gravel pit is doing.
 11 Are they crushing rocks? I mean, in my opinion, miles.
 12 You know, where we live on the river,
 13 we've got a canyon, and the sound just bounces back and
 14 forth. So that's a question I can't answer because it
 15 depends so much on topography.
 16 **COMMISSIONER BRANTLEY:** Thank you.
 17 **CHAIRMAN MARTIN:** And we have a question
 18 online, too. Ms. Hamlin.
 19 **MARK HUGHES:** Hi, this is Mark Hughes
 20 saying Cindy Hamlin, 11094 Bluff Creek Circle,
 21 Anchorage. We own property at 32177 West Hills Court.
 22 I spoke last meeting about all the
 23 reasons that I thought this was inappropriate for our
 24 area. And since then I noticed that Granite had been
 25 in Mystery Creek. And I have talked to some people, I

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1 was in the gravel industry before I retired. I think
 2 there is good gravel up Mystery Creek.
 3 On the way home last weekend I drove one
 4 way from the entrance of the new gravel pit there by
 5 Kenai Keys, and it's 24 miles one way from there to the
 6 end of the job site. So you've got a 48-mile round
 7 trip.
 8 Andrea was just saying how convenient it
 9 was and great for everybody to shorten up the gravel
 10 haul. 48 miles round trip is not shortening up one
 11 semi load of gravel.
 12 **UNIDENTIFIED SPEAKER:** Nor does it
 13 enhance any safety on the roadway at all.
 14 **MARK HUGHES:** No, that's 48 miles of
 15 semis back and forth for one load. And it's 8.4 miles
 16 one way, so 17 miles round trip from Mystery Creek.
 17 So now Andrea needs to say why this is
 18 such a good deal. She said just a minute ago it's
 19 win/win, win for the people, win for CIRI. Sorry,
 20 Andrea, I think it's win/lose. I think it's win for
 21 CIRI and lose for the people, the neighbors in the
 22 community, and the river.
 23 So I don't know, it's just not right.
 24 There has got to be a better solution, either some
 25 gravel off the new bypass, Mystery Creek, something a

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1 little closer.
 2 We've got a brand new highway there. Now
 3 you're going to haul 20 tons probably a load or more,
 4 48 miles round trip, and that's a win/win? Sorry.
 5 It's just not right what you're doing to our
 6 neighborhood. There is other places that doesn't have
 7 a community beside it and a river along it. So
 8 hopefully something changes here. Thank you very much.
 9 **CHAIRMAN MARTIN:** Thank you. Will you
 10 stand for questions from commissioners? Seeing no
 11 requests from commissioners, thank you for your
 12 testimony. Next testifier, please. We have one in the
 13 audience. Please state your name and address for the
 14 record.
 15 **ERIC ROSENBERG:** 32350 Moonshine Drive in
 16 Soldotna. I have a photograph from a drone, that, if
 17 possible, I would like to put up. Is there a way that
 18 I could put that photograph up?
 19 **CHAIRMAN MARTIN:** We're limited by
 20 sitting and hearing your testimony.
 21 **ERIC ROSENBERG:** Well, I think it's
 22 important that you actually see what it looks like from
 23 folks on the Soldotna side so you can actually see when
 24 you look at a map what we're talking about with the
 25 auditory issues, the visual issues, and the

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1 disturbances, because that, when we're looking at the
 2 code --
 3 **CHAIRMAN MARTIN:** Yeah, I understand
 4 drone photography is very useful. We just don't have
 5 the technology to accommodate that.
 6 **ERIC ROSENBERG:** I understand. I have
 7 the ability, if you'd like, to show you.
 8 The problem I have is when we met on July
 9 17th, we heard from CIRI that they were concerned and
 10 they were listening to our concerns. And we heard Ms.
 11 Jacuk tell you that she was -- from the last meeting,
 12 that there were some issues. But we had no meetings.
 13 Nobody came by and said, "Hey, what's going on? How
 14 can we help you?"
 15 Commissioner Brantley at the end of the
 16 meeting and Commissioner Fikes said to us, "Hey, we've
 17 got some questions." None of those questions have been
 18 addressed. So all that's passed is that we're having
 19 another meeting, but we still have all these unanswered
 20 questions, and you're asking to modify a permit to
 21 allow the gravel pit to begin without addressing the
 22 concerns of the folks that actually live there.
 23 While I hear that Ms. Jacuk wants to tell
 24 us about she's concerned about the river, you have the
 25 Naptowne Rapids there are there, and we heard at the

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1 last meeting from a geologist who was concerned about
 2 if there is a failure, what happens to the mixture?
 3 That's a very busy part of the river that it's going to
 4 mix in.
 5 Nobody has told us what, if any, type of
 6 analysis has been done. Nobody has come over to the
 7 Soldotna side to understand what the auditory issues
 8 are.
 9 I can hear my neighbors over in Sterling
 10 when they speak. Nobody has told us what the sounds
 11 are. It's in the code that they are supposed to. It's
 12 in the code that there is a visual disturbance. Nobody
 13 has come over. And that's why this map issue -- while
 14 I understand you don't have the IT -- nobody from CIRI
 15 thought it was important to say, "Let's take a look
 16 what it's like at 304 feet looking down into this pit."
 17 So I think that I have many issues.
 18 I am a lawyer, so I do have a little bit
 19 of a different perspective. I do have land use issues
 20 behind me. And one of the things that's going to come
 21 here is these folks have not done their due diligence
 22 to come and meet with us to try and listen to our
 23 concerns.
 24 So my time is coming to an end, but I
 25 believe this project -- or this modification should be

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1 denied, it should be denied because CIRI hasn't done
2 anything other than Ms. Jacuk coming in and telling us
3 how wonderful the project is and it's going to help
4 Alaskans.
5 The Alaskans are here today right now
6 before you, they are your neighbors, they are the
7 people who live there, and they have done nothing for
8 us other than tell us how great the project is. What's
9 so great about it? That's all I have to say.
10 **CHAIRMAN MARTIN:** If there is any
11 questions from commissioners? Mr. Brantley.
12 **COMMISSIONER VENUTI:** Mr. Chair, I have a
13 question.
14 **CHAIRMAN MARTIN:** Go, Mr. Venuti.
15 **COMMISSIONER VENUTI:** This is for the
16 testifier. You state that you are an attorney. Are
17 you representing a specific entity in this case?
18 **ERIC ROSENBERG:** Myself. And my -- who I
19 stand before you, Commissioner Venuti, I'm just as
20 equal as CIRI.
21 At the end of the last meeting,
22 Commissioner Venuti, you voted to approve this, and
23 then Mr. Brantley very bravely said, "You know what, I
24 have a question about the one area of the pit that is
25 so close to the river." Where CIRI came back and said,

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1 "Well, we've gone and we don't think that that area had
2 good gravel."
3 And Commissioner Brantley said, "Well,
4 why don't we go and why don't you change it so that
5 area -- you've told these residents that you're not
6 going to mine in that area." We've heard nothing from
7 that.
8 I mean, do you recall at the end of the
9 meeting there was an area close to the river -- and I'm
10 concerned about the river -- the section -- thank
11 you -- commissioner, you said, "Is that area going to
12 be mined?" And they said, "No." But they did nothing
13 in that time period, other than the planning board came
14 to us and just said, "Okay, here is the new date."
15 Nothing has happened.
16 I mean, let's take the time to do this in
17 a measured approach rather than just making the
18 approval. Make CIRI work for this. Make CIRI do their
19 job and make CIRI have to approach the residents that
20 live here and do the right thing.
21 **CHAIRMAN MARTIN:** Go ahead with your
22 question, Mr. Brantley.
23 **COMMISSIONER BRANTLEY:** Just to be clear,
24 you do understand that Area 1 and 2 are already
25 approved? Those can be mined.

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1 **ERIC ROSENBERG:** I understand that,
2 but --
3 **COMMISSIONER BRANTLEY:** So I just had one
4 question for you, just a hypothetical.
5 If Area 1 and, say, Area 2 produced
6 gravel results that were so-so, like maybe they passed,
7 but maybe it's going to be really hard to process the
8 D-1 and the asphalt, maybe they found better material
9 closer to the highway in this new area.
10 Now, if that -- excuse me, if that
11 encourages them to then stay within that area and stay
12 away from the river, do you think that would be a
13 reasonable trade off?
14 **ERIC ROSENBERG:** Yes. And let me explain
15 this to you, Commissioner Brantley. I spoke to -- I've
16 forgotten your name, sir, but.
17 **BRYAN TAYLOR:** Brian Taylor.
18 **ERIC ROSENBERG:** I spoke to Mr. Taylor,
19 and I said, "Look, can you show me on a map?"
20 My issues don't become right for what's
21 called injunctive relief until the sounds are there.
22 My issues for injunctive relief don't become right
23 until they are starting to work. They haven't. So I
24 do understand that they have been permitted, but my
25 issues don't rise to that level until certain times.

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1 I really thought at the end of the
2 meeting CIRI took it seriously and would have come over
3 and taken a look, but they didn't. They just came with
4 a four-minute speech of how wonderful it is for the
5 river, and I've lived here my whole life and nothing is
6 going to happen. I'm not buying it, and I don't think
7 you guys should.
8 Your role as a commission --
9 **CHAIRMAN MARTIN:** Yeah.
10 **ERIC ROSENBERG:** Sorry.
11 **CHAIRMAN MARTIN:** Thank you. We
12 appreciate -- is there any other questions? Yeah, I
13 got to keep everything moving.
14 **ERIC ROSENBERG:** Understood.
15 **CHAIRMAN MARTIN:** Okay, thank you for
16 your testimony. Is there anyone on Zoom willing to
17 testify? Cindy Hamlin, you're next.
18 **CINDY HAMLIN:** Well, my comments are just
19 similar to my husband and to the gentleman that just
20 testified, that our questions really weren't answered
21 from last meeting.
22 We expressed our issues and concerns
23 about our well water. Specifically the Cuddy family on
24 Furrier Avenue was granted time to get baseline testing
25 on their well water since they were potentially the

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1 most impacted. I've heard nothing about that. No
 2 response about what the baseline testing showed or even
 3 if they had time to have that performed.
 4 We also had many questions about road
 5 hazards and safety on the roadways, a threat to the
 6 river, the wildlife fisheries. What about the noise
 7 level and the dust? We haven't heard any responses to
 8 those questions or concerns from our last meeting.
 9 And I concur with the other speakers, Ms.
 10 Jacuk hasn't answered any of those questions in her
 11 presentation.
 12 **CHAIRMAN MARTIN:** Thank you. Are there
 13 any questions from commissioners for Ms. Hamlin?
 14 Seeing no requests, thank you for your testimony, Ms.
 15 Hamlin.
 16 And I'll take testimony from someone in
 17 the audience. Please state your name and address for
 18 the record.
 19 **RICK SCHIEFELBEIN:** It's a long cord,
 20 she's keeps me on a short leash, and I like my short
 21 leash.
 22 My name is Rick Schiefelbein. I live at
 23 37105 Steelhead Circle in the Bings Landing
 24 Subdivision. You'll kind of have to excuse me, I run
 25 out of air quickly, and I'll try to keep this very

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1 brief.
 2 I concur with everything that has been
 3 brought forward so far, and I am pretty familiar with
 4 water testing. I know the engineer that owns the well
 5 drilling company that does the test wells up and down
 6 the Sterling Highway, and is currently doing test wells
 7 on the Cooper Landing bypass. They test the water
 8 before the construction, they test the water after.
 9 Has any well testing, water testing been
 10 done in the CIRI pit project that you guys know of?
 11 And if not, why not? I mean, they are tearing the
 12 dickens out of that place. You know, they tear the
 13 dickens out of a narrow strip of land going, and they
 14 run a test every I don't know how many miles or what
 15 the distance is, I just know they do it.
 16 We've had no environmental impact
 17 studies. We've had no testing of the water. We know
 18 in the Bings Landing Subdivision that our aquifers, and
 19 there is a bunch much them, come downhill from the hill
 20 that CIRI is mining on, they come our direction.
 21 Are they going to impact our water? We
 22 don't know. Do they? Has anybody done any kind of
 23 study to ascertain what's going to happen to our water
 24 if they have a massive fuel spill or some other kind of
 25 catastrophe that can happen with that number of -- that

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1 amount of traffic?
 2 And the distance for the Cooper Landing
 3 roadwork from the pit right around the corner from my
 4 house is ridiculous. It's just absolutely bizarre.
 5 We've got a brand new highway that they are going to be
 6 rolling these trucks down, and they got pits up there
 7 right down the road from where the new road is going
 8 in.
 9 I think it is time to -- for you guys to
 10 curtail this project if you see fit to; if you don't,
 11 well, there is not much we can do about it I don't
 12 guess.
 13 But you've heard from a number of us both
 14 back in '17, the last meeting, and now. And I would
 15 seriously appreciate you all considering stopping this
 16 until these issues can be addressed and we can get some
 17 form of satisfaction that this thing is, yea, it's good
 18 for Alaska. What part of Alaska? It isn't good for
 19 Bings Landing Subdivision. It's not good for the noise
 20 level across the -- especially the guys across the
 21 river, because sound rises. Are they going to have
 22 rock crushers in there? Does anybody know if they are
 23 going to be doing rock crushing? That's some noisy
 24 stuff.
 25 Is there going to be any restrictions on

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1 jake brakes and back-up buzzers, the bleep-bleep things
 2 that go on and on? I don't think that we'll be able to
 3 hear much of it. My house is so well insulated I don't
 4 hear the neighbors shooting their guns, but not
 5 everybody is like that. And especially the guys across
 6 the river up on the hill.
 7 I know, I used to have a place on a river
 8 up on a bluff, and I could hear every word that the
 9 people, you know, over a quarter of a mile away from
 10 me, they were saying, because the noise just goes up.
 11 That's something that hasn't been looked at or
 12 addressed I don't think by CIRI, and I don't guess CIRI
 13 much cares about that.
 14 But at any rate, I'll stop my blathering
 15 because I'm just about to run out of air, and entertain
 16 any questions you have for me.
 17 **CHAIRMAN MARTIN:** Thank you. Are there
 18 any questions from commissioners? Mr. Brantley?
 19 **COMMISSIONER BRANTLEY:** Yeah, I would
 20 like to just frame a question for you. So this is just
 21 to be clear, this is a modification.
 22 **RICK SCHIEFELBEIN:** I understand.
 23 **COMMISSIONER BRANTLEY:** So the pit is
 24 already approved.
 25 **RICK SCHIEFELBEIN:** I understand.

1 **COMMISSIONER BRANTLEY:** And what's
2 already approved is closer to your home, and what they
3 are trying to move modify is further away from your
4 home.

5 **RICK SCHIEFELBEIN:** By how much?

6 **COMMISSIONER BRANTLEY:** By quite a bit,
7 actually, from Area 1 and area 2. I mean --

8 **RICK SCHIEFELBEIN:** I've driven that
9 whole thing, and it's not that much. There is hardly
10 any difference.

11 **COMMISSIONER BRANTLEY:** Well, I mean, it
12 depends on where they start. Some of it is over a half
13 mile. So if they start at the entrance, which they
14 probably will do, and work their way back towards your
15 house --

16 **RICK SCHIEFELBEIN:** You're sure about
17 that?

18 **COMMISSIONER BRANTLEY:** -- and who knows
19 how much they will use. They might get halfway down
20 and just -- but just hypothetically, though --

21 **RICK SCHIEFELBEIN:** Well, the guy that
22 just testified said they were going to start in the
23 middle of it.

24 **COMMISSIONER BRANTLEY:** Okay, that's
25 where the counter permit is. But if it's approved they

1 turn off? Where is your access point to get into
2 Steelhead?

3 **RICK SCHIEFELBEIN:** Bings Landing Drive,
4 just down the road from the entrance to the -- I guess
5 that's going to be their exit. They will probably come
6 in on Feuding, go into the pit, come out on -- I don't
7 know, I'm not sure what -- but I think that's -- if I
8 was doing it, that's the way I would do it. If I'm
9 coming from that way, I would come in from -- not
10 Feuding, Kenai Keys into the pit, come out down by --
11 pretty close to the Bings Landing drive. That's our
12 access point to Bings Landing Subdivision.

13 **CHAIRMAN MARTIN:** Any other questions
14 from commissioners? Seeing none, thank you for your
15 testimony.

16 Is there anyone online wishing to
17 testify? Seeing none, we'll bring in the next person
18 from the audience. Please state your name and address
19 for the record.

20 **CHARLES CLASBY:** My name is Charles
21 Clasby. I live at 32167 West Hills Court, and that's
22 also in Bings Landing, Sterling.

23 First I want to agree with everything
24 that public has -- my friends here, neighbors have
25 talked about.

1 might change their plans. I don't know, but I just --
2 I know that (indiscernible) north.

3 **RICK SCHIEFELBEIN:** Well, okay. They can
4 pretty much do whatever they want to do, am I wrong
5 here?

6 **CHAIRMAN MARTIN:** Middle by the highway.

7 **RICK SCHIEFELBEIN:** So they can pretty
8 much do anything they want.

9 **COMMISSIONER BRANTLEY:** Yeah, basically.

10 **RICK SCHIEFELBEIN:** Once guys approve it,
11 they can do anything they want.

12 **COMMISSIONER BRANTLEY:** You stated that
13 you live down steelhead?

14 **RICK SCHIEFELBEIN:** Yes.

15 **COMMISSIONER BRANTLEY:** Okay. Which is
16 much closer to Area 2 than the new proposed area.

17 So I'm just saying that if we deny this,
18 they still have the permit to go into Area 2.

19 **RICK SCHIEFELBEIN:** Right. But if you do
20 approve it, then you're approving that kind of wear and
21 tear on our brand new Sterling Highway, right? You're
22 approving that kind of wear and tear on our highway.

23 **CHAIRMAN MARTIN:** I think we got the
24 question. Ms. Fikes, do you still have a question?

25 **COMMISSIONER FIKES:** So where would you

1 And my concerns about a gravel pit, there
2 is a lot of problems with people wanting -- or putting
3 a gravel pit in. They are never something that anybody
4 wants to have in their backyard. This is in our
5 backyard, whether it's Area 2 or Area 1.

6 Mr. Brantley, you said that this stuff
7 has already been approved. Is that to say it can never
8 be disapproved? I don't know.

9 CIRI made their comments here at the
10 beginning about a win/win. And I have to agree with
11 Mark who says no, it's not a win/win.

12 This is a money maker for CIRI. It's
13 nothing financially for us. We sit downstream of the
14 groundwater from where these pits are being proposed to
15 be dug.

16 I know recently on KTUU TV about three or
17 four weeks ago they had a little story about a gravel
18 pit that was disapproved up around the Wasilla area
19 because of the problem of it being impacted on the
20 residents. One person had their offer withdrawn on
21 their property, home, whatever it was because of the
22 pit. Eventually they got their wish, they got the pit
23 denied.

24 Mr. Brantley, you said these things have
25 already been approved. That sounds like it can't be

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1 undone. I don't think that's true. I think you guys
2 can deny it.
3 And I asked a rhetorical question, even
4 to CIRI. "You want this in your backyard?"
5 The lady in the beginning stated in her
6 CIRI -- or the CIRI person stated that 20-foot test
7 drills were made. I'm not really sure what she meant
8 by that. As far as testing to see what kind of gravel
9 or whether or not -- I think she did comment about
10 there was no water near.
11 Well, I have to let you know that my well
12 is right about 70 feet. That's about 50 feet deeper
13 than they drilled. And if I'm not mistaken, my
14 neighbor Mark -- I don't know if Mark even knows
15 this -- I think their well is somewhere around 2- or
16 300 feet in order to get usable water.
17 All of this is flowing towards the
18 magnificent Kenai River, and CIRI and their history
19 with this area and their living here, you know, they
20 talk about, you know, this is a win/win thing.
21 I am concerned about my property value in
22 the future if or when this gravel pit is started, I'm
23 worried about the noise that it will create.
24 Obviously, there is going to be a magnificent scar on
25 the ground.

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1 And I think the gentleman who said he had
2 a drone visual, too bad you guys couldn't hook him up,
3 but it's going to be an awful thing to see when all
4 those tourist planes are flying along, and they fly
5 over my house every day, floatplanes, and they see this
6 horrible scar in the ground not too far from the
7 diagram that you guys sent to us, this red shaded area,
8 shows the Sterling Highway cutting right across. And
9 this is our neighborhood right here. That's pretty
10 close.
11 I appreciate your time and letting us
12 come up here and speak. That would pretty much
13 conclude what I have to say.
14 **CHAIRMAN MARTIN:** Thank you, sir. Are
15 there any questions from commissioners? Online?
16 Thanks for your testimony. Anyone online wishing to
17 testify? Seeing none, next in line in the audience.
18 Please, state your name and address for the record.
19 **PERRY HERSHBERGER:** My name is Perry
20 Hershberger, I live at 37060 Steelhead Circle,
21 Sterling.
22 And I'm learning a lot tonight. I
23 haven't really been involved and engaged with this
24 process because basically we're new Alaska residents.
25 We purchased our property on Bings, my

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1 wife and I, off of Bings Landing on Steelhead last
2 fall, and had no idea that this was even an issue or
3 would be an issue.
4 Given that we're residential, I would
5 surely think that our residential properties and
6 property values and water tables would be protected.
7 And so I'm learning a lot tonight that -- to know that,
8 you know, there is an issue here.
9 And gosh, I don't know, if I would have
10 known had a year ago, I'm not sure I would have
11 invested in the property that we now own and are
12 actually improving, making further investments and
13 hoping to bring people in to visit our state.
14 We love it here, we love our neighborhood
15 and our neighbors, we got a great neighborhood and
16 great people.
17 But, you know, if this turns out to be a
18 bad thing by expanding this gravel pit and affecting
19 our water tables, then who is going to want to buy our
20 properties in the future? Who is going to want to live
21 there. Who would want to live next to an open gravel
22 pit? CIRI? No, I don't think they would either.
23 So I guess I'm here just tonight to say I
24 support everything that's been said from our
25 neighborhoods, from the folks in our neighborhood, and

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1 I just hope you really consider our position on this.
2 I appreciate your time tonight, and thank you very
3 much.
4 **CHAIRMAN MARTIN:** Thank you. Next
5 testifier in the audience, please. Anyone in the
6 audience wishing to testify? Anyone online? Seeing no
7 further questions, we'll close public comment for the
8 evening and bring it back to the commission for
9 discussion.
10 **COMMISSIONER ECKLUND:** Chair Martin, it's
11 Commissioner Ecklund.
12 **CHAIRMAN MARTIN:** Go ahead.
13 **COMMISSIONER ECKLUND:** I believe that one
14 of the reasons we postponed this was because there was
15 a very short noticed timeline to the residents in order
16 for them to assess their wells and then have a
17 measuring rod for if and when something happens to
18 their wells.
19 I don't know if the people from that
20 meeting gave any comments regarding whether they got
21 their wells tested.
22 And I know it's sad to say that that
23 expense would go back on the area residents to have
24 that, but at least then if something happened down the
25 road after CIRI started digging, they would have a way

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1 to prove that there has been damage to their wells. I
 2 don't know who then they would take that to.
 3 I want them to understand that the
 4 Planning Commission is currently the people who approve
 5 material site permits and conditional use permits that
 6 are modifications to those permits.
 7 I think I've been on this commission for
 8 about 11 years, and we did a lot of effort, a lot of
 9 work on rewriting the material site ordinance. But
 10 ordinances aren't approved by the commission, they are
 11 approved by the counsel -- I mean, by the assembly.
 12 And so they didn't pass that ordinance
 13 that we wrote, which allowed us to deny permits if they
 14 didn't meet the requirements.
 15 The current code as we've been told
 16 doesn't allow us to deny. It's a very hard proof --
 17 hard to prove that the visual, the noise, the health of
 18 the neighbors are going to be affected, the safety on
 19 the roads.
 20 I agree with everything that's said
 21 tonight. That brand new highway is going to be
 22 damaged. I live in Seward. Our highway gets damaged
 23 by, you know, the tourists and the buses and
 24 everything, but I can't imagine what a dump truck,
 25 loads of stuff, and 48 miles is a big round trip. I

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1 know there are closer pits. I've seen them as I drive
 2 to my meetings in Soldotna.
 3 I would hope that those of you that have
 4 the ability to get some baseline figures, do that so
 5 that you have some recourse if something happens.
 6 There is nothing in code that requires an EIS from -- I
 7 mean, the borough is not going to pay for that. The
 8 borough is not going to pay for -- you know, to test
 9 your wells.
 10 So I just -- I hear you, but I would ask
 11 that you talk to the assembly so they hear you as well,
 12 thank you.
 13 **CHAIRMAN MARTIN:** Thank you, Ms. Ecklund.
 14 Further discussion from commissioners? Mr. Brantley.
 15 **COMMISSIONER BRANTLEY:** Yeah, I guess I
 16 should explain what I'm thinking on this.
 17 There is really nothing we can do about
 18 the two areas that are currently approved. And those
 19 areas are much closer to the residents down Bings
 20 Landing Road, Steelhead Circle, this new area.
 21 And just because CIRI says that the
 22 material isn't quite what they wanted, doesn't mean
 23 it's not usable. It just might require more processing
 24 to get there. So what they are trying to -- possibly
 25 doing is finding a better quality material closer to

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1 the highway.
 2 I wish they would have, like we asked
 3 last meeting, that they would relinquish then Area 1 at
 4 least that's close to the river. They haven't offered
 5 that volunteer condition. There is nothing we can --
 6 can't force them to give that up as far as I
 7 understand.
 8 But what I'm thinking is that approving
 9 this 61 acres will encourage them not to use Area 1 and
 10 2. So really I'm going to support this modification
 11 because it's, as far as I can tell, over half a mile
 12 away from any residences, and it's an area that would
 13 be a better place to operate and to process. I guess
 14 that's what I'm thinking so far on this.
 15 **CHAIRMAN MARTIN:** Mr. Taylor, staff,
 16 would you help us -- would you reiterate how best to
 17 amend this for including the conditional -- I mean, the
 18 voluntary conditions.
 19 **BRYAN TAYLOR:** Yes, through the chair.
 20 If you're making a motion to approve, then if you want
 21 to incorporate the volunteered condition, just --
 22 someone will need to make an amendment to the
 23 resolution in Section 3 to include the voluntary
 24 condition as permit condition No. 17, and then renumber
 25 those that follow it.

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1 **CHAIRMAN MARTIN:** Thank you. So moved
 2 would be a great way to consolidate that for any of the
 3 commissioners willing to consider the amendment.
 4 Ms. Ecklund, you have your hand up.
 5 **COMMISSIONER ECKLUND:** Yeah. I'm looking
 6 at the "I Legislate" paperwork, and I don't see that we
 7 asked them for any other volunteer conditions like the
 8 silent or white noise back-up beeper, limiting the
 9 hours of crushing, or anything else. And I didn't see
 10 where they had offered any of that up.
 11 So Mr. Taylor, could you enlighten me if
 12 any of those items were volunteered.
 13 **BRYAN TAYLOR:** No. The only volunteer
 14 permit condition is the one limiting the 20 acres for
 15 the first two years of the permit. That's the only one
 16 I've received.
 17 **COMMISSIONER ECKLUND:** And a followup.
 18 Can we do a mandatory -- I mean, this is a
 19 modification. Can we modify what we're going to allow
 20 by saying they have to use white noise backup beepers
 21 and crushing can only happen between these hours? Can
 22 we modify those requirements?
 23 **BRYAN TAYLOR:** The permit conditions --
 24 you're limited to which conditions you can apply, and
 25 they are the ones that are in code. So you would be

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1 limited to applying the conditions that are in code.
 2 **COMMISSIONER ECKLUND:** Can you list those
 3 for us, please?
 4 **BRYAN TAYLOR:** I can. I'll have to pull
 5 them up. I can come back here in just a second.
 6 **COMMISSIONER ECKLUND:** Okay, thank you.
 7 **BRYAN TAYLOR:** Through the chair.
 8 Commissioner Ecklund, is there a condition -- in
 9 21.29.50 the permit conditions list mandatory
 10 conditions. Is there something you have in mind
 11 specifically? You mentioned white noise?
 12 **COMMISSIONER ECKLUND:** Yeah, several of
 13 the gravel pits in the last couple of years, since we
 14 were working on the amendments to this ordinance,
 15 volunteered that they would take off the backup beepers
 16 and put in white noise backup alarms that meets the
 17 requirement of their organizations, their safety.
 18 **BRYAN TAYLOR:** I understand what you're
 19 saying.
 20 So those voluntary permit conditions are
 21 just that. If you're asking whether you can make them
 22 mandatory, I believe the answer is no. If they are
 23 being volunteered by the applicant, that's one thing;
 24 but if the white noise is not specifically mentioned
 25 here, which it's not, then there is not really a way

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1 that you can make that mandatory.
 2 **COMMISSIONER ECKLUND:** So is there any
 3 conditions that we can add? Because it's a conditional
 4 use permit. I believe most of the ones I've looked at
 5 allow us to apply conditions.
 6 **BRYAN TAYLOR:** 21.29.40 states the
 7 standards for sand and gravel material sites, which is
 8 those standards are what you're trying to meet by
 9 applying the conditions.
 10 And part A, the second sentence there:
 11 Only the conditions set forth in KPB 21.29.50 may be
 12 imposed to meet these standards.
 13 There are certain conditions in 21.29.15
 14 that can be taken inclusively. It says you can have,
 15 for instance, buffers, 50 feet of natural vegetation,
 16 or minimum six-foot earthen berm, or a minimum six-foot
 17 fence.
 18 So I believe you would be limited to
 19 treating that inclusively and stacking those on top of
 20 one another.
 21 **COMMISSIONER ECKLUND:** Yeah. And I
 22 believe when we approved the first two areas in this
 23 pit, we looked at that very closely. And I think when
 24 this came before us the last time we estimated that
 25 they were meeting those conditions already in what they

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1 were asking, but we can't add any other.
 2 These new white noise backup beepers are
 3 something that is newer, and I don't know how old that
 4 section of the code is. But, again, those were some of
 5 the things that we recommended to the assembly to
 6 modify in a new ordinance that would change the
 7 material site permits.
 8 So thank you for looking those up for me.
 9 **BRYAN TAYLOR:** Yes, thanks.
 10 **CHAIRMAN MARTIN:** Further discussion?
 11 Ms. Bentz has her hand up.
 12 **COMMISSIONER BENTZ:** Yes, thank you. I
 13 just wanted to follow up on one of the questions that
 14 Commissioner Ecklund hand about the operating time.
 15 And it is one of the conditions in the
 16 permit to limit the hours of operation for rock
 17 crushing. So rock crushing equipment shall not be
 18 operated between 10 p.m. and 6 a.m., and I think those
 19 are the only hours of operations conditions that we can
 20 apply. So anything else would be voluntary for
 21 processing.
 22 The other thing I wanted just to mention
 23 about our code, and maybe this can help clarify a
 24 couple of the water questions, is that this permit, I
 25 believe, does not propose any excavation within the

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1 water table.
 2 So in the application I think you stated
 3 there were something like 32 test holes were dug
 4 without encountering the water table. So that was the
 5 indication that excavation would be above the water
 6 table.
 7 And our code does say that for our water
 8 source separation conditions, that the conditional land
 9 use permits require two-foot vertical separation from
 10 the seasonal high water table to be maintained.
 11 And just thinking through some of the
 12 testimony that we heard as well, usually the water
 13 monitoring isn't really required by the Planning
 14 Commission unless there is an application to excavate
 15 within the water table. And it's at that point that
 16 the applicant would be responsible of installing water
 17 monitoring tubes to really understand that groundwater
 18 elevation, flow direction, and flow rate for the parcel
 19 for the excavation area, and it needs to be monitored
 20 for a year prior to the application.
 21 So if there was any excavation by this
 22 project in the water table, there would be
 23 requirements -- or if it was modified future down the
 24 road, it would be a requirement to have those
 25 monitoring wells in place well in advance, a year in

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1 advance.
 2 So I just wanted to make sure that the
 3 testifiers heard that and that those were kind of the
 4 conditions that the Planning Commission has to work
 5 with when we're applying the code for these types of
 6 applications.
 7 **CHAIRMAN MARTIN:** Thank you. Further
 8 discussion? I'll entertain a motion for accepting the
 9 new items that Mr. Taylor suggested.
 10 **COMMISSIONER BENTZ:** I move to amend the
 11 motion to add the voluntary condition as outlined in
 12 the planner's memo.
 13 **COMMISSIONER BRANTLEY:** Second.
 14 **CHAIRMAN MARTIN:** It's been seconded by
 15 Mr. Brantley. Discussion? Anyone online, hands
 16 raised? If not, roll call, please.
 17 **ANN SHIRNBERG:** Bentz?
 18 **COMMISSIONER BENTZ:** Yes.
 19 **ANN SHIRNBERG:** Ecklund?
 20 **COMMISSIONER ECKLUND:** No.
 21 **ANN SHIRNBERG:** Fikes?
 22 **COMMISSIONER FIKES:** No.
 23 **ANN SHIRNBERG:** Gillham?
 24 **COMMISSIONER GILLHAM:** Yes.
 25 **ANN SHIRNBERG:** Morgan?

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1 **COMMISSIONER MORGAN:** Yes.
 2 **ANN SHIRNBERG:** Venuti?
 3 **COMMISSIONER VENUTI:** No.
 4 **ANN SHIRNBERG:** Brantley?
 5 **COMMISSIONER BRANTLEY:** Yes.
 6 **ANN SHIRNBERG:** Martin?
 7 **CHAIRMAN MARTIN:** Yes.
 8 Motion passes 5 to 3. And further
 9 discussion on the main motion as amended?
 10 **COMMISSIONER BENTZ:** Chair Martin?
 11 **CHAIRMAN MARTIN:** Yes, Mrs. Bentz.
 12 **COMMISSIONER BENTZ:** I have a suggestion
 13 or a question for the applicant if they are available
 14 to see if they would add another voluntary condition to
 15 use white noise alarms rather than the beepy alarms on
 16 the equipment at this excavation site.
 17 **CHAIRMAN MARTIN:** Ms. Jacuk, are you
 18 available for questions?
 19 **ANDREA JACUK:** Hi, yes. This is Andrea
 20 Jacuk. Thank you, Ms. Bentz.
 21 So white noise backup alarms, that is
 22 something that we are willing to discuss with our
 23 operator, but I will say that white noise backup alarms
 24 are not MSHA required, but it is something that we're
 25 willing to explore further if needed. Thank you.

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1 **CHAIRMAN MARTIN:** Ms. Bentz?
 2 **COMMISSIONER BENTZ:** Thank you, Ms.
 3 Jacuk. And I guess this is a question. At this time
 4 would you be willing to have that voluntary condition
 5 added to this conditional land use permit?
 6 **ANDREA JACUK:** Thank you, Ms. Bentz. I
 7 can say that I don't have the authority to make that
 8 decision right now, but that's something that we can
 9 discuss at a later time, I would be more than happy to.
 10 **CHAIRMAN MARTIN:** Thank you, further
 11 discussion.
 12 **COMMISSIONER ECKLUND:** Yes, it's Cindy
 13 again. Thank you, Chair Martin.
 14 I'm just going to say this. I don't know
 15 any other way to get the point across to the assembly
 16 that this ordinance, this section of code has got to be
 17 fixed. It's got to be looked at.
 18 I mean, I understand the not in my
 19 backyard thing, but we didn't even really address the
 20 noise or the safety on the road or -- we have in the
 21 past, but, you know, we just get to the point where we
 22 just -- you know, we throw our hands up in the air
 23 because our code doesn't allow us to do any of that.
 24 So, you know, our government is supposed
 25 to be with the people, not with organizations making

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1 the money off of a new road, you know. And it's
 2 supposed to be for the good of the people as a whole.
 3 Yes, the road around Cooper Landing is
 4 going to be wonderful, that bypass. That road is
 5 probably going to be a big improvement for the people
 6 as a whole.
 7 But in the meantime, who are we listening
 8 to when we cannot make conditions on these permits?
 9 Who is, you know, holding our hands, I mean, holding us
 10 back from doing something to help mitigate what the
 11 residents in the area are going to have to go through
 12 and what the road is going to be going through.
 13 And, you know, I know the code says this
 14 is what the code says and we have to vote yes. But I
 15 don't know how to get the assembly's attention. So I'm
 16 just saying that now, thanks.
 17 **CHAIRMAN MARTIN:** Yeah, Ms. Ecklund, I
 18 hear you loud and clear. It's -- in trying to get the
 19 assembly's attention, which it's critical that,
 20 regardless of which way you vote, that you have sound
 21 findings that will pass muster in court.
 22 Further discussion? Seeing no one on
 23 line, none in the audience, roll call, please.
 24 **ANN SHIRNBERG:** Bentz? I'm sorry, turn
 25 my microphone on. Bentz?

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Planning Commission Hearing Agenda

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2215 • (907) 714-2378 Fax
Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

Melanie Aeschliman, Planning Director • Charlie Pierce, Borough Mayor

Blair Martin, Chair – District 2-Kenai ~ Robert Ruffner, Vice Chair – District 7-Central

Syverine Abrahamson-Bentz, Parliamentarian – District 9-South Peninsula ~ Jeremy Brantley – District 5-Sterling/Funny River

Pamela Gillham – District 1-Kalifornsky ~ Virginia Morgan – District 6-East Peninsula ~ Vacant – District 3-Nikiski ~ Vacant – District 8-Homer

Diane Fikes – City of Kenai ~ Vacant – City of Seward ~ Vacant – City of Soldotna ~ Vacant – City of Seldovia ~ Franco Venuti – City of Homer

**January 25, 2022
7:30 p.m.**

**Zoom Meeting Link: <https://us06web.zoom.us/j/9077142200>
Zoom Toll Free Phone Numbers: 888-788-0099 or 877-853-5247
Zoom Meeting ID: 907 714 2200**

To join the meeting from a computer visit the Zoom meeting link above. If you connect by computer and do not have speakers or a microphone, connect online and then select phone for audio. A box will come up with toll free numbers, the meeting ID, and your participant number. To attend the Zoom meeting by telephone use the Zoom toll free phone numbers listed above.

****Please note the records on these items have not been reopened, no new evidence will be accepted nor is public comment opened. It is also possible that the Commission will elect to deliberate these matters in an adjudicative session.***

HEARINGS

1. Conditional Land Use Permit Modification Application
Applicant: Cook Inlet Region, Inc.
Parcel ID # 065-081-18
Sterling Area

2. Conditional Land Use Permit Application
Applicant: Beachcomber, LLC
Parcel ID # 169-010-67
Anchor Point Area

MISCELLANEOUS INFORMATIONAL ITEMS

CONTACT INFORMATION

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

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Phone: toll free within the Borough 1-800-478-4441, extension 2215

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website: <http://www.kpb.us/planning-dept/planning-home>

A party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances. An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the filing and records preparation fees.

Vacations of right-of-ways, public areas, or public easements outside city limits cannot be made without the consent of the borough assembly. Vacations within city limits cannot be made without the consent of the city council. The assembly or city council shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received within the specified period, it shall be considered that consent was given.

A denial of a vacation is a final act for which the Kenai Peninsula Borough shall give no further consideration. Upon denial, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

Resolution 2018-23

**Appeal of the Kenai Peninsula Borough
Planning Commission's Approval of
A Conditional Land Use Permit
in the Anchor Point area.**

**KPB Tax Parcel ID# 169-010-67
Tract B, McGee Tracts
Deed of Record Boundary Survey (Plat 80-104)
Deed recorded in Book 4, Page 116,
Homer Recording District.**

**Applicant
Beachcomber, LLC**

**Landowner
Beachcomber, LLC**

Volume 2

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R676 through R710 Volume 2	Planning Commission Minutes June 10, 2019
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R711 through R732	Planning Commission Packet and Desk / Lay Down Packet June 24, 2019
R733 through R743	Planning Commission Minutes June 24, 2019
R744 through R783	Miscellaneous / Additional Information

VERBATIM TRANSCRIPT

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T116 through T187	Verbatim Transcript / Index June 10, 2019
T188 through T209	Verbatim Transcript / Index June 24, 2019

RESOLUTION 2018-23

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2018-23
HOMER RECORDING DISTRICT**

A resolution granting a conditional land use permit to operate a sand, gravel, or material site for a parcel described as Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

- WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS,** KPB 21.25.040 provides that a permit is required for a sand, gravel or material site; and
- WHEREAS,** on June 4, 2018 the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district; and
- WHEREAS,** public notice of the application was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS,** public notice of the application was published in the July 5, 2018 & July 12, 2018 issues of the Homer News; and
- WHEREAS,** a public hearing of the Planning Commission was held on July 16, 2018 where public comment was taken and the Commission denied the approval of the conditional land use permit; and
- WHEREAS,** the denial was appealed, a subsequent appeal hearing was held, and the hearing officer remanded the application to the Planning Commission; and
- WHEREAS,** a public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News; and
- WHEREAS,** at the March 25, 2019 meeting, the Planning Commission continued the hearing to May 28, 2019, which was later rescheduled for June 10, 2019. Public notice of the hearing was mailed on April 30, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the May 30, 2019 and June 6, 2019 issues of the Homer News; and
- WHEREAS,** a public hearing of the Planning Commission was held on Jun 10, 2019 where public comment was taken;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On June 4, 2018, the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. Land use in the rural district is unrestricted except as otherwise provided in KPB Title 21.
5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres and provides regulations for material extraction.

6. The proposed disturbed area is approximately 27.7 acres.
7. Consistent with KPB 21.25.050(A) on June 21, 2018, the applicant submitted a revised site plan and application to the Planning Department that addressed issues raised by staff with the initial review of the application.
8. The submitted application with its associated documents was reviewed by staff for compliance with the application requirements of KPB 21.29.030. Staff determined that the application was complete and scheduled the application for a public hearing.
9. A public hearing of the Planning Commission was held on July 16, 2018. Public notice of the hearing was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the July 5, 2018 & July 12, 2018 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
10. Testimony was filed and heard regarding issues that are not addressed by the KPB 21.29.040 standards or 21.29.050 conditions. Staff and the Planning Commission in reviewing the application are not authorized by the code to consider those issues such as property values, water quality, wildlife preservation, a material site quota, and traffic safety.
11. A public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
12. A public hearing of the Planning Commission was held on June 10, 2019. Public notice of the hearing was mailed on April 30, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the May 30, 2019 and June 6, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
13. At the June 10, 2019 hearing, the applicant volunteered to utilize a moving, or rolling, berm rather than a stationary berm. The berms will be placed near the active excavation area to be moved as the extraction area and reclaimed areas expand.
14. At the June 10, 2019 hearing, the applicant volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
15. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
16. *Parcel boundaries.* All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. The submitted site plan indicates the location of each of the parcel boundary stakes.
 - B. Planning staff has visited the site several times and has observed that the boundary stakes are in place.
17. *Buffer zone.* A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
 - B. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
 - C. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.
 - D. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.
 - E. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
 - F. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
 - G. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
 - H. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that can provide visual and noise screening of the material site for some of the adjacent uses.
 - I. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent

- properties.
- J. A 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - K. The total buffer width, as recommended by staff, along the southern and eastern property boundaries is 98-feet.
 - L. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
 - M. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
 - N. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - O. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
 - P. There has been testimony that the material site will mar the view of Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.
 - Q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.
 - R. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.
18. *Processing.* Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
- A. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the north property line.
 - B. The applicant proposed the following justifications for waiving the processing setback: "Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant's daughter & 169-022-08 is not developed."
 - C. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
 - D. The portion of the proposed processing area greater than 300 feet from the property line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.
 - E. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.
19. *Water source separation.* All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.
- A. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
 - C. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.
20. *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.
- A. This permit approval does not allow excavation in the water table.
21. *Waterbodies.* An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
- A. The Cook Inlet lies about 600 feet west of the proposed material extraction.
 - B. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
 - C. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast

- corner of the property.
- D. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.
 - E. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - F. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the floodplain is an existing stripped area.
 - G. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.
 - H. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
 - I. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
22. *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.
 - A. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.20.050(A)(7).
 23. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads.
 - A. The submitted site plan indicates that the material site haul route will be Danver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - B. There was a significant number of public comments concerning the condition of Anchor Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
 - C. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
 24. *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.
 - A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
 25. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 26. *Hours of operation.* Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - B. This condition reduces off-site noise impacts of the material site.
 27. *Reclamation.* Reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
 - A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.
 - C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.
 - D. The application states that less than 50,000 cubic yards will be mined annually therefore the material site qualifies for a small quantity exception from bonding.
 28. *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.
 - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
 29. *Voluntary permit conditions.* Conditions may be included in the permit upon agreement of the

permittee and approval of the planning commission.

- A. The applicant has volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
 - B. The volunteered condition concerning back-up alarms is in the best interest of the Borough and the surrounding property owners because the multi-frequency alarms better minimize the noise impacts of the material site.
 - C. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.
 - D. The volunteered condition to place the berm near the active excavation area is in the best interest of the Borough and the surrounding property owners because this placement of the berm will better minimize the visual impacts of the material site.
 - E. The applicant has volunteered a condition a condition that prohibits material site operations on holiday weekends during the summer months.
 - F. The volunteered condition, to not operate on holidays, is consistent with the standard to reduce noise disturbance to adjacent properties.
 - G. The volunteered condition, to not operate on holidays, is in the best interest of the Borough and the surrounding property owners because the Anchor River State Recreational Area has a significantly greater number of visitors on holidays and several of the neighbors and Alaska State Parks has expressed concern about the noise impacts to the recreational area.
30. *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.
- A. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm placed near the active extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm placed near the active extraction area
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary; and a 12-foot high berm placed near the active extraction area except along the northern 200 feet of the proposed excavation.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
10. The permittee shall ensure that fuel storage 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.
11. The permittee shall conduct operations 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the

addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.

16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.
21. The permittee shall operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
22. The permittee shall not operate the material site or haul material from the site on Memorial Day weekend (Saturday through Monday), Labor Day weekend (Saturday through Monday), and the 4th of July holiday to also include:
 - Saturday and Sunday if July 4th is on a Saturday, Sunday, Monday, or Friday
 - Saturday, Sunday, and Monday if July 4th is on a Tuesday
 - Saturday, Sunday, and Friday if July 4th is on a Thursday

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 24th DAY OF JUNE, 2019.


Blair J. Martin, Chairperson
Planning Commission

ATTEST:


Julie Hindman
Administrative Assistant

PLEASE RETURN
Kenai Peninsula Borough
Planning Department
144 North Binkley St.
Soldotna, AK 99669

MEETING PACKET

&

DESK / LAY DOWN PACKET

MARCH 25, 2019

(Please note that some information has been dispersed throughout the record so that there was not duplicate information.)

AGENDA ITEM G. PUBLIC HEARING

4. Conditional Land Use Permit for a Material Site; Anchor Point Area

STAFF REPORT

PC MEETING: March 25, 2019

Applicant: Beachcomber LLC

Landowner: Beachcomber LLC

Parcel Number: 169-010-67

Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Location: 74185 Anchor Point Road

BACKGROUND INFORMATION: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

On July 16, 2018, the Planning Commission denied the approval of this Conditional Land Use Permit application based upon the following findings:

1. The noise will not be sufficiently reduced with any buffer or berm that could be added.
2. The visual impact to the neighboring properties will not be reduced sufficiently.

The Planning Commission's decision was appealed to a hearing officer in accordance with KPB 21.20. The hearing office has remanded the decision to the Planning Commission with the following instructions:

The Commission shall reevaluate the application with respect to the mandatory conditions listed in KPB 21.29.050, as well as any voluntary conditions that Beachcomber may agree to. The Commission shall conduct a second public hearing at which it shall issue findings of fact, pertaining to the mandatory conditions listed in KPB 21.29.050, and shall reference specific evidence in the record in support of those findings. In issuing its findings, the Commission must comply with both local and common law requirements, which require the Commission to both issue findings supported by substantial evidence and to "articulate the reasons for their decisions."

Following are excerpts from the hearing officer's decision regarding the Planning Commission's discretion:

While the Code requires applicants to submit significant documentation in order to obtain the permit, the Code does not provide the Commission discretion to deny such a permit when the application has been properly submitted. Instead, the Code preserves the unrestricted nature of the rural zoning district and limits the Borough to the imposition of certain conditions to extraction. (Hearing Officer Decision, p.10.)

A CLUP actually imposes greater rather than fewer restrictions upon the permitted parcels. While the rural zoning district is primarily unregulated and unrestricted, an applicant's parcels are subject to specific and express conditions that are not automatically imposed on other parcels in the same district. Thus, the government must ensure that the application of greater restrictions upon the applicant are in fact justified and imposed in a fair and objective way. The Code preserves this fairness by granting the Borough staff, the Commission, and a hearing officer very limited discretion in denying and even conditioning CLUPs. (Hearing Officer Decision, p.12.)

While the Commission's concerns may be valid, the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code. Instead, the Assembly, in adopting the Code, only granted the Commission authority to impose these conditions and ensure that any application complied with the application requirements. In other words, under the law as it currently stands, the Commission may only apply conditions under KPB 21.29.050 when issuing a material site conditional use permit. It may not impose additional conditions despite the positive impact such conditions may have in the rural zoning district or the community at large. To the extent the parties disagree with these limitations, it is the Borough Assembly, through the local legislative process, and not this hearing officer, that holds the power to change the permit approval process. (Hearing Officer Decision, p.13.)

The complete decision of the hearing officer is included with this staff report.

The submitted site plan indicates that the material site haul route will be Danver Street, which is a Borough maintained road. The site plan and application proposes the following buffers:

- North: 6-foot high berm except along the east 400 feet where a 50-foot vegetated buffer is proposed.
- South: 6-foot high berm.
- East: 6-foot high berm.
- West: Greater than 50-foot vegetated buffer.

The application indicates that the depth to groundwater is 20 feet and that the depth of the proposed excavation is 18 feet. The groundwater depth was determined by a test hole on the property and exposed surface water to the north. The site plan indicates that the processing area is 300 feet from the south and east property lines. It is greater than 300 feet from the west property line. A waiver is being requested from the north property line. The site plan indicates that the proposed processing area is located 200 feet south of Parcel 169-022-08, which is undeveloped. Parcel 169-022-04 is developed and located within 300 feet of the proposed processing area; this parcel is owned by the applicant's daughter. There is adequate room elsewhere on the parcel to accommodate processing while complying with the 300-foot setback. Staff does not recommend approval of the processing distance waiver request.

The site plan indicates that there are several wells located within 300 feet of the parcel boundaries but none within 100 feet of the proposed excavation area. The site plan indicates a 104-foot setback from the wetlands area located in the northeast corner of the property and that this setback will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, Best Management Practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska, will be utilized as a guideline to reduce potential impacts to water quality.

The application states that reclamation will be completed annually before the growing season ends (September) and that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust. The applicant estimates a life span of 15 years for the site with an approximate annual quantity of less than 50,000 cubic yards.

Following is a summary of the buffers proposed by staff:

- North: 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm between the vegetated buffer and the extraction area; a six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain; and a 12-foot high berm along the rest of the northern boundary.
- South: 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm between the vegetated buffer and the extraction area.
- East: 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 12-foot high berm between the vegetated buffer and the extraction area.
- West: Greater than 50-foot vegetated buffer along the western most parcel boundary.

PUBLIC NOTICE: Public notice of the application was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their Post Office. Public notice of the application was published in the March 14, 2019 & March 21, 2019 issues of the Homer News.

ATTACHMENTS

- Planning Commission packet from July 16, 2018
- Public comments submitted at the July 16, 2018 meeting
- Excerpt from the minutes of the July 16, 2018 meeting
- Hearing Officer's decision dated December 26, 2018
- Hearing Officer's reconsideration decision dated February 4, 2019
- Staff recommended buffers map

FINDINGS OF FACT

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On June 4, 2018, the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. Land use in the rural district is unrestricted except as otherwise provided in KPB Title 21.
5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres and provides regulations for material extraction.
6. The proposed disturbed area is approximately 27.7 acres.
7. Consistent with KPB 21.25.050(A) on June 21, 2018, the applicant submitted a revised site plan and application to the Planning Department that addressed issues raised by staff with the initial review of the application.
8. The submitted application with its associated documents was reviewed by staff for compliance with the application requirements of KPB 21.29.030. Staff determined that the application was complete and scheduled the application for a public hearing.
9. A public hearing of the Planning Commission was held on July 16, 2018. Public notice of the hearing was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the July 5, 2018 & July 12, 2018 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
10. Testimony was filed and heard regarding issues that are not addressed by the KPB 21.29.040 standards or 21.29.050 conditions. Staff and the Planning Commission in reviewing the application are not authorized by the code to consider those issues such as property values, water quality, wildlife preservation, a material site quota, and traffic safety.
11. A public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
12. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
13. *Parcel* boundaries. All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. The submitted site plan indicates the location of each of the parcel boundary stakes.
 - B. Planning staff has visited the site several times and has observed that the boundary stakes are in place.
14. *Buffer zone*. A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
 - B. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
 - C. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.

- D. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.
 - E. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
 - F. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
 - G. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
 - H. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that can provide visual and noise screening of the material site for some of the adjacent uses.
 - I. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent properties.
 - J. A 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - K. The total buffer width, as recommended by staff, along the southern and eastern property boundaries is 98-feet.
 - L. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
 - M. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
 - N. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - O. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
 - P. There has been testimony that the material site will mar the view of Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.
 - Q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.
15. Processing. Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
- A. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the north property line.
 - B. The applicant proposed the following justifications for waiving the processing setback:

“Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant’s daughter & 169-022-08 is not developed.”

- C. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
 - D. The portion of the proposed processing area greater than 300 feet from the property line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.
 - E. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.
16. *Water source separation.* All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.
- A. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
 - C. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.
17. *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.
- A. This permit approval does not allow excavation in the water table.
18. *Waterbodies.* An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
- A. The Cook Inlet lies about 600 feet west of the proposed material extraction.
 - B. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
 - C. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast corner of the property.
 - D. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.
 - E. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - F. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the floodplain is an existing stripped area.
 - G. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.

- H. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
 - I. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
19. *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.
- A. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.20.050(A)(7).
20. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads.
- A. The submitted site plan indicates that the material site haul route will be Denver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - B. There was a significant number of public comments concerning the condition of Anchor Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
 - C. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
21. *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.
- A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
22. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
- A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
23. *Hours of operation.* Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - B. This condition reduces off-site noise impacts of the material site.
24. *Reclamation.* Reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
- A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.

- C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission
 - D. The application states that less than 50,000 cubic yards will be mined annually therefore the material site qualifies for a small quantity exception from bonding.
25. *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.
- A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
26. *Voluntary permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
- A. No additional conditions have been volunteered by the applicant.
27. *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.
- A. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance

STAFF RECOMMENDATION

The Planning Commission should review the application, site plan, staff report, and comments received and determine if the mandatory conditions contained in KPB 21.29.050 will be met. The Planning Department recommends that the Planning Commission deny the processing distance waiver request, approve the conditional land use permit with listed conditions, and adopt the findings of fact subject to the following:

1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicant will provide the recording fee for the resolution to the Planning Department.
4. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit.
5. The 100-foot buffer adjacent to the riparian wetland and floodplain shall be restored to a vegetative state prior to the issuance of the permit.

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm between the vegetated buffer and the extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm between the vegetated buffer and the extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 12-foot high berm between the vegetated buffer and the extraction area.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.

These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.

4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
10. The permittee shall ensure that fuel storage 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.
11. The permittee shall conduct operations 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.
16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A “party of record” is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the filing fee and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2018-23
HOMER RECORDING DISTRICT**

A resolution granting a conditional land use permit to operate a sand, gravel, or material site for a parcel described as Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

- WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS,** KPB 21.25.040 provides that a permit is required for a sand, gravel or material site; and
- WHEREAS,** on June 4, 2018 the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district; and
- WHEREAS,** public notice of the application was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS,** public notice of the application was published in the July 5, 2018 & July 12, 2018 issues of the Homer News; and
- WHEREAS,** a public hearing of the Planning Commission was held on July 16, 2018 where public comment was taken and the Commission denied the approval of the conditional land use permit; and
- WHEREAS,** the denial was appealed, a subsequent appeal hearing was held, and the hearing officer remanded the application to the Planning Commission; and
- WHEREAS,** a public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site

- once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
 3. On June 4, 2018, the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
 4. Land use in the rural district is unrestricted except as otherwise provided in KPB Title 21.
 5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres and provides regulations for material extraction.
 6. The proposed disturbed area is approximately 27.7 acres.
 7. Consistent with KPB 21.25.050(A) on June 21, 2018, the applicant submitted a revised site plan and application to the Planning Department that addressed issues raised by staff with the initial review of the application.
 8. The submitted application with its associated documents was reviewed by staff for compliance with the application requirements of KPB 21.29.030. Staff determined that the application was complete and scheduled the application for a public hearing.
 9. A public hearing of the Planning Commission was held on July 16, 2018. Public notice of the hearing was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the July 5, 2018 & July 12, 2018 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
 10. Testimony was filed and heard regarding issues that are not addressed by the KPB 21.29.040 standards or 21.29.050 conditions. Staff and the Planning Commission in reviewing the application are not authorized by the code to consider those issues such as property values, water quality, wildlife preservation, a material site quota, and traffic safety.
 11. A public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
 12. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
 13. *Parcel boundaries.* All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. The submitted site plan indicates the location of each of the parcel boundary stakes.
 - B. Planning staff has visited the site several times and has observed that the boundary stakes are in place.
 14. *Buffer zone.* A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
 - B. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
 - C. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.
 - D. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.

- E. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
 - F. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
 - G. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
 - H. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that can provide visual and noise screening of the material site for some of the adjacent uses.
 - I. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent properties.
 - J. A 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - K. The total buffer width, as recommended by staff, along the southern and eastern property boundaries is 98-feet.
 - L. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
 - M. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
 - N. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - O. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
 - P. There has been testimony that the material site will mar the view of Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.
 - Q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.
15. Processing. Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
- A. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the north property line.
 - B. The applicant proposed the following justifications for waiving the processing setback: "Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant's daughter & 169-022-08 is not developed."
 - C. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
 - D. The portion of the proposed processing area greater than 300 feet from the property

line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.

- E. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.
16. *Water source separation.* All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.
- A. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
 - C. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.
17. *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.
- A. This permit approval does not allow excavation in the water table.
18. *Waterbodies.* An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
- A. The Cook Inlet lies about 600 feet west of the proposed material extraction.
 - B. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
 - C. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast corner of the property.
 - D. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.
 - E. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - F. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the floodplain is an existing stripped area.
 - G. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.
 - H. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
 - I. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
19. *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.

- A. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.20.050(A)(7).
20. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads.
 - A. The submitted site plan indicates that the material site haul route will be Danver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - B. There was a significant number of public comments concerning the condition of Anchor Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
 - C. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
21. *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.
 - A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
22. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
23. *Hours of operation.* Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - B. This condition reduces off-site noise impacts of the material site.
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 - A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.
 - C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission
 - D. The application states that less than 50,000 cubic yards will be mined annually therefore the material site qualifies for a small quantity exception from bonding.
25. *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.
 - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
26. *Voluntary permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - A. No additional conditions have been volunteered by the applicant.
27. *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.

- A. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm between the vegetated buffer and the extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm between the vegetated buffer and the extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 12-foot high berm between the vegetated buffer and the extraction area.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
10. The permittee shall ensure that fuel storage 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.
11. The permittee shall conduct operations 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.
16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations,

those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.

17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 2019.

Blair J. Martin, Chairperson
Planning Commission

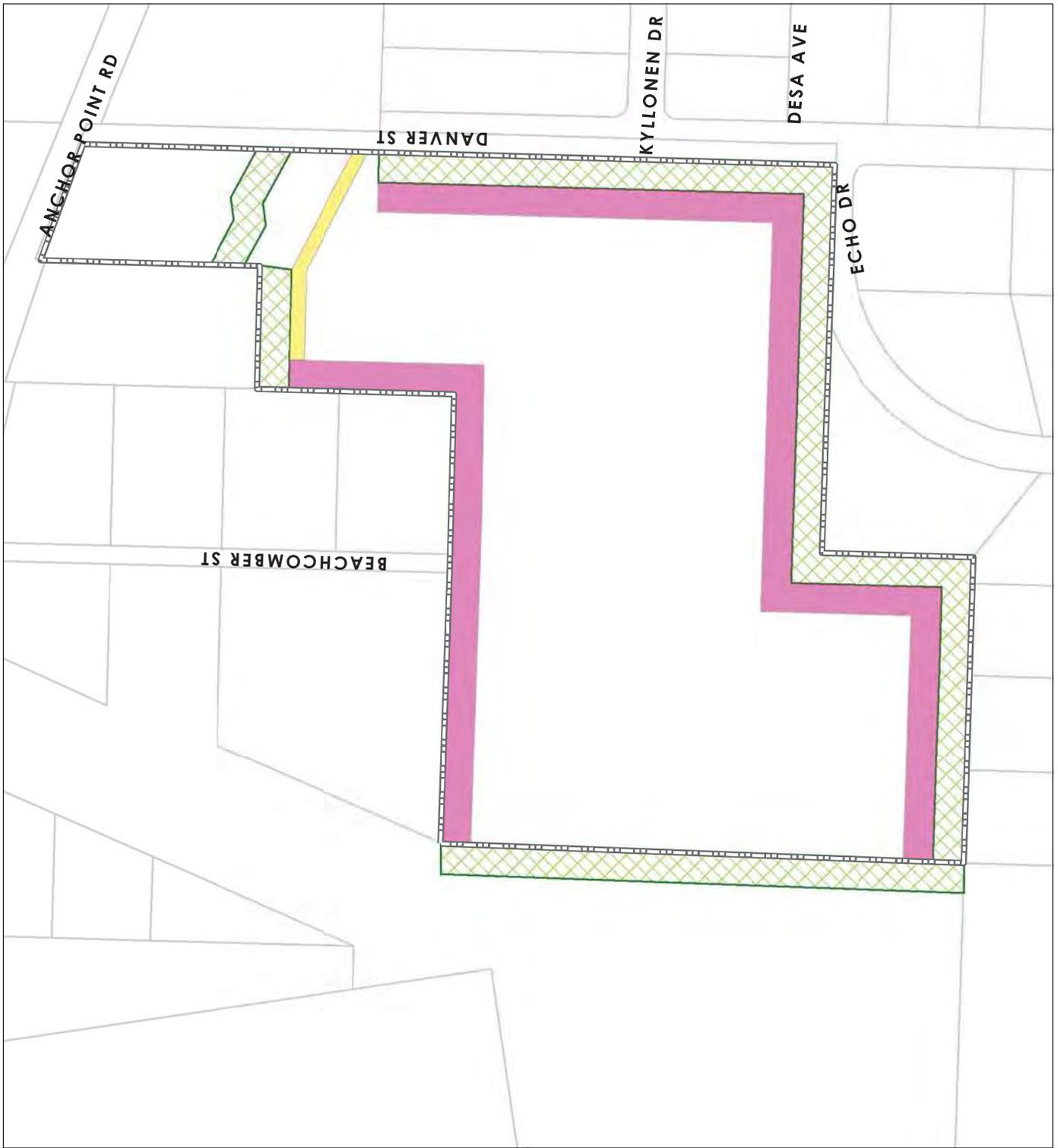
ATTEST:

Julie Hindman
Administrative Assistant

PLEASE RETURN
Kenai Peninsula Borough
Planning Department
144 North Binkley St.
Soldotna, AK 99669

Kenai Peninsula Borough Planning Commission Meeting, March 25, 2019
Conditional Land Use Permit for a Material Site

Parcel Number 169-010-67
Applicant: Beachcomber LLC



LEGEND

- CLUP Boundary
- 6-Foot High Berm
- 12-Foot High Berm
- 50-Foot Vegetative Buffer
- Other Parcels

0 125 250 Feet

Date: 3/11/2019

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

Kenai Peninsula Borough Planning Commission Meeting, March 25, 2019
 Conditional Land Use Permit for a Material Site

Parcel Number: 169-010-67
 Applicant: Beachcomber LLC



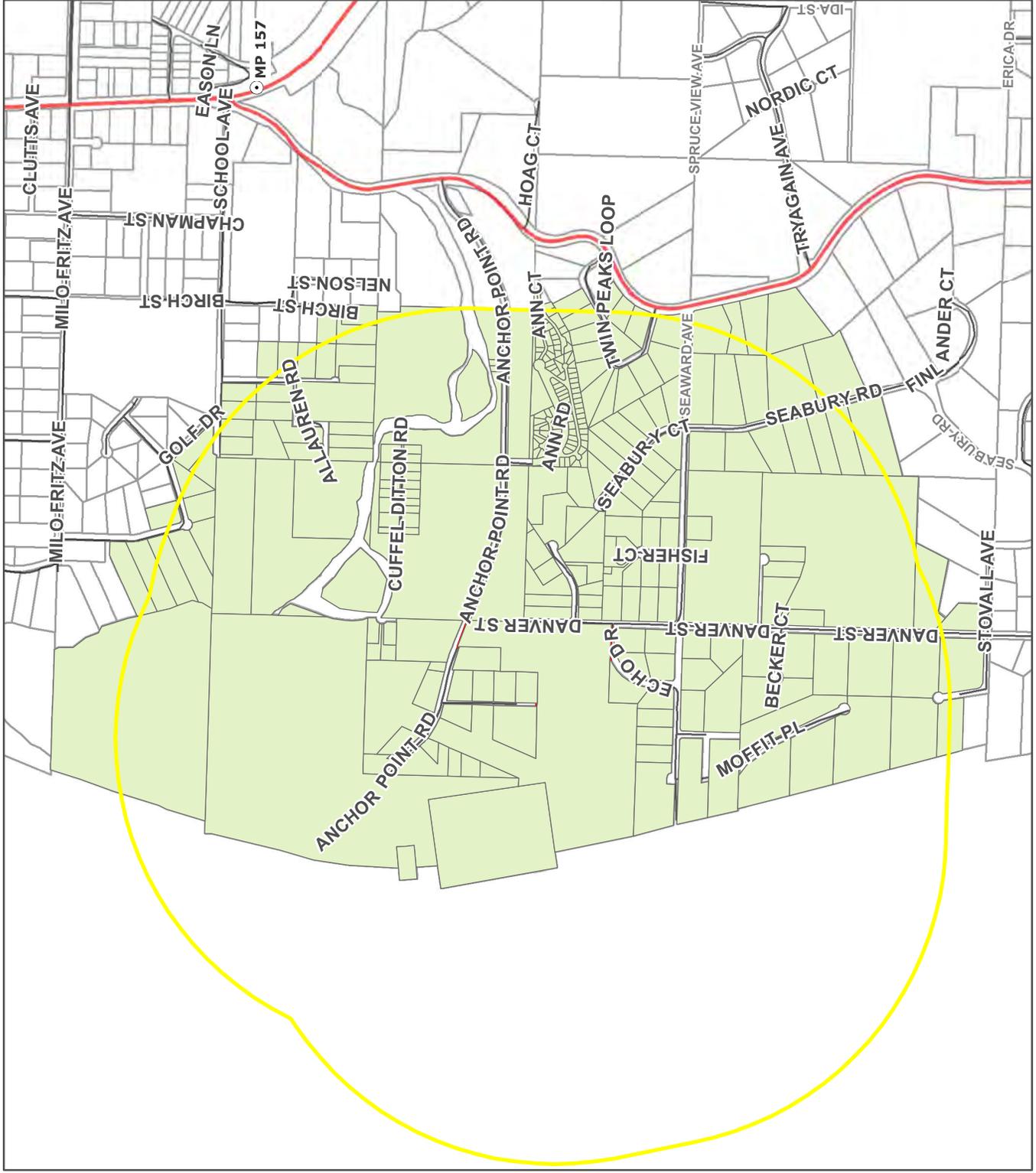
LEGEND

- MANA_PARCELS_1_Buffer40
- Parcels selection 6
- Proposed Material Site
- Boundaries

R270



Date: 3/1/2019
 The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



**Kenai Peninsula Borough, Alaska
144 North Binkley Street
Soldotna, Alaska 99669**

In the matter of the Kenai Peninsula)
Borough Planning Commission's decision)
to disapprove a conditional use permit)
for a material site that was requested for)
KPB Parcel 169-010-67; Tract B, McGee)
Tracts - Deed of Record Boundary Survey)
(Plat 80-104) - Deed Recorded in Book 4,)
Page 116, Homer Recording District)
)
Beachcomber LLC, Emmitt and Mary Trimble,) Case No. 2018-02
)
Appellant)
_____)

**HEARING OFFICER'S DECISION AND ORDER ON
MOTION FOR RECONSIDERATION**

On Wednesday, January 9, 2019, two parties filed timely motions for reconsideration in this matter: the R O Baker II Revocable Trust and Hans Bilben. The Kenai Peninsula Borough Code ("Code") provides that a party may request reconsideration

only on the following criteria:

1. The hearing officer overlooked, misapplied, or failed to consider a code provision directly controlling;
2. The hearing officer overlooked or misconceived a material fact;
3. The hearing officer overlooked or misconceived a material question in the case; or
4. Fraud or misrepresentation by a party."¹

The hearing officer requested responses from other parties to the case. Applicant Beachcomber, LLC and the Kenai Peninsula Borough ("KPB") filed the only responses to the motion for reconsideration. The hearing officer considered both motions for reconsideration and both responses carefully, and denies the motions for the following reasons.

¹ KPB 21.20.350(A).

Baker II Trust Motion for Reconsideration

The Baker II Trust's motion challenges the hearing officer's decision to uphold the Planning Commission's ("Commission") denial of the conditional land use permit, arguing that the Code gives the Commission the authority to deny a permit, and that the Commission's findings of fact were sufficient.² Though the Baker II Trust does not specifically identify the criteria in KPB 21.20.350(A) upon which it motions for reconsideration, the hearing officer will assume the Baker II Trust intends to invoke KPB 21.20.350(A)(1) and (A)(2), relating to the hearing officer overlooking or misapplying of code provisions and material facts.

The Baker II Trust argues that the Code provisions governing material site permit conditions in KPB 21.29 "do not restrict the Commission's power under Chapter 21.25 to disapprove a permit where terms and conditions cannot 'protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts,' as required by KPB 21.29.040(A),"³ citing *South Anchorage Coalition v. Coffey*⁴ in support of its argument. In that case, a Court found "the use of the terms 'may approve' indicates that the Commission also has discretion to deny the permit even if it finds that the standards are met."⁵ However, the language and purpose of the Anchorage Municipal Ordinance interpreted in *Coffey* is very different from the local code provisions at issue in this appeal. The property in *Coffey* was in a non-commercial residential zone, which allowed natural resource extraction as a conditional use.⁶ In contrast, the KPB Code "preserves the unrestricted nature of the rural zoning district and limits the Borough to the imposition of certain conditions to extraction."⁷ Using the Anchorage ordinance language as an analogy in this case is not appropriate.

KPB Code Chapter 21.25 contains the "general provisions applicable to all conditional land use permits," and "where the provisions of this chapter and a CLUP chapter regulating a specific use conflict, the more specific chapter shall control."⁸ Chapter 21.29 regulates a specific use, namely, material sites. Therefore, a provision in Chapter 21.29 that applies to a specific situation will take precedence over the general provisions in Chapter 21.25. The Commission may only apply the conditions listed in KPB 21.29.050 when determining whether to deny a material site conditional use permit. In this case, the Commission's findings were not sufficient to determine whether the denial was properly within the Commission's authority. Remand for further findings is an appropriate remedy for lack of sufficient findings.

² Baker II Trust's Motion for Reconsideration, p. 2.

³ Baker II Trust's Motion for Reconsideration, p. 3

⁴ *South Anchorage Coalition v. Coffey*, 862 P.2d 168 (1993).

⁵ *Id.* at 173, n. 13.

⁶ *Id.* at 169.

⁷ Hearing Officer's Decision and Order, p. 10

⁸ KPB 21.25.010.

The Baker II Trust's second argument is that "[t]hese findings are sufficient for the Applicant and any reviewing body to understand the Commission's reasoning...[d]etailed findings are not required where the basis of the decision is clear."⁹ The Baker II Trust does not point to any specific material fact that it alleges the hearing officer overlooked or misconceived. Therefore there is no basis for reconsideration on this point.

Hans Bilben Motion for Reconsideration

Mr. Bilben argues that the hearing officer overlooked and misapplied KPB 21.25.050(B), which, according to Mr. Bilben, "explicitly and expressly grants the Planning Commission authority to disapprove a permit application and, through 21.25.020, requires that the Planning Commission find that the permit meets the applicable *standards* before approving an application."¹⁰ As Mr. Bilben's motion acknowledges, "KPB Code 21.29.040 sets forth the specific *standards* that apply to CLUPs for material sites."¹¹ That provision states that "only" the conditions in KPB 21.29.050 may be imposed to meet the standards listed in KPB 21.29.040. Therefore, KPB 21.29.040 and KPB 21.29.050 control over language in KPB 21.25.050(B) granting the Commission authority to "find at a minimum that the proposed activity complies with the requirements of this chapter," because the more specific language of Chapter 21.29 controls over the more general language of Chapter 21.25.¹² The hearing officer's decision and order therefore properly applied and interpreted KPB 21.25.050(B).

Mr. Bilben also argues that the hearing officer overlooked and misconceived a material fact, namely, the testimony of Bruce Wall, the Borough Planner.¹³ Mr. Bilben quotes Mr. Wall's testimony at the public hearing:

So with the proposed six-foot berm, I was not able to state in the staff report that the standards in KPB 21.29.040 had been met, but with the addition of the 50-foot vegetated buffer in portions of the property, I was then able to draft the findings stating that the standards had been met. Of course, the decision concerning buffers is entirely up to the Planning Commission.¹⁴

Mr. Wall's testimony does not present a material fact. It provides his reasoning behind his recommendations in the staff report, and acknowledges that his recommendations are just that. As Mr. Wall noted, the decision about the buffers required by KPB 21.29.050(A)(2) is up to the Commission. The hearing officer therefore

⁹ Baker II Trust's Motion for Reconsideration, pp. 3-4.

¹⁰ Hans Bilben's Motion for Reconsideration, p. 3, emphasis in original motion.

¹¹ Hans Bilben's Motion for Reconsideration, p. 3, emphasis in original motion.

¹² KPB 21.25.010.

¹³ Hans Bilben's Motion for Reconsideration, p. 4.

¹⁴ Hans Bilben's Motion for Reconsideration, p. 5.

did not overlook or misapply Mr. Wall's testimony. In this case, the Commission denied the permit application and made findings of fact, however those findings were not specific enough to permit full review of their decision. Remand is appropriate so that the Commission can fully articulate its decision and issue detailed findings of fact.¹⁵

For these reasons, the motions for reconsideration filed by the Baker II Trust and Hans Bilben are DENIED.

Dated this 5th day of February, 2019.



Holly C. Wells, Hearing Officer

Right to Appeal

The filing of a motion for reconsideration suspends the time in which an appeal must be taken to Superior Court. The time period in which to file an appeal shall begin when the hearing officer issues the decision on the motion for reconsideration, or 10 days after the motion for reconsideration is filed if the hearing officer does not issue a decision on the motion.

This Decision and Order on the Motion for Reconsideration is a final decision. An appeal from this decision may be filed in the Alaska Superior Court within 30 days after the date of distribution of this decision and is governed by Part 6 of the Alaska Rules of Appellate Procedure. This decision remains in effect while an appeal is pending unless stayed by the Alaska Superior Court. See KPB 21.20.350 and KPB 21.20.360.

¹⁵ See Hearing Officer's Decision and Order, p. 9.

CERTIFICATE OF SERVICE

I, John Blankenship, Clerk of the Kenai Peninsula Borough, do hereby certify that, I served the foregoing notice.

X 

 Signature

Dated this 6th day of February, 2019.

Ann Cline anndotcalm@gmail.com	John Girton johnrgirton@aol.com	Gina M. DeBardelaben McLane Consulting, Inc. ginadebar@mcclanecg.com	Lee Yale leeyale2008@yahoo.com
Mark M Yale markyale2001@yahoo.com	Gary L. Sheridan Eileen D. Sheridan twoshar@acsalaska.net	Philip J. Brna fisheyeak@gmail.com	Hans M. Bilben catchalaska@alaska.net Agent: Katherine Elsner Ehrhardt, Elsner & Cooley Katie@907legal.com
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Susan and James Reid ecapjimsue@gmail.com	RO Baker II Revocable Trust Agent: Robert W. Corbisier, Reeves Amodio LLC rob@reevesamodio.com	Michael Brantley zz49er@outlook.com	
Appellant / Applicant Emmitt & Mary Trimble dba Beachcomber LLC Agent: Keri-Ann Baker, KC Baker, LLC kcbaker@kcbakerlaw.com	Kenai Peninsula Borough Max Best Planning Director Hand Delivered	Kenai Peninsula Borough Holly Montague Deputy Borough Attorney Hand Delivered	Kenai Peninsula Borough Bruce Wall, Planner bwall@kpb.us

**Kenai Peninsula Borough, Alaska
144 North Binkley Street
Soldotna, Alaska 99669**

In the matter of the Kenai Peninsula)	
Borough Planning Commission's decision)	
to disapprove a conditional use permit)	
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KPB Parcel 169-010-67; Tract B, McGee)	
Tracts - Deed of Record Boundary Survey)	
(Plat 80-104) - Deed Recorded in Book 4,)	
Page 116, Homer Recording District)	
)	
Beachcomber LLC, Emmitt and Mary Trimble,	)	Case No. 2018-02
)	
Appellant)	
_____)	

HEARING OFFICER DECISION AND ORDER

I. INTRODUCTION

On December 6, 2018, a hearing was held before the undersigned hearing officer in the above-titled appeal. Appellant Beachcomber LLC, through owners Emmitt and Mary Trimble ("Beachcomber," or "Appellant"), appealed the Kenai Peninsula Borough Planning Commission's ("Commission") denial of its application for a conditional land use permit ("CLUP" or "material site permit") for a material site on KPB Parcel 169-010-67. Appellant, through counsel, filed an opening statement challenging the decision issued by the Borough Planning Commission. Gina M. DeBardelaben of McLane Consulting, Inc. and the Kenai Peninsula Borough planning staff also filed opening

statements supporting Appellant's position. Conversely, over 25 parties entered appearances and filed opening statements supporting the Commission's decision.¹

Based upon review and consideration of the Record, arguments presented by the parties and their representatives both at the hearing and in writing, and applicable law, the Commission's findings of fact are not supported by substantial evidence. The Commission's decision is therefore remanded for further proceedings, fact finding, and conclusions under KPB 21.20.320(2)-(3) and KPB 21.20.330 and in accordance with directions provided in this decision.

II. PROCEDURAL AND FACTUAL BACKGROUND

On June 4, 2018, Beachcomber filed an application with the Kenai Peninsula Borough for a conditional land use permit to extract peat, sand and gravel from its property (the "Application").² Beachcomber also owns the property on which the proposed material site would be located, 74185 Anchor Point Road³ (KPB Tax Parcel 169-010-67), an irregularly shaped parcel of 41.72 acres.⁴ The site plan and associated documents attached to the Application stated that extraction would be limited to the

¹ Ann Cline, Richard Cline, John Girton, Lee Yale, Mark Yale, Gary L. Sheridan, Eileen D. Sheridan, Philip J. Brna, Hans Bilben, represented by counsel Katherine Elsner, Thomas Brook, Lawrence R. Oliver, Donald L. Horton, William Patrick, Linda Patrick, Shirley Gruber, Vickey Hodnik, G. George Krier, Paul Roderick, Mike Brantley, David D. Gregory, Teresa Ann Jacobson Gregory, Joseph Sparkman, Nathan Lynn Whitmore, Susan Reid, James Reid, R O Baker II Revocable Trust, represented by counsel Robert W. Corbisier, Steven Perry Thompson, Eldon Overson, Marie Carlton, and Richard Carlton.

² R. 11.

³ Local residents also refer to this road as the Beach Road, Beach Access Road, or Anchor River Road.

⁴ R. 19.

eastern 27.7 acres of the parcel and that the site haul route would be via Denver Street, a Borough maintained road, to Anchor Point Road.⁵

Borough Planning Department staff (“Staff”) reviewed the Application and supporting documents to determine whether it complied with Kenai Peninsula Borough Code (“Code”) requirements. While conducting its review of the Application, Staff made site visits to the subject property.⁶ As a result of these visits, Staff recommended additional conditions to protect the neighboring parcels. In response, the Applicant submitted a revised site plan.⁷ Ultimately, Staff determined the Application met KPB requirements and recommended approval of the Application, subject to certain conditions, which included additional berms and buffers.⁸

Applicant proposed a six-foot high berm along most of the northern, eastern and southern property boundaries of the proposed material site, where there is no vegetation to provide screening.⁹ The neighboring properties on the southeast corner of the proposed material site are at a higher elevation than the site.¹⁰ The staff report therefore recommended a 12-foot high berm in this area because a six-foot high berm would do little to minimize the visual impact or noise disturbance to neighboring properties.¹¹ Staff recommended a 50-foot vegetated buffer in addition to the proposed

⁵ R. 5.

⁶ R. 196.

⁷ R. 195-196.

⁸ R. 21-23.

⁹ R. 5.

¹⁰ R. 19.

¹¹ R. 19-20.

six-foot high berm for the remaining southern and eastern boundaries, where there was some existing vegetation to provide screening.¹²

Staff prepared 13 proposed findings of fact for the Commission's consideration.¹³ The proposed findings of fact state that the proposed material site meets the standards imposed by KPB 21.29.040(A)(1) through (6). Finding No. 7 states that "A 200-foot separation distance to the property boundaries for the processing area is not sufficient to minimize noise disturbance to other properties."¹⁴ Findings No. 11 and 12 states that noise and visual impacts will be reduced and minimized by the requirements of permit condition 2, which imposes buffer requirements as detailed below.¹⁵

Staff also recommended 20 permit conditions.¹⁶ Recommended condition No. 2 contains conditions that vary from the standard conditions in KPB 21.29.050 relating to buffers and berms. Condition No. 2 requires a combination of vegetated buffers and berms in different configurations depending on the boundary.¹⁷ Staff recommended denying the processing buffer waiver request, and approving the application with the proposed conditions.¹⁸

On July 16, 2018, the Commission held a public hearing on the Application. The hearing was well attended. Almost 30 individuals spoke against the permit as did a representative of Cook Inletkeeper, a nonprofit association that advocates for the

¹² R. 19-20.

¹³ R. 20-21.

¹⁴ R. 20.

¹⁵ R. 21-22.

¹⁶ R. 22-23.

¹⁷ R. 22.

¹⁸ R. 21-22.

protection of the Cook Inlet watershed. Those testifying raised concerns primarily based on increases in traffic volume, decreased traffic safety, negative impacts on surface and subsurface water quality, decreases in property values, degradation of the residential nature of the area, reduced recreational values, negative visual impacts, increased noise and dust, and destruction of wildlife habitat. Testimony was also presented challenging the hours of operation and opposing the permit due to the existing number of material sites in the area.¹⁹ In addition to those testifying against the permit, Emmitt Trimble appeared in support of his Application alongside his daughter and neighbor, Lauren Isenhour, as well as Beachcomber's engineer, Gina DeBardelaben.²⁰ Staff also made a presentation, explaining to the Commission the basis for its recommended findings and conditions.²¹

In light of the substantial testimony against the Application presented at the hearing and Staff's recommendation for approval subject to certain conditions, Staff urged the Commission to continue the hearing to provide the members the opportunity to consider the evidence before making a decision.²² Despite Staff's recommendation, the Commission did not postpone²³ the hearing and instead moved into deliberations on the record.²⁴

¹⁹ *Id.*

²⁰ T. 19-24.

²¹ T. 2-3; T. 7.

²² T. 7.

²³ T. 25-26.

²⁴ T. 3.

While the Commission's deliberations were brief,²⁵ the Commission did discuss the buffer zone provisions of the Code and whether the buffers in the Application would minimize noise disturbance and visual impacts to other properties.²⁶ Several Commissioners expressed the opinion that the buffers and berms would not minimize noise and visual impacts.²⁷ The Commission then voted on the motion to approve the Applicant's CLUP application, which failed by a vote of six to three.²⁸ The Commission adopted the following findings:

1. Borough Code 21.29.040(A)(4): The noise will not be sufficiently reduced with any buffer or berm that could be added.
2. Borough Code 21.29.040(A)(5): The visual impact to the neighboring properties will not be reduced sufficiently.²⁹

The written notice of decision was issued July 21, 2018³⁰ and Beachcomber filed the appeal on August 2, 2018.³¹

III. STANDARD OF REVIEW

Pursuant to the Kenai Peninsula Borough Code of Ordinances, the following three standards apply to an appeal of the Commission's decision:

1. The hearing officer may exercise independent judgment on matters that relate to the interpretation or construction of ordinances or other provisions of law; however, due consideration shall be given to the

²⁵ The Commission's deliberations were less than 20 minutes. See discussion on T. 24-25 extending the time for public comment past 11:00 pm. The meeting adjourned at 11:23 pm. T. 28.

²⁶ T. 28.

²⁷ T. 26-28.

²⁸ T. 28.

²⁹ T. 28.

³⁰ R. 16-18.

³¹ R. 249-250.

expertise and experience of the planning commission in its interpretations of KPB titles 20 and 21.

2. The hearing officer shall defer to the judgment of the planning commission regarding findings of fact if they are supported in the record by substantial evidence.

3. The hearing officer may revise and supplement the planning commission's findings of fact. Where the hearing officer decides that a finding of fact made by the planning commission is not supported by substantial evidence, the hearing officer may make a different finding on the factual issue, based upon the evidence in the record developed before the planning commission if it concludes a different finding was supported by substantial evidence, or may remand the matter to the planning commission as provided in KPB 21.20.330(B).³²

Additionally, KPB 21.20.330 specifies the three situations in which, following an appeal, the hearing officer is required to remand a case to the Commission based on inadequate factual findings. These situations include:

A. Changed circumstances. An appeal alleging changed circumstances or new relevant evidence, which with due diligence could not have been presented to the planning commission, shall be remanded to the planning commission.

B. Lack of findings. Appeals from planning commission decisions which lack findings of fact and conclusions by the planning commission or contain findings of fact and conclusions which are not supported by substantial evidence shall be remanded to the planning commission with an order to make adequate findings of fact and conclusions.

C. Findings for remand. The hearing officer shall make findings of fact and conclusions setting forth the basis for the remand and shall include instructions to the planning commission regarding whether additional evidence, notice, hearing or findings are required.³³

The above standards both define and limit a hearing officer's authority.

³² See KPB 21.20.320

³³ See KPB 21.20.330

IV. PRELIMINARY MOTIONS

In addition to Beachcomber's substantive points on appeal, the parties raised several procedural and preliminary matters at the hearing. These matters were addressed at the hearing but reiterated within this decision for ease of reference and review. The R O Baker II Revocable Trust filed a motion to strike portions of the Borough's reply statement that refer to an unrelated material site CLUP application. The Trust argued that because no opening statement of any party referred to the facts of that permit, it was impermissible for the Borough to cite to Commission comments at that unrelated hearing. The motion to strike was denied. However, the hearing officer noted that any reference to previous Commission decisions would not have precedential value in this case and, to the extent the Borough's reply contains new factual evidence, that evidence would not be considered.

The second preliminary motion requested permission for Pete Kinneen to represent two of the parties of record, namely Philip Brna and John Girton at the hearing. Kinneen does not have standing and is not a party to this appeal but he was selected as an advocate for parties Brna and Girton. Thus, Kinneen was permitted to testify on behalf of parties Brna and Girton so long as he understood that doing so did not make him a party to the appeal.³⁴

In addition, Michael Brantley requested to present a PowerPoint presentation to the hearing officer in support of his statement opposing the Application. His presentation was permitted for illustrative purposes only and with the understanding that any new evidence submitted in the PowerPoint presentation would be disregarded.

³⁴ R. 554. The dismissal order was not challenged.

V. FINDINGS AND DECISION

After reviewing the statements of the parties, the record, and the relevant law, it is my determination as the hearing officer for this appeal that the Commission exceeded the scope of its authority in denying the permit based upon its determination that the conditions would not afford adequate protection from noise and visual blight. Further, the findings issued by the Commission did not provide substantial evidence in support of its denial and were not adequate. Although I may sympathize with the concerns expressed by the Commission and reiterated during the appeal hearing by numerous witnesses, these concerns fall outside the discretion afforded both the Commission and this hearing officer, as a matter of local law.

That said, the nature of the hearing and the substantial amount of testimony presented at the hearing but unaddressed by the Commission makes it impossible to determine whether or not there were other considerations by the Commission that were not expressed in its deliberations or its decision, but that may have warranted denial of the permit on appropriate grounds. The Commission's lack of adequate findings warrants remand so that the Commission may articulate its findings and the reasons for its denial if there is such a reason that falls within the Commission's scope of authority.

A. Limitations of the Borough Code

The basis for remand in this case arises mainly from the limitations of the Code provisions governing the material site permit process and the counterintuitive restrictions that process places on the Commission. The Borough has, for the most part,

transferred zoning authority to the cities within its borders. While the Borough does maintain zoning authority over areas outside the regulatory arm of the cities, but within Borough boundaries which constitute the Borough's rural zoning district, the Borough Assembly permits almost wholly unrestricted use of these areas and has limited restrictions on use to only those expressly provided in the Code.³⁵

Among the few restrictions that apply to the rural zoning district, KPB 21.29 requires users to obtain a permit for material extraction in certain situations.³⁶ While there are different permit requirements depending upon the nature of the extraction, a CLUP is required for material extraction disturbing more than 2.5 acres or entering the water table.³⁷ In order to obtain such a permit, an applicant must submit an application that provides information identified in the Code.³⁸ The Code actually requires significant documentation of the intended extraction on site, including but not limited to, plans regarding the life span of the extraction, a buffer plan, a reclamation plan, and so on. While the Code requires applicants to submit significant documentation in order to obtain the permit, the Code does not provide the Commission discretion to deny such a permit when the application has been properly submitted. Instead, the Code preserves the unrestricted nature of the rural zoning district and limits the Borough to the imposition of certain conditions to extraction.³⁹

³⁵ See KPB 21.04.010(B).

³⁶ See KPB 21.29.020.

³⁷ See KPB 21.29.020(B).

³⁸ See KPB 21.29.030.

³⁹ See KPB 21.29.040.

Specifically, the Code provides that:

These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. *Only* the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to other properties;
3. Minimizes off-site movement of dust;
4. Minimizes noise disturbance to other properties;
5. Minimizes visual impacts; and
6. Provides for alternate post-mining land uses.⁴⁰

The differences between the traditional purpose of a “conditional use permit” and the CLUP required by the Borough further highlights the limited authority granted to the Borough to regulate extraction within the rural zoning district. Although the Borough has entitled its extraction permit a “conditional use permit,” the permitting process differs greatly from the traditional “conditional use” permitting process. Generally, a conditional use permit is designed to *permit* certain uses otherwise prohibited in a zoning district. For example, a local residential zoning district may permit day care facilities within that district but only where a conditional use permit is obtained. The community with zoning authority may expect its planning commission to grant or deny the conditional use permit after balancing several factors identified by ordinance, including the best interest of the district and the community. In such cases, the permit at issue grants the permit applicant greater rights than other land owners in the zoning district at issue.

⁴⁰ See KPB 21.29.040 (emphasis added).

Consequently, the permitting community would have an obligation to ensure that the district's interests warrant granting one landowner more freedom of use than another.

Here, the Borough's CLUP process has the opposite effect. A CLUP actually imposes greater rather than fewer restrictions upon the permitted parcels. While the rural zoning district is primarily unregulated and unrestricted, an applicant's parcels are subject to specific and express conditions that are not automatically imposed on other parcels in the same district. Thus, the government must ensure that the application of greater restrictions upon the applicant are in fact justified and imposed in a fair and objective way. The Code preserves this fairness by granting the Borough staff, the Commission, and a hearing officer very limited discretion in denying and even conditioning CLUPs.

In this case, the Commission did not take issue with the Applicant's compliance with the Application requirements. Instead, the Commission's findings suggested that the permit requirements failed to protect against the visual and noise impacts of the specific material site.⁴¹ Commissioner Ecklund explained her reasoning in disagreeing with the staff's recommendations:

from the testimony I've heard tonight and the documents that have been submitted, I don't think that the berms or the vegetation buffers will do justice to minimize the noise disturbance to other properties...and I don't think that the visual effects will be reduced sufficiently with buffers, berms...I don't think they could build them high enough for that.⁴²

⁴¹ T. 27-28.

⁴² T. 26-27.

Similarly, Commissioner Bentz remarked that “I don’t think these conditions will minimize noise disturbance to other properties and the conditions won’t minimize visual impacts either.”⁴³ Commissioner Morgan agreed, commenting “I don’t see how the 50-foot buffer or berms are going to minimize visual impact or sound impact because of the unique topography.”⁴⁴

While the Commission’s concerns may be valid, the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code. Instead, the Assembly, in adopting the Code, only granted the Commission authority to impose these conditions and ensure that any application complied with the application requirements. In other words, under the law as it currently stands, the Commission may only apply conditions under KPB 21.29.050 when issuing a material site conditional use permit. It may not impose additional conditions despite the positive impact such conditions may have in the rural zoning district or the community at large.⁴⁵ To the extent the parties disagree with these limitations, it is the Borough Assembly, through the local legislative process, and not this hearing officer, that holds the power to change the permit approval process.

B. The Lack of Adequate Findings

While the Commission’s findings exceeded its authority under local law, affirmation of the Commission’s decision may still be appropriate if the Commission’s other findings of fact and conclusions warranted denial. By way of example, if the

⁴³ T. 28.

⁴⁴ T. 28.

⁴⁵ See KPB 21.29.050.

Commission determined an applicant failed to submit a proclamation plan and it issued adequate findings supporting that conclusion, such findings would support denial of a permit. In the case at hand, however, the Commission's findings that noise and visual impact would not be sufficiently reduced by berm or buffer⁴⁶ do not support a finding that the Application fails to meet the legal requirements in the Code, even when these findings are given due deference. More specifically, the Commission did not identify any evidence that Beachcomber failed to meet the CLUP application requirements.

Looking to the language of KPB 21.29.040, it is clear that *only* the conditions in KPB 21.29.050 may be imposed to "protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts." The plain meaning of the word "only" is "alone of its or their kind"... "and no other and no (or nothing) more; solely; exclusively..."⁴⁷ Thus, the conditions in KPB 21.29.050 are the "sole" or "exclusive" conditions that may be applied to minimize noise and visual impacts, which were the two foremost concerns facing the Commission in the hearing on Beachcomber's application.

Given that only the conditions in KPB 21.29.050 may be applied to minimize noise and visual impacts, the Commission's findings of fact are insufficient in that they do not address how Beachcomber's Application failed to meet the mandatory conditions imposed by KPB 21.29.050. Although the Commission members who voted against approving the Application discussed their belief that the buffers and berms as proposed in the staff report would not minimize noise and visual impacts, they did not discuss

⁴⁶ T. 28.

⁴⁷ Webster's New World Dictionary of the American Language (Second College Edition), 994.

whether the Application actually met the conditions required by KPB 21.29.050. The Commission's findings state merely that the Application does not meet the standards set out in KPB 21.29.040, without reference to the mandatory conditions in KPB 21.29.050.

During the hearing and throughout the appeal process, many argued that the Application should be denied due to concerns regarding health and safety. While preserving and protecting the health and safety of Borough residents and visitors is undoubtedly important, the Commission and this hearing officer are limited by the Borough Code when reviewing conditional use permits and cannot, as a matter of law, deviate from the criteria identified in the Code. However, the narrow scope of this review does not prevent interested parties from taking action under other federal and/or state laws, to the extent such laws apply. Similarly, the hearing officer's limitations do not prevent interested parties in raising concerns regarding the permitting process before the Borough Assembly.

VI. INSTRUCTIONS TO COMMISSION ON REMAND

On remand, the Commission may reopen the record and take additional testimony either by written comments or oral testimony. The Commission shall re-evaluate the Application with respect to the mandatory conditions listed in KPB 21.29.050, as well as any voluntary conditions that Beachcomber may agree to. The Commission shall conduct a second public hearing at which it shall issue findings of fact, pertaining to the mandatory conditions listed in KPB 21.29.050, and shall reference specific evidence in the record in support of those findings. In issuing its findings, the

Commission must comply with both local and common law requirements, which require the Commission to both issue findings supported by substantial evidence and to "articulate the reasons for their decisions."⁴⁸ Specific and detailed findings of fact that explain the adjudicative decisions "facilitate judicial review, insure careful administrative deliberation, assist the parties in preparing for review, and restrain agencies within the bounds of their jurisdiction."⁴⁹

VI. ORDER

For the reasons stated above, Appellant Beachcomber's request for the hearing officer to issue the permit is DENIED. The Commission's decision to deny the CLUP is hereby REMANDED for further proceedings in accordance with this order.


Holly C. Wells, Hearing Officer

Right of Reconsideration

Pursuant to KPB 21.20.350, any party that participated in the hearing may request reconsideration of this decision by filing a motion for reconsideration with the Borough Clerk within fourteen (14) days after the date of distribution of this decision. A motion for reconsideration is governed by and shall comply with the requirements of KPB 21.20.350 (A)-(D).

⁴⁸ *S. Anchorage Concerned Coal., Inc. v. Coffey*, 862 P.2d 168, 175 (Alaska 1993).

⁴⁹ *City of Nome v. Catholic Bishop of N. Alaska*, 707 P.2d 870, 875 (Alaska 1985).

Right to Appeal

This Decision and Order is a final decision. An appeal from an officer decision may be filed in the Alaska Superior Court within 30 days after the date of distribution of this decision and is governed by Part 6 of the Alaska Rules of Appellate Procedure. This decision remains in effect while an appeal is pending unless stayed by the Alaska Superior Court. See KPB 21.20.360.

CERTIFICATE OF SERVICE

I, John Blankenship, Clerk of the Kenai Peninsula Borough, do hereby certify that, I served the foregoing notice.

X 
Signature

Dated this 26th day of December, 2018.

Ann Cline anndotcalm@gmail.com	John Girton johnrgirton@aol.com	Gina M. DeBardelaben McLane Consulting, Inc. ginadebar@mcLANEcg.com	Lee Yale leeyale2008@yahoo.com
Mark M Yale markyale2001@yahoo.com	Gary L. Sheridan Eileen D. Sheridan twoshar@acsalaska.net	Philip J. Brna fisheyeak@gmail.com	Hans M. Bilben catchalaska@alaska.net Agent: Katherine Elsner Ehrhardt, Elsner & Cooley Katie@907legal.com
Richard Cline captrichie@me.com	Steve Thompson Stevethompson1961@yahoo.com	Thomas Brook tbrook@ak.net	Teresa Ann Jacobson Gregory PO Box 904 Anchor Point, AK 99556
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Marie Carlton seaburyroad@live.com	David D. Gregory davidgregory0754@gmail.com	Joseph Sparkman jay1332@att.net	Nathan Lynn Whitmore lkwhitmore@acsalaska.net
Susan and James Reid ecapjimsue@gmail.com	RO Baker II Revocable Trust Agent: Robert W. Corbisier, Reeves Amodio LLC rob@reevesamodio.com	Michael Brantley zz49er@outlook.com	
Appellant / Applicant Emmitt & Mary Trimble dba Beachcomber LLC Agent: Keri-Ann Baker, Law Office of Charles G. Evans 165 E. Bunnell Ave., Suite D Homer, AK 99603 Keri-ann.baker@locge.com legal@locge.com	Kenai Peninsula Borough Max Best Planning Director Hand Delivered	Kenai Peninsula Borough Holly Montague Deputy Borough Attorney Hand Delivered	Kenai Peninsula Borough Bruce Wall, Planner bwall@kpb.us

From: RICHARD CLINE [mailto:captrichie@me.com]
Sent: Wednesday, March 13, 2019 11:16 AM
To: Planning Dept, <planning@kpb.us>
Cc: LadyAnn Cline <anndotcalm@gmail.com>
Subject: Attention: Blair Martin

Dear Blair,
My wife Ann and I own two lots and a cabin on Danver St. overlooking the proposed gravel pit by Beachcomber LLC. Our cabin address is:

34926 Danver St.
Anchor Point, AK 99556

If you have any questions or comments for us, my email is above, or you can contact us by phone at (907) 715-7237.

I am sending an open letter about the proposed gravel pit and the upcoming hearing out to neighbors, news outlets, and other concerned KPB residents. I thought it would be favorable and desirable to inform you of all of its contents before I send it out. It is attached for your review. In it, I implore the Planning Commission to come to our neighborhood and see for yourself just how devastating this proposed pit will be. As far as we know, no members have yet done so. Rather than base your decision on what we or anyone else says, personal observation of the location would be much more valuable. I would presume you give the utmost veracity to the Planning Department, who have actually visited the area (Bruce Wall); however, Bruce stood on Pete Kineen's deck with Pete, Hans Bilben, and myself, maneuvered behind a tree, then stated he couldn't even see the site from there! You are invited to go anywhere on our property, and I'm sure any of the concerned neighbors would also welcome your personal visit to observe for yourself why we are so worried.

Thank you for your consideration.

Richard and Ann Cline

atch. Open Letter

An open letter on the upcoming KPB Hearing to consider the application of Beachcomber LLC for a gravel extraction land usage permit.

We, and our fellow residents of Anchor Point in the vicinity of the proposed gravel pit, have been devastated since last summer over the very real threat of a noisy, dangerous, unsightly gravel pit in the middle of our serene neighborhood that currently enjoys fantastic views of Cook Inlet and the Alaska Range. We have come out with one voice opposing the granting of the permit because we know what it would do to the area. Homeowners around existing gravel pit extraction operations know only too well just what they have to look at and listen to each day, and we certainly don't want that here.

The Kenai Peninsula Borough Planning Commission listened to our concerns last summer, and immediately denied the permit, based on the obvious non-compliance with two of the required six conditions that had to be met for approving a permit, even though the previous 96 applications had been granted a seemingly rubber-stamped approval without a single denial. Beachcomber LLC, their legal representation, and their hired engineering company who were all very experienced in the "conditions" and history of prior applications, expected a rapid approval and business as usual. When the permit was denied, they quickly filed an appeal, again expecting the usual approval through a Borough process heavily favoring the gravel operators over residents. In their arguments, they stated themselves that the non-compliance of those pesky conditions are expected to be overcome with the usual waiving of the conditions by the Commission.

The hearing officer denied the reversal of the original decision, but instead of a correct confirmation of the Commission's denial, ordered the entire process to be repeated. Now the Commission is holding another hearing to again hear both sides in the approval or denial process.

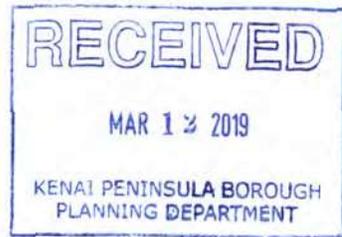
The Commission, so far, has simply listened to concerned parties on both sides, with a vast majority urging denial. It's our neighborhood at stake here. Beachcomber LLC owners don't live anywhere near the site, nor do their lawyers or the engineering firm they hired. But more importantly: *neither do any of the Commissioners!* During this entire period, the Commission has relied on testimony of upset residents telling them their concerns of what the operation would do to the view, the noise, the dust,

the water table, the wildlife, the property values, and their health; and of course to the other sides' testimony basically scoffing at the whole thing and urging a simple waiving of existing legislative conditional requirements.

The answer here is for the Commission to simply visit the area *for themselves*. They should also visit existing gravel extraction operations that have an operating rock crusher so they experience for themselves just what we are all worried about. They will witness just how well berms and buffers "mitigate" the sounds and dust of these operations. They will see the concerns we have from our properties because the proposed site is in plain view and actually abuts existing homes. They will see the already poor road conditions, the proximity of the Anchor River and State campgrounds, and how the noise would be magnified by our topography.

We implore the Commission to make an informed decision on this case without emotion, without reliance on testimony from either worried residents or unconcerned developers by taking the time to make the one-hour drive to see all of this *for themselves* and not rely on deceptive photographs. They are welcome on our property. We want them to look out from our deck and hopefully visit adjacent properties to confirm what a dangerous, ugly, polluting eyesore this proposed open pit would be.

Ann and Richard Cline



Ann Cline
34926 Danver St.
Anchor Point, Alaska 99556

March 8, 2019

Planning Commission Chairman
Kenai Peninsula Borough
144 North Binkley Street
Soldotna, Alaska 99669

RE: Statement of Ann Cline for the hearing of the land use permit application of Beachcomber LLC on Parcel No. 169-010-67

Dear Mr. Chairman,

I am writing to you on behalf of our small community of Anchor Point neighbors who are upset about a proposed sand, gravel, and peat extraction permit submitted by Emmitt and Mary Trimble of Beachcomber LLC/Coastal Realty. The 40+ acre property in question is located on the west side of Danver St. between Anchor River Road and Echo. I respectfully request that you deny the proposed permit.

I am very sorry I cannot be present at your public hearing to be held March 25, 2019 in Soldotna at 7:30 P.M. Unfortunately, I am already obligated in Washington State, but I hope that this letter can be read to those present at the meeting. The following are my key concerns:

[1] Visual enjoyment of property

Currently, the hillside view overlooking the proposed gravel pit is of a lovely green meadow, spruce and alder trees, and spectacular Cook Inlet and Alaska Range beyond. A dusty gravel pit is not what we had in mind when we purchased our lots here through the Trimble's Coastal Realty in 2013 and 2016. Neighbors who abut the property are naturally quite concerned about the loss of property value as well as the aesthetics of losing their Alaskan green space.

Of course we would all be thrilled to have the monetary resources to purchase enough acres to completely ensure our privacy and solitude. Not being in a financial position to do so, we trusted our realtors to speak the truth about the land we considered purchasing. We now trust the borough officials to protect our interest and desire to live peacefully with our neighbors. We hope that we can together find a solution that will render everyone contented.

When Mary and Emmitt Trimble trespassed on our property on November 19th, 2018, our video surveillance cameras recorded their actions and verbal communication. They stood on our deck and saw and took photographs and video of their excavated land. In one of the recordings, Mr. Trimble said, "There's the berm." By his own admission, the gravel excavation that has already started is in plain sight from our property. The fact is no berm nor physical barrier could be constructed either by height or width to sufficiently reduce the visual impact to neighboring properties.

[2] Noise

Most Alaskans take pride in the beauty of their land. Some, like my husband and I, love the pastoral setting and mountain views afforded by a hillside home. Others prefer the quiet solitude of a cabin nestled hidden among spruce and alder. **ALL** of us are adamantly opposed to an unpleasant drone of gravel excavators, machinery, and dump trucks next door. Several years ago when the Trimbles cleared their property, there was a constant obnoxious noise from heavy equipment, easily heard from all surrounding properties. As you review the proposed three phases of sand, gravel, and peat extraction, we implore you to consider thoughtfully the full import of your decision on our neighborhood as well as the precedent it could set for future Kenai Peninsula communities. It is ludicrous to think that noise from the proposed Danver St. gravel/mining operation could be sufficiently reduced with a buffer or berm.

[3] Dust

My husband and I built our cabin over the past four summers. We experienced first hand the weather and winds here in Anchor Point. We can appreciate the dismay of Marie Drinkhouse, Lee and Mark Yale, and Bob Baker (to name a few) when they were apprised of the proposed permit application. The Anchor Point winds would carry excavation dust, dirt, and debris straight south to their houses. All of us within at least a half-mile would be negatively affected by the dust pollution created by such an operation. I hate to imagine what the air would smell, taste, look, or feel like with an excavation project underway.

To support my claims listed above, I researched existing statistical impact analyses and gravel pit studies completed in Alaska and elsewhere in the United States and Canada. The research I conducted solidified and confirmed my belief that the Kenai Borough Planning Commission should unequivocally deny the Beachcomber LLC permit. There are a plethora of cases in every state with accompanying guidelines and public considerations.

It is not realistic to think that our Anchor Point neighborhood would invest in a sound-monitoring device to record decibel levels and hours of operation to submit as evidence during the Trimble's Beachcomber LLC excavations over the past months. Our neighborhood endured the drone of the excavation equipment, trucks, etc. It was annoying and embarrassing to me when friends and families came to enjoy our "quiet Alaskan solitude and beauty."

Most people agree that sand and gravel are significant non-renewable resources that contribute to our society and enhance our economy. The location is the concern. In Alberta, for example, gravel pit construction and operations posed so many potential negative environmental and social impacts to residents and their municipalities that numerous cases and protests resulted. One gravel pit proposal, ironically almost identical to ours in Anchor Point, was submitted and after reviewing the application, the Alberta Council turned down the proposal despite an endorsement by the Municipal Planning Committee. This is one of many cases I identified where residents and concerned environmental agencies gathered in opposition and rightfully protested gravel pit applications.

The most common impacts of gravel pit development and operations worldwide are the lack of conservation of reclamation materials, erosion, dust and noise nuisances, impacts to road conditions, negative visual aesthetics, and water and soil contamination. Lack of conservation of reclamation materials, particularly topsoil (stripping and handling) is a common result of pit operations. Gravel pit operations, including extraction, excavation and transportation may lead to soil erosion. Wind facilitates removal of sand and other smaller particles from pits and may cause siltation of rivers, ponds and other bodies of water. Our nearby Anchor River is not a resource with which we would like to experiment. Depleted salmon runs in the future are not the time to feel remorse. We must be proactive now for future generations of fish, wildlife, and those humans who enjoy them.

On-site dust is caused by excavation of topsoil, aggregate processing, hauling of gravel and the movement of heavy equipment. Dust has been shown to cause health problems, safety concerns in relation to driving, and can affect the cleanliness of personal property both indoor and outdoor. Dust can vary in size. Large particles tend to settle quickly whereas smaller particles carry great distances. The smaller the particles, the more dangerous to health they are. Fine particulate matter, 10 microns or less in diameter, can be inhaled and are considered toxic, and smaller particulate matter, less than 2.5 microns in diameter, is even more harmful. The particulate matter can lodge deep within the lungs and tissues of the body and there is no biological mechanism for clearing it from the body. Recent studies have shown that fine particulates pose a greater danger to our health. Dust particles may lead to increases in cardiopulmonary disease, asthma, bronchitis, emphysema, pneumoconiosis and

premature death in those with pre-existing conditions. (Gravel Water Ontario, 2010). Crystalline silica dust is commonly found in gravel operations and is also a known carcinogen (Gravel Water Ontario, 2010). Because of the elevation of our home located at 34926 Danver, we are in direct line of prevailing winds. We encourage you to come and stand on our deck to witness this concern for yourself.

The crushing and trucking of gravel are two of the most common noise pollution issues associated with a gravel pit operation. In my research, noise from the heavy equipment used in gravel pit operations is often the source of complaints and irritation to adjacent neighborhoods. The direction of wind can also influence the level of noise pollution from the operation. Wind exacerbates the noise problem especially when the wind is blowing from the operation towards a residence. My husband and I can certainly attest to this as well as our neighbors who live over and behind the hill on Danver to the south, well past the proposed excavation site!

Hauling gravel impacts road traffic and road conditions. Frequent usage of roads can overburden the borough financially as the borough may have to re-gravel or reconstruct damaged roads. As taxpayers, this is a big concern in Anchor Point. In addition, gravel trucks generate a larger volume of traffic on highways and rural roads and as a result, lead to increased safety concerns particularly for tourist families who are not familiar with the area. One of our neighbors invested in an on-site camping business for tourists and Anchor Point fishermen. His property line is shared by the bulldozed area of the Beachcomber LLC. This past summer, he suffered significant financial loss already!

A gravel pit is considered an eyesore, as it is often aesthetically displeasing. Anchor Point residents agree that a gravel pit in our neighborhood would lower our property values and quality of life. One of the research documents I read offered advice to gravel excavation business owners. It stated, "Nobody wants to live near a gravel pit. The dust and noise from the operation is a problem for many individuals. The "NIMBY" (Not In My Back Yard) attitude is common and the general public will normally oppose such an operation." The solution offered was to provide vegetative buffers and fences around operations. [Source: Grimshaw Gravels Aquifer Technical Report, 1998] It is ludicrous to think that in our case a fence or berm could be erected that could prevent us from viewing the unsightly scars of the proposed Beachcomber LLC gravel mine! I ask you to please come stand on our deck and calculate the height necessary to obscure our view!

As correctly stated by the Commission in their original decision on conditions 5 (visual impact) and 4 (noise), the standards can NEVER be met by the proposed location. I was thankful that Mr. Bruce Wall took the time after the July, 2018 public hearing to come to Anchor Point and view the proposed site from our deck.

At that time, he felt that the Planning Department would not support reversing the commission's decision. What a disappointment when the opposite occurred! Our entire community felt betrayed.

It's been said, "When given the choice between being right or being kind, choose kind." In this instance, I hope you will find that the citizens of our Anchor Point neighborhood are both right and kind. My husband Richard and I mean no disrespect toward Mary and Emmitt Trimble. We hope that the Trimbles will find a more suitable location for their new business that will be profitable for them while not negatively impacting adjacent landowners. It has been rumored that the Trimbles plan to sell the property to a gravel company and then move out of state to avoid unpleasant repercussions. I hope that is not the case. I want to greet every Anchor Point resident with a smile and the knowledge that I try to be a good neighbor to all. I would hope that you and the Trimbles feel the same.

Regardless of the personal outcome of this permit issue, I would like to exhort the Kenai Peninsula Planning Department to consider enacting designated zoning regulations as do most areas of the United States. Zoning protects all parties. With regards to our area in Alaska, folks who purchase land for a quiet cabin won't have to worry about noisy, unsightly businesses encroaching in the future. Our specific neighborhood in Anchor Point enjoys spectacular views of the Cook Inlet and surrounding snow-covered mountains. As I implored in an earlier letter, our lots and those around us should be zoned residential. Other areas along the main highway should be zoned commercial for real estate offices, emergency road crews, restaurants, police, fire departments, schools, etc.

We hope that as you deliberate and examine the concerns, goals, and plans of all parties involved, you also include the honorable aspect of this issue. When all is said and done, it is our hope that everyone will feel good about the outcome. We have traveled the Kenai Peninsula with our friends and family and noted that there are many existing gravel, sand, and rock mining excavation sites that have easy ingress and egress from the main highway and are completely set apart from homes. Perhaps someone can offer the Trimbles assistance in locating a more suitable location for the business of sand, gravel, and peat. In the end, we are neighbors and a community that wants the best for each and every citizen.

I would like to thank you for listening to us and all our neighbors who appreciate this beautiful state and in particular, love our little corner of the world in Anchor Point. Please feel free to contact me should you need further input to support your good work. Thank you so very much for helping us to preserve our scenic view and tranquility.

Respectfully submitted,

Ann Cline
Ann Cline

anndotcalm@gmail.com
(425) 449-3540 **R300**

Statement of Richard L. Cline for the hearing of the land use permit application of Beachcomber LLC on Parcel No. 169-010-67

I want to thank you for the opportunity to provide my views on this case. I also want to thank all of our great neighbors in the Anchor Point community who have given so much of their time, money, and efforts to show the Borough commission just why they should deny the disastrous gravel pit permit application in our neighborhood.

If this permit application were to be approved, the consequences to the neighborhood would be catastrophic. The original decision of an errant planning department individual to recommend approval in the first place has already devastated property values. I would like to list all of the facts and issues that would be detrimental, such as the negative impact on local wildlife, the further deterioration of dangerous road conditions, the constant lines of large trucks traveling to and from the site, for example.

I would like to list and expound on all of these issues, but unfortunately, according to existing Borough directives, they have no bearing on this decision. The only things that have bearing on this hearing are the requirements stated as needing to be in compliance in order to grant the permit. Everyone involved knows there are SIX requirements that have to be satisfactorily met in order to obtain a permit for sand, gravel, and peat extraction. Everyone involved here also is intimately aware that if any ONE of those requirements is not met, the commission is obligated to deny the permit.

We have shown as a group, with incontrovertible evidence, that both the negative visual impact, and the detrimental noise impact have not, can not, and never could possibly be met by this location. Mr. Bruce Wall himself stood on our deck, viewed the proposed pit location in

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plain view himself, and stated that if he had it all to do over again, he would not have recommended approval. He made an additional comment that same day that he did not expect the planning department would continue to support approval when the original hearing recommended denial and it was appealed.

The entire residential population around the proposed gravel monstrosity are very grateful the Kenai Peninsula Planning Commission originally disapproved this conditional land use permit. We absolutely agreed that they had correctly concluded the noise could not be sufficiently reduced with any possible buffer nor berm; and the total destruction of our view due to the visual impact of an open sore gravel pit in plain sight of our houses absolutely required disapproval. The application submitted by Emmitt and Mary Trimble is an absolute farce, full simply of claims that they have "satisfactorily complied" with all conditions. Their argument included the suggestion that if a condition wasn't satisfactorily met, the Commission should simply waive all of the requirements!

This past summer we enjoyed many visitors to our home on Danver overlooking the Trimble land. I can submit names and contact information of these individuals to the Commission if needed. Every single one of them agreed that allowing a gravel/rock/sand development on that tract would:

1. Destroy our view;
2. Subject us to a constant aggravating and obnoxious noise- and dust-creating operation;
3. Destroy the value of our cabin and land;
4. Add to the deterioration and danger of Anchor River Road; and

5. Negatively impact the watershed of an already-endangered salmon stream.

These add confirmation to the facts; the FACTS, that the visual impact and the noise of this proposed pit alone can NOT be sufficiently mitigated to allow approval. And pretending a massive extraction effort "might" not negatively affect local water table and the Anchor River fish habitat is foolishness of the highest order.

As for the impact of the view and the noise that has already happened, I took a video of the view from our deck on August 29th during the Trimble's rubber-stamp expansion of their current pit this past summer. In it you can clearly see the impacted area as well as the area into which they want to expand, and hear the obnoxious noise of just one bulldozer pushing rocks and dirt.

The Trimbles themselves decided to trespass on our property on Nov 19, and were recorded by our security video system walking back and forth to take pictures and video, and commenting that they could see the berm area and the land of the proposed pit. Those security videos were presented as evidence to the Alaska State Troopers, and a trespassing complaint was filed.

Any of the videos can be made available to the Commission if needed.

I urge the Commission to look at all the overwhelming evidence we have presented to support the denial of the conditional use permit. These are facts. Beachcomber has no justifiable petition for approval. The most telling component of the weakness of their argument is when during their first appeal, they admitted the

visual and noise requirements can NOT be met, so the Borough should simply waive those requirements. Even though that has unfortunately been the case in the past, it is time to protect the environment and welfare of ALL people.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "RL Cline". The signature is written in a cursive, flowing style.

Richard L. Cline
34926 Danver St
Anchor Point, AK 99556

From: Marie Drinkhouse [mailto:mariedrinkhouse@yahoo.com]
Sent: Wednesday, March 13, 2019 9:26 AM
To: Planning Dept, <planning@kpb.us>; Hindman, Julie <jhindman@kpb.us>
Subject: Beachcomber LLC on Parcel No. 169-010-67

Attention: Blair Martin, Planning Commission Chair

I am writing in concern over the mining permit being requested and previously denied in Anchor Point. This location borders my property on two sides. I do feel that the wind would not allow any berm to protect me from either dust or sound. Nor could a berm allow the vacationers in the parks, also very near, to have fond memories of their stay at Anchor Point camp grounds. The noise from the truck traffic and the safety involved with that movement would also be a negative affect on the continued use of those campgrounds. Yes, this would probably have a negative affect on my land value but worse yet I fear it would have a negative affect on the visitors that come and stay a brief period at Anchor Point. This little town has so little going for it and this land use approval would harshly affect its shining star (camp grounds, fishing stream and peaceful vistas) all located at or very near the proposed site. The borough is a large area and these mining assets are valuable but there has to be a better location with much less affect on two of our most valuable state resources, namely tourist and fishing.

Thank you for your serious consideration.

Marie Drinkhouse
The garage/cabin with the blue roof on Echo Drive
907-354-0847

I am presently out of state caring for my sister who is ill.

Beachcomber Appeal Letter

Dec 6, 2018

1. On May 27, 1778 Captain Cook on the HMS Resolution lost a kedge anchor off of Anchor Point, and the name stuck.
2. In 1786 there were Russian Shelikov Co. placer mines between Homer and Ninilchik.
3. In May 1890 Miners under Robert Michaelson met at Anchor Point to change some mining district rules.
4. US Census in 1890 reported 3 men sluicing beach gravel at Anchor Pt. on the subject property. They had constructed a 2 mile long ditch to supply water from a pond for sluicing for gold \$7/Day/Man very fine gold.
5. 1895 Harry Spalding, G.T.W. Bramen and other wealthy Boston investors put up \$100,000 and sent A. Pennock to investigate rumors of immense gold bearing deposits on the East shore of Cook Inlet. They found evidence of gold from grassroots to bedrock.
6. The Boston and Alaska Company formed, and on March 1, 1897 filed with the US Surveyor General's office in Sitka, Alaska, Mineral Survey No. 259 Lot No 37 in the Sitka Land District as a plat of the claim of the Boston and Alaska Company, known as the California Placer Mining Claim, in the Anchor Point Mining District, Cook Inlet County, Alaska, containing 104.7 acres, including the subject property, surveyed August, 1896.
7. On April 1, 1896 Austin and Della Banks arrived in Homer with 21 horses, 6 hydraulic mining machines, and 200,000 board feet of lumber. In May they went to Anchor Point to begin building houses for placer mining. Michael J. Heney a young engineer set up the No. 1 Giant hydraulic mining installations at Anchor Point on or adjoining the subject property.
8. In August, 1896, a reported three day cleanup at Anchor Point produced \$3000-\$4000 worth of gold.
9. By the fall of 1897 the Anchor Point claim had proven not to be profitable and all but a few men moved on up the Inlet to Sunrise and Hope taking with them most of the mining equipment, pipe, and remaining building materials. Joseph M. Cooper 1896-1897 was one of the few men who remained and continued sluice mining at Anchor Point with diverted water from Anchor River (aka Laida River) living in the remaining homes and cabins scratching out a living. He died in 1900 and is buried in Anchor Point.
10. In 1946 a missionary group including Ruth Kyllonen and her teenage son Buzz homesteaded the Anchor River Valley. Buzz rekindled the exploration of the mineralization of their homestead (subject of permit application) by hand digging for his Mother, with a shovel, a bucket, and a rope, a water well by their cabin through 40' of rock, sand, and gravel before accessing the aquifer that provided them with potable water at that level.
11. Within a couple of years the Territory established a "work camp" just south of the river to excavate gravel and work on the north end of that segment of the Sterling highway between Homer and Anchor Point. In 1950 the existing steel bridge spanned the river below the forks completing the connection to the north and connecting the other new homesteaders on the north side of the river, where there were even greater gravel and sand resources in the north half of section 4 to Milo Fritz Road.
12. The territory developed a gravel source where the existing borough transfer site is and John Collie developed a private sand and gravel source south of that out to the bluff above the river, and Ralph Miller developed a small pit fronting on what would become Danver, just off the

beach road, which was later purchased and expanded by Buzz Kyllonen. Utilizing the sand and gravel from that pit Buzz over a number of years developed the RV Village and all of the other lots to the south of the beach road including construction of Denver, Seaward, Echo, Kyllonen Dr., Fisher Ct, Seabury Ct. and Rd., Desa and other unnamed private roads, driveways, and pads. At one time he had an active rock crusher in that pit right along Denver. All of this growth and development happened after my family purchased our first property in the valley in 1975 and first utilized the gravel sources nearby.

13. This specific area was first settled in 1890, 129 years ago, exclusively for the value of the minerals discovered there, and continues to prosper as a result of the commercial utilization of those resources. The four nearby gravel pits have operated in harmony with the town and valley community for the last 68 years more or less. They have provided the access to the river, Parks and beach for residents and visitors alike.
14. There is residential development in this unincorporated, un-zoned, multi-use area as a result of the preexisting industrial and commercial resource development. Regardless of legislated noise and sight conditional standards in the ordinance, a pre-existing real standard has been set by the community, and specifically this immediate neighborhood and its property owners. ALL of them drove past four PEU gravel pits within one mile of our site, in order to view their property prior to purchase, most importantly the one on Denver between the Beach Rd and Kyllonen Dr. owned and continuing to be operated by Mr. Kyllonen. This pit is 60 feet from our existing pit that is almost 3 years old and the subject of these proceedings. After executing whatever "DUE DILIGENCE" those buyers chose, they voted with their dollars and happily purchased their "dream property" contemporaneously with the existence and operation of that gravel pit with regard to the existing levels of negative visual and noise impact, which they accepted by their willing purchase.
15. We did the same in 1975, 1978 and 2015. This property is a legacy property for my family and we intend to build a home on the beach for our extended family and to pasture our livestock there, no matter how much noise the dogs, goats, and chickens make, to the displeasure of some of our neighbors.
16. We have been developing residential subdivisions from east of Homer to Anchor Point, the North Fork Rd and Happy Valley since 1975, 43 years. We have created over 200 homesites for families as well as our own. One of our largest costs of development is sand and gravel for roads and driveways. We hope to be able to keep this large parcel intact without subdividing and selling portions, but we do want to be prepared to do so, if necessary. We would expect to utilize most of the excavated material offsite in other developments. In order to do so we must permit the property for material extraction and transfer, with concurrent reclamation of areas where extraction occurs, in order to realize the full value of the remainder. We have a track record of being good stewards of the land in all of our projects. The 2 nicest and well cared for properties in the neighborhood are the 2 gravel pit properties.
17. The public hearing with the Planning Commission lasted over 2 ½ hours of repetitive emotional testimony with little or no substantial evidence provided to refute the professional Planning Department's staff report that recommended issuing of the permit since the application met all of the required conditions. Not one question was addressed by the Planning Commission to any

of the complainants and the only question directed to the applicant was "so Mr. Trimble you just want the permit, you may not really operate the pit". Some of the Planning Commissioners didn't want to continue the hearing to another meeting, they wanted to vote right then in the absence of any discussion regarding any issues raised. The permit was denied and subsequently the staff was requested to come up with supposed findings of fact to justify the decision that had already been made. No voluntary conditions were ever discussed at that hearing, and complainant testimony was apparently accepted without question or investigation.

18. "Minimize", whether sound or site, means to do the most possible to reduce the negative impact. Do the best you can. By their actions, not their words, these property owners have shown that an existing operating gravel pit was not of sufficient negative impact to deter them from purchasing their property and utilizing the products extracted. Nothing that can be done on our property can block the existing view of the Mountains, volcanoes, and Cook Inlet. The view of our property does not belong to them, and they have no right to it at all. Insulated window blinds that lift from the bottom up could wholly eliminate any negative sight impact from their homes. Gravel trucks, water trucks, fuel trucks, sanding trucks, septic pump trucks, graders and earth moving equipment move up and down Denver on a daily basis. Gravel trucks from our pit would only be moving north on Denver away from the sounds of a growing neighborhood.
19. Prior to applying for a conditional use permit I was approached by Cook Inlet Construction who was bidding on a gravel pad project for Hilcorp about 2 miles from our pit. They considered our material to be of superior quality to alternate sources and significantly closer, they offered \$8.50/yard for an estimate of 9,500 yards, \$80,000 more or less. After the CULP was denied I applied immediately for a counter permit for 2.5 acres that required the same Planning Department scrutiny for approval. That permit was approved and issued, but it was disclosed to the complainants that there was a contract to provide that material for Hilcorp. A concerted effort and a barrage of complaints and threats to Hilcorp management in Houston erupted immediately, and though work had already begun in our pit by CIC, Hilcorp eventually capitulated and instructed CIC to get the material from another source 22 miles away +/- over 3 separate state roads necessitating the use of many additional belly dumps, side dumps and end dumps with pups hugely increasing the traffic flow. The altered project cost Hilcorp an additional \$120,000. That Tortious interference with a commercial transaction between CIC and Beachcomber LLC by the complainants has succeeded in damaging my family significantly and caused us to postpone planned development projects that leaves three separate contractors and their families to look for scarce other winter projects.



29113 Canal Avenue East John Crouse



THE STATE
of ALASKA

Department of
Health and Social Services

**Response to Mr. John Crouse Regarding the Potential Health Consequences of
Exposure to Fugitive Dust from Gravel Mining**

March 10, 2017

Dear Mr. Crouse:

Gravel extraction is permitted at the borough level. If gravel extraction is authorized, the potential impact on neighboring populations should be mitigated via a dust control plan, and residents may file complaints to the borough if activities adversely impact them in spite of existing restrictions and mitigation measures. Alaska residents should contact the Alaska Department of Environmental Conservation (ADEC) with questions about State laws pertaining to their potential exposure to environmental pollutants due to any mining activities.

Air Pollution due to Particulate Matter and Human Health

From a human health standpoint, gravel mining activities are known to result in the creation of particulate matter (PM) that is <10 microns (μm) in diameter (PM₁₀), which is an air pollutant. Dust concentration in air and particle size depends on several criteria such as the volume and speed of traffic, vehicle weight, the condition of the road, moisture content of the road surface material, silt fraction in the road surface, wind speed and direction, and distance from the road. Consequently, the potential impact of the emission of fugitive dust from a site can only be accurately evaluated by accounting for these factors. While air pollution due to particulate matter (PM) can adversely impact human health, the adverse health effects are more strongly associated with fine to ultrafine particles (diameter: <2.5 μm and <0.1 μm , respectively) generated by combustion processes rather than the coarse particles (diameter: 2.5–10 μm).

Fine and ultrafine particles are usually produced by motor vehicles, wildfire smoke or other combustion sources. Long-term exposure to this kind of PM has been associated with respiratory diseases like asthma and chronic obstructive pulmonary disease (COPD), as well as cardiovascular mortality and morbidity, and even all-cause mortality. They are likely more toxic than coarse particles because they include metals, carbon, sulfates, and nitrates, and can adsorb potentially toxic chemicals (Pope and Suh, 2006). They also tend to penetrate deep into the lungs and reach the alveoli, where they can access the blood stream. Furthermore, fine particles remain suspended in the atmosphere for longer periods of time (days to weeks), travel longer distances (100s to 1000s of miles), and infiltrate in the indoor environment (Wilson and Suh, 1997).

Coarse particles, with a diameter of 2.5–10 μm , are often emitted from crustal material by activities such as vehicle traffic on unpaved roads, rock crushing and grinding, and natural windblown dust. They represent the main fraction of fugitive dust, with a PM_{2.5}/PM₁₀ ratio of 0.1 (EPA, 2005). Coarse particles settle much more rapidly than fine particles with atmospheric residence times of minutes to hours, and they only travel short distances from less than a mile to tens of miles at the most (Wilson and Suh, 1997).

Coarse particles are usually trapped by the mucociliary lining of the upper respiratory tract and cleared from the body by coughing, sneezing or swallowing, but they can cause eye, nose and throat irritation. Toxicology studies of exposure to coarse particles have produced conflicting results ranging from no observed effects to effects seemingly associated with the presence of a given marker such as silica (Schelsinger et al., 2006), suggesting that the unique molecular composition of particles is likely to play a role in their toxicity. Epidemiologic studies have also produced inconsistent results. Although most studies show no correlation between coarse particle exposure and all-cause mortality, a few studies indicate a weak association with cardiovascular mortality (McDonnell et al. 200; Mar et al., 2000; Ostro et al. 2000). The association between coarse particle exposure and morbidity is also debated. Although some investigations do not show any appreciable health impact of coarse particles, others show that short-term exposure to coarse particles (e.g., from dust storms and windblown dust) is linked to an increase in hospital admissions due to asthma, COPD and cardiovascular issues (Brunekreef and Frosberg, 2005; Cheng et al. 2015). Data are still lacking on long-term exposure.

Fugitive Dust Studies in Alaska

One peer-reviewed study conducted in Anchorage showed significant effects of PM₁₀ on outpatient visits for asthma, bronchitis, and upper respiratory tract infections. Because the PM₁₀ in Anchorage is composed primarily of crustal material and volcanic ash, it was assumed that most of the PM₁₀ was composed of coarse particles, which were responsible for the observed effects (Gordian et al., 1996).

ADEC studied the level of fugitive dust emissions from unpaved roads in eight villages in Alaska's Northwest Arctic Borough during the summer seasons of 2003, 2004, and 2005. They observed that events characterized by a high concentration of PM smaller than 10 μm were associated with reports of heavy dust conditions to ADEC and anecdotal information from local hospitals of increased visits related to respiratory and cardiovascular issues (ADEC, 2006). One can assume that PM₁₀ investigated in this study consisted of coarse particles. No other data could be found on the impact of fugitive dust on Alaska residential areas.

Conclusion

About 90% of fugitive dust consists of coarse particulate matter, i.e. particles with a diameter between 2.5–10 μm . Contrary to fine particles with a diameter <2.5 μm , most of these particles tend to be cleared from the body through coughing, sneezing and swallowing. Although long-term exposure to coarse particles has not been well studied, there is evidence that short-term exposure can be associated with an increased risk of respiratory and cardiovascular disease.

Gravel pits tend to generate coarse particulate matter. As such, mitigation measures are usually implemented to limit the transport of dust away from the operation site. In Alaska, the implementation of such mitigation measures is regulated by the borough.

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NATIONAL ASSOCIATION OF REALTORS®

Code of Ethics Video Series

The Preamble to the Code of Ethics

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

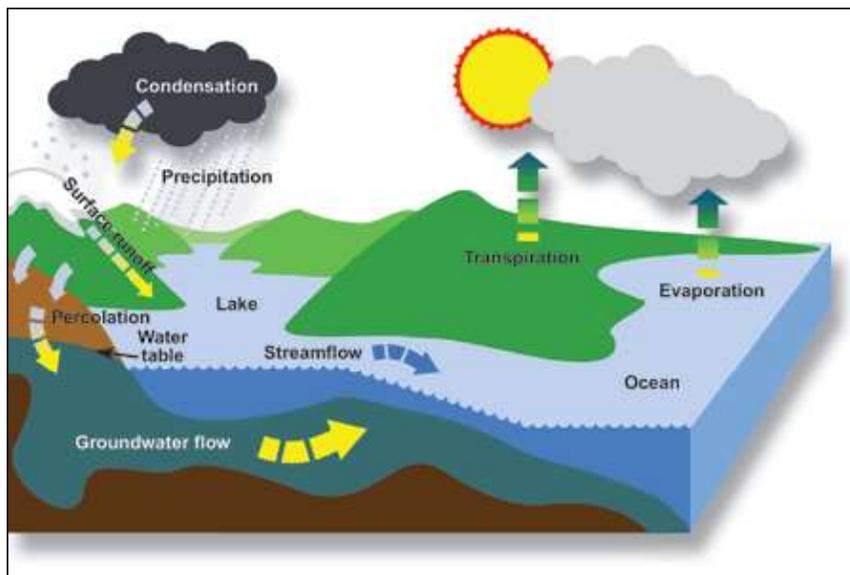
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11/01/07

GROUNDWATER IN THE AGGREGATE INDUSTRY

Groundwater is a renewable resource that is in constant motion as part of the hydrologic cycle. Above-water pits and quarries have little or no effect on water levels or the flow of groundwater.



What is Groundwater?

Just as the name implies, groundwater is water contained in the pores and fissures of the earth. Groundwater is a renewable resource. It is in constant motion, part of the hydrologic cycle (see Hydrologic Cycle on the cover page). Rainfall and snowmelt infiltrate into the earth to recharge groundwater, which then flows as baseflow into streams and lakes. Evaporation from open water, and transpiration from plants, returns water to the atmosphere to complete the cycle.

A common misconception is that groundwater flows in underground rivers and lakes like surface water. Instead, groundwater seeps very slowly through the pore spaces and small fissures in the soil and rock. Materials such as clay have a low permeability, and hence very slow groundwater flow, while sand and gravel, or highly fractured rock, have high permeability and permit groundwater to flow faster. These more permeable layers are called aquifers.

The water table is the depth at which the soils or rock become completely saturated with groundwater. If a hole were dug, and left to stand for a while for groundwater to seep in, the water level in the hole would represent the water table. The water table elevation is not static, though, and it can fluctuate in different seasons and from year-to-year, depending on the amount of recharge. Natural depressions can intersect the water table to form lakes, ponds and wetlands.

Water Wells

Groundwater is a critical resource in Ontario - nearly one quarter of us rely on wells for our water supply. Some of these are municipal wells serving urban communities, but the vast majority are private water wells, mainly in the rural parts of the province. Two common types of wells are shallow dug wells which draw water from the water table, and bored or drilled wells which draw water from deeper aquifers.

The *Ontario Water Resources Act* and the *Environmental Protection Act* both serve to protect the quality and quantity of groundwater. They are administered by the Ontario Ministry of the Environment, which will respond to public complaints regarding interference with water wells. The Ministry has several excellent publications available to

Fact Sheet

Groundwater at Pits and Quarries

- Groundwater is a renewable resource.
- Water wells are protected under provincial legislation.
- Above-water pits and quarries can have a beneficial effect on groundwater and aquatic resources.
- Below-water pits and quarries can be operated without significant groundwater impacts if they are carefully designed and operated.
- Permits to Take Water ensure that aggregate wash plants do not harm water resources.

Aggregate extraction and processing is a clean industry that does not provide groundwater contaminants.

homeowners on subjects including proper water well construction and maintenance, protecting water quality in wells and managing water shortages (1-800-565-4923 or www.ene.gov.on.ca).

Wells and their associated equipment require ongoing maintenance. Even with the best maintenance, though, they still tend to degrade naturally over a period of years, through mechanical wear and clogging of the well screen, pump and pipes, .

Can Pits and Quarries Affect the Flow of Groundwater?

The answer depends on the type of pit or quarry.

Above-Water Pits and Quarries

Most of Ontario's sand and gravel pits, and a few of its rock quarries, are excavated entirely above the water table. This type of operation has little or no effect on water levels or the flow of groundwater because there is no direct, physical alteration of the water table or any aquifers. Monitoring programs at above-water pits and quarries across Ontario have confirmed that groundwater is unaffected.

In some ways, above-water pits and quarries can actually be beneficial to groundwater. They create a "bowl" that captures and infiltrates all rainfall and snowmelt rather than allowing some of it to run off across the ground surface. A study on the Oak Ridges Moraine documented a number of benefits related to this extra groundwater recharge (Hunter/Raven Beck,

1996). One of the important benefits is to reduce direct run-off to surface water streams and increase cold groundwater baseflow which is critical to fish habitat.

Below-Water Pits

Below-water pits usually use large excavators or draglines to dredge sand and gravel from the *pit ponds* that form below the water table level. Generally, this type of extraction does not have major impacts because most of the groundwater remains in the pit, or drains back into the pit. This type of pit also captures surface water run-off and promotes more groundwater recharge, but these benefits are offset by the increased evaporation that will occur from the surface of a pit pond. Minor water losses also occur due to residual moisture contained in the aggregate products that are shipped from the site. Finally, the removal of solid sand and gravel particles from below the water table has the effect of temporarily lowering the water level in a pit pond (imagine removing a rock from a bucket of water).

The water surface in very large below-water pit ponds will stabilize at a uniform level, whereas the groundwater table before extraction may have been irregular or sloping. Therefore, the water table around the pit will have to “adjust” to the water level in the pit pond, possibly resulting in slightly different groundwater flow patterns. Fortunately, there is a simple solution where this may be a problem – digging several smaller pit ponds rather than one large pond (Ostrander *et al.*, 1998).

When all of these factors are combined, the net effects of below-water extraction are normally minor and very localized. However, in certain circumstances they could still be significant if there are sensitive features such as wetlands or shallow wells in close proximity. As a result, a detailed and careful hydrogeological study is necessary when licencing this type of pit (Ministry of Natural Resources, 1997), and mitigation (solutions) to any negative impacts will be required. An ongoing groundwater monitoring program may be required.

Below-Water Quarries

Most quarries that extract from below the water table pump water out of the excavation so that the work of blasting and recovering the bedrock can be done on a dry floor. *Dewatering* usually does affect groundwater levels and flow patterns around the site, since it artificially lowers the water table to at least the base of the quarry. Hydrogeologists call the area around the quarry that is affected by the dewatering the *drawdown cone* or the *radius of influence*. Wells, streams, wetlands, or other sensitive features within

this area must be carefully studied to predict the impacts and devise mitigation measures before the quarry can be licenced (Ministry of Natural Resources, 1997) and a groundwater monitoring program will normally be required.

There are many locations in Ontario where below-water quarries are successfully operated while sensitive water uses continue nearby – it depends very much on the specific hydrogeological setting. Recently, some innovative technologies have been introduced in Ontario to lessen the effects of quarry dewatering, such as pumping the water from the quarry back into the groundwater system around the quarry to artificially recharge the water table. This has so far proven to be quite successful (Gartner Lee Limited, 2001).

Other Water Takings

Pits and quarries have uses for water, similar to other businesses, such as supplying offices and shops with drinking water, watering lawns and gardens, etc., but these tend to be relatively minor. Most types of aggregate processing, such as crushing and screening, are dry operations and do not require water supply.

However, to minimize dust (which is a byproduct of excavation in a pit or quarry) spray water is used on internal haul roads, processing equipment, stockpiles and trucks.

One exception is aggregate washing plants, which are used at some sites, and do require relatively large quantities of water. Most plants recycle wash water through a “closed loop” series of holding ponds and settling ponds (i.e., the water is re-circulated, with no off-site discharge), so that the amount of water actually consumed in the process is usually less than about 10%. This *make-up water* normally comes from local groundwater or surface water sources. A common configuration would be to have a well that would be used occasionally during the production season to “top up” the ponds.

These water takings are regulated separately from the pit licence under the *Ontario Water Resources Act*, and controlled through Permits to Take Water. The applications and related hydrogeological studies are carefully reviewed by the Ministry of the Environment, other government agencies, and the interested public through the Environmental Bill of Rights process to ensure there will be no unacceptable impacts from these water takings, before the permit is issued.

GROUNDWATER IN THE AGGREGATE INDUSTRY

Can a Pit or Quarry Contaminate Groundwater?

It surprises some people to learn that aggregate extraction is a clean industry. Processing aggregates is a purely mechanical process of crushing, screening, blending, and sometimes washing (with water), without the need for chemicals. At most sites, fuels and lubricants for the equipment are the only potential sources of groundwater contamination, and these are closely regulated under the *Technical Standards and Safety Act*. A spills contingency plan is a standard condition of every new aggregate licence.

Bacteriological contamination of the type responsible for the Walkerton tragedy comes from human and animal wastes. Aggregate extraction and processing is not a source of this type of contamination.

As a result, water quality in and around pits and quarries is not normally an issue. This was confirmed through a study in 1989 as part of the Ontario government's MISA program, where monitoring at a selected number of pits and quarries found good water quality, with only sporadic traces of organic compounds at some sites that might indicate the use of petroleum products (SENES, 1989). In addition, there are many site specific monitoring programs in place at aggregate operations.

What About Water Temperature?

Water temperature concerns are occasionally raised in conjunction with below-water pits. A pit pond warmed through the summer months could result in a flow of warmer groundwater to nearby points of baseflow discharge and, in turn, affect cold water fisheries resources. An analysis conducted on behalf of the Credit

Valley Conservation Authority in 1998 concluded that pit ponds have minimal impact on groundwater temperatures, and that these minor effects are completely dissipated within a few hundred metres from a pit (Ostrander *et al*, 1998). Field monitoring has also confirmed that groundwater returns to its normal background temperature within tens of metres of pit ponds (Harden Environmental, 1995).

As a result of the research to-date, thermal effects of pits and quarries is not considered to be a major issue in most cases. However, where there are cold water fisheries close to a pit pond, appropriate investigations and studies are required, and the setbacks and buffer zones will be adjusted accordingly.

For further information, please contact the OSSGA Environment and Resources Manager, at (905) 507-0711 or visit the OSSGA website at www.ossga.com.

Prepared by Gartner Lee Limited in consultation with OSSGA's Environment Committee.

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The "About Aggregates" series:

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3. Rehabilitation of Pits and Quarries
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5. Importance of Aggregates
6. Geology and Aggregate Extraction
7. Controlled Blasting at Quarries
8. Groundwater in the Aggregate Industry
9. Management of Abandoned Aggregate Properties (MAAP) Program



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“Highest and Best Use”

Highest and Best Use is the likely use, selected from a number of available choices, to which an area of land or a building may be put, based on what is physically possible and in compliance with zoning and building regulations and which, at the time of an appraisal, produces the most profitable present value of the land. The legal use of land or improved property which, at any point in time, is likely to produce the highest return to an investor.

When it comes to valuing land – one of the most important factors in getting this number reasonably accurate is to understand the “highest and best use” for a property.

The question of a property's highest and best use is something all appraisers aim to address – and the issue is particularly relevant to appraisers and investors who are working with vacant land.

When a vacant lot doesn't have any pre-existing improvements on it, there can be many potential uses for the property (depending on how the owner wants to use it, and what the local zoning regulations will allow), but even when there are several possibilities, there is only ONE highest and best use.

The Four Criteria

To keep things simple, let's assume we're looking at rural land with *no improvements* and *no history of environmental contamination*.

According to the Appraisal Institute, the four standard criteria points we'd be looking at are:

- Legal Permissibility
- Physical Possibility
- Financial Feasibility
- Maximum Productivity

Legal Permissibility

According to the local zoning and planning department (typically at the county or city level), *what are you allowed to do with this property?*

Furthermore, are there any particular uses that are **disallowed** by government regulations and/or prohibited by covenants, deed restrictions or other issues covered in the [property's title history](#)?

In some cases (for instance, if a property is situated in a Home Owners Association), there may be additional rules that govern what can and can't be done with a property – even beyond what the city or county will allow.

While in some cases, it may be possible to change the zoning of a property to suit your purposes, or even negotiate with the HOA to get their permission for the specifics of what you want, this can be a complicated, convoluted process that is anything but guaranteed... so for the purposes of this article, we're going to assume that changing the legal uses of a property is NOT in the cards.

Physical Possibility

When considering what can be done with a property, it's important to recognize what is **physically possible** – taking into account the physical attributes of the property (its size, shape, location, terrain, legal easements, and a lot more).

For example, if you've got one acre of [land located in a swamp](#), *you shouldn't assume the property is buildable*. Likewise, if you've got one acre of land in the middle of the desert, you shouldn't assume the property can be used as a marina... because it's just not physically possible.

Of course, both are ridiculous examples – but they illustrate the point of taking the property's physical attributes into account when determining what the property may be used for.

Financial Feasibility

When taking any kind of construction or improvements into account (whether you plan to build a house or a skyscraper), it's important to ensure that the intended use can either:

- a. Generate enough revenue to justify the cost of the improvements (in the case of a commercial project or business endeavor).
- b. Create enough additional value to justify the cost of construction for the homeowner and/or make a profit for the investor.

To use another ludicrous example, you wouldn't spend \$10 million to buy a high-end parcel of land in downtown Manhattan, only to run a lemonade stand that earns \$10 a day – right?

If you're going to pay this kind of cash (and even more to develop it), you need to be confident it will create enough value or generate enough revenue for this kind of investment to actually make sense.

Maximum Productivity

To determine a property's maximum productivity, it's important to know which use is likely to generate the highest return on investment (ROI) for the investor.

For example, let's say we have a 10-acre parcel of land that could be used to build either of the following:

- Movie Theater Complex
- Self-Storage Facility

We can follow a simple equation to determine which of these scenarios is most likely to be the “maximally productive” use.

Movie Theater Complex

Cost of Land Purchase: \$100,000

Cost of Construction: \$1,400,000

Market Value of Finished Building: \$1,700,000

Profit for Developer: 13%

Self-Storage Facility

Cost of Land Purchase: \$100,000

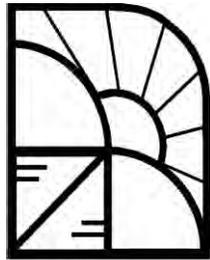
Cost of Construction: \$1,100,000

Market Value of Finished Building: \$1,500,000

Profit for Developer: 25%

Even though the movie theater complex would give us the *highest market value*, the self-storage facility provides the *highest ROI to the investor*, and this is what makes it the maximally productive use.

Another important factor to consider is the local supply and demand for such buildings and businesses. It may not make sense to build a self-storage facility right next to another pre-existing self-storage facility, or a movie theater complex two doors down from another movie theater complex. If the presence of similar buildings in the area interferes with the feasibility of the property use, this also needs to be considered.



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Phoenix Center Policy Paper Number 53:

***Quarry Operations and Property Values:
Revisiting Old and Investigating New Empirical Evidence***

George S. Ford, PhD
R. Alan Seals, PhD

(March 2018)

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(2018).

Phoenix Center Policy Paper No. 53
Quarry Operations and Property Values:
Revisiting Old and Investigating New Empirical Evidence

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Abstract: A large literature exists on the impact of disamenities, such as landfills and airports, on home prices. Less frequently analyzed is the effect of rock quarries on property values, and what little evidence is available is dated and conflicting. This question of price effects is a policy relevant one, with one study in particular used frequently to support “not in my backyard” campaigns against new quarry sites. In this POLICY PAPER, we revisit the literature and conduct a new analysis of the price effects of quarries, estimating the effect of quarries on home prices with data from four locations across the United States and a wide range of econometric specifications and robustness checks along with a variety of temporal circumstances from the lead-up to quarry installation to subsequent operational periods. We find no compelling statistical evidence that either the anticipation of, or the ongoing operation of, rock quarries negatively impact home prices. Our study likewise highlights a number of shortcomings in the empirical methodologies generally used to estimate the effect of disamenities on real estate prices. First and foremost, many existing studies are naïve as to the empirical conditions necessary to identify a causal relationship and do not establish credible strategies to estimate the counter-factual outcome. Second, the inclusion of “distance to the site” regressors in hedonic models is shown to be an unreliable statistical method. Using the method of randomized inference, the null hypothesis of “no effect” of placebo quarries is rejected in as much as 93% of simulations.

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I. Background

Odds are that underneath your feet is a construction material made of sand, crushed stone, and gravel. These construction materials are an essential ingredient into nearly every construction project, from residential housing, office buildings, retail outlets, entertainment structures, to the roads that connect them.¹ Sand, rock and gravel are literally the foundation of economic development, but their extraction process can generate dust, noise, vibration, and truck traffic. While modern technologies and methods have greatly reduced quarries' impact, the environmental and economic consequences of quarry operations receive considerable attention, often in the form of "not in my backyard" (or "NIMBY") campaigns opposing quarry expansions or new sites. Choosing a quarry site is a delicate task. While a quarry may be best located far from residential density on NIMBY concerns, it also needs to be near the final point of demand due to its high transportation cost. Quarries must balance the need to be both "near" and "far," so they are typically found on the outskirts of cities and towns.

A key NIMBY complaint in the siting and expansion of quarries is the effect of the operations on nearby home values. According to Census data, housing amounts to about 70% of the average American's net wealth, so naturally homeowners are sensitive to any adverse effect, real or imagined, on property values.² Despite NIMBY opposition, nearly all the evidence on quarry operations finds no price effect. Frequently mentioned studies include Rabianski and Carn (1987) and Dorrian and Cook (1996), both of which find no relationship between appreciation rates of property values near to and far from quarries.³ An

¹ 2014 *Minerals Yearbook, Construction Sand and Gravel*, U.S. Geological Survey (2014) at p. 1 (available at: https://minerals.usgs.gov/minerals/pubs/commodity/sand_&_gravel_construction/myb1-2014-sandc.pdf) ("Construction sand and gravel is a traditional basic building material and is one of the earliest materials used by humans for dwellings and later for outdoor areas such as paths, roadways, and other constructs. Despite the relatively low, but increasing, unit value of its basic products, the construction sand and gravel industry is a major contributor to and an indicator of the economic well-being of the Nation").

² *Wealth, Asset Ownership, & Debt of Households Detailed Tables: 2013*, U.S. Census Bureau (2017) (available at: <https://www.census.gov/data/tables/2013/demo/wealth/wealth-asset-ownership.html>).

³ A.M. Dorrian and C.G. Cook, *Do Rock Quarry Operations Affect Appreciation Rates of Residential Real Estate*, Working Paper (1996); J. Rabianski and N. Carn, *Impact of Rock Quarry*

even earlier study conducted for the U.S. Bureau of Mines in 1981 also found no consistent relationship between quarry operations and the prices of nearby homes.⁴ There are a number of consulting reports on the question, and none report price attenuation attributable to a quarry.⁵

Opposition to quarries based on home valuations relies universally on a report by Professor Patricia Hite (2006).⁶ This brief, 250-word study (hereinafter the “*Hite Report*”) analyzes data from a few thousand homes sales (apparently in the mid-to-late 1990s) around a single quarry in Delaware, Ohio. Using an unconventional regression model and data on transactions occurring decades after the quarry opened, the *Hite Report* finds a positive relationship between home prices and distance from the quarry. Based on that evidence, the *Hite Report* concludes that quarries reduce home values. Yet, the *Hite Report*’s methods and data do not support a causal interpretation.

As economic development marches on, new quarries will be required to satisfy the demand for basic building materials. In light of the mostly dated and conflicting evidence on the effect of quarries on housing prices, this POLICY PAPER offers new evidence, and a review of old evidence, on the relationship between housing prices and rock quarries. First, given its frequent use by NIMBY opposition to quarries, we revisit the *Hite Report*, analyzing home sales data

Operations on Value of Nearby Housing, Prepared for the Davidson Mineral Properties (August 25, 1987).

⁴ M. Radnor, D. Hofler, *et al.*, *Social, Economic and Legal Consequences of Blasting in Strip Mines and Quarries*, U.S. Bureau of Mines (May 1981) (available at: <http://www.cdc.gov/niosh/nioshtic-2/10006499.html>).

⁵ See, e.g., *Study of Impact of Proposed Quarry on The Real Estate Values of Surrounding Residential Property in Raymond, New Hampshire*, Crafts Appraisal Associates Ltd. (April, 2009) (“The evidence does however suggest that the overall marketplace does not react to an influence such as a quarry with a measurable negative reaction as it relates to sale price.”); *Martin Marietta New Design Quarry: Analysis of Effect on Real Estate Values*, Stagg Resources Consultants, Inc. (November 17, 2008); *A Property Valuation Report: Affect [sic] of Sand and Gravel Mines on Property Values*, Banks and Gesso, LLC (October 2002); *Impacts of Rock Quarries on Residential Property Values in Jefferson County, Colorado*, Banks and Gesso, LLC (May 1998); R.J. McKown, *Analysis of Proposed Sand & Gravel Quarry: Granite Falls, WA*, Schueler, McKown & Keenan, Inc. (September 25, 1995).

⁶ D. Hite, *Summary of Analysis: Impact of an Operational Gravel Pit on House Values: Delaware County, Ohio*, Working Paper (2006). We assign the date “2006” as is conventional, but that year is merely the recording stamp date on the document when it was filed in some type of proceeding. We do not know whether a more detailed analysis was provided at some point. We have never seen such a document cited and were unable to locate it.

around the same Delaware-Ohio quarry. Despite replicating both the location and methods of the *Hite Report*, our regression analysis finds that prices *fall* – not rise – as distance from the quarry increases. This result conflicts with that appearing in the *Hite Report*, so we look for more evidence by analyzing data on homes sales near a quarry outside of Murfreesboro, Tennessee, over the same time interval. Again, we find prices *fall* as distance from the quarry increases.

We are reluctant, however, to claim this evidence implies quarries raise home prices. Rather, we conclude, based on the method of randomized inference and other tests, that the *Hite Report's* method is unreliable. Using a simulation of pseudo-treatments, we find that the null hypothesis that home prices rise or fall in distance from a *randomly selected location* is rejected in no less than 67% of cases at the 10% nominal significance level. Estimating price-distance relationships, especially without explicitly considering selection bias, is a highly-unreliable statistical procedure. The nature of real estate markets do not permit the effect of quarries to be identified with such naïve empirical tests.

Second, using data on home sales near a relatively new quarry in Gurley, Alabama, we augment the Hite-style analysis with a difference-in-differences estimator, which quantifies the price-distance relationship both before-and-after operations begin. By exploiting the timing of the quarry buildout and the location of home sales with respect to the quarry, we can credibly identify a causal relationship, at least in theory. Unlike the analysis for Delaware and Murfreesboro, home prices rises in distance from the Gurley quarry site, but do so *before* the quarry becomes operational. After operations begin in 2013, the positive effect of distance is attenuated, again suggesting a positive effect of quarries on housing values.

One critique of our Gurley analysis is that market participants shift price forecasts downward in response to the prospect of a quarry so that the deleterious effects of the quarry could be realized before the quarry opens. Quarry site approvals normally take a decade or so, providing ample time for anticipatory responses to valuation fears. To address this concern, we analyze transactions near a recently approved quarry in Madera County, California. Using a difference-in-differences estimator in conjunction with Coarsened Exact Matching, we test for the anticipatory effect of the proposed quarry on nearby housing prices located along the major roadways serving the site. We find no evidence the quarry reduced housing prices. If anything, relative home prices rose near the quarry site.

While our evidence suggests that quarries do not reduce, but may increase, home prices, our analysis suggests more than anything that the identification of

the effect of quarries on prices is a very difficult problem, facing many conceptual and practical obstacles. We do not resolve all these difficulties. That said, we can conclude the evidence strongly implies the *Hite Report* and its methods are unreliable. Further analysis is, as usual, encouraged.

This paper is outlined as follows. First, we discuss the empirical requirements of quantifying a plausibly causal relationship between property values and quarry operations. Second, we revisit the *Hite Report*, estimating the price-distance relationship for the same quarry in Delaware, Ohio, and replicating the analysis for a quarry near Murfreesboro, Tennessee. Using a simulation method, we demonstrate the futility of estimating the price effects of quarries using the method proposed in the *Hite Report*. Third, we turn to the estimation of causal effects using the difference-in-differences estimator for quarry sites in Gurley, Alabama, and Madera County, California. Across multiple methods, we find, if anything, that home prices near quarries rise, not fall. In all, however, we believe our analysis best supports the hypothesis of “no effect” of quarries, or the announcement of quarries, on home prices. Conclusions are provided in the final section.

II. Empirical Framework

Disamenities such as landfills, airports, windfarms and prisons may plausibly reduce the prices of nearby homes. Such effects have been widely studied.⁷ Modern empirical methods for observational data based on the Rubin Causal Model, however, suggest that much of the work may offer biased estimates of such disamenities because much it looks only at prices after the “treatment,” making it difficult to address selection bias.⁸ To conclude that a disamenity reduces home values, the researcher’s interest must be in the *causal effect* of an amenity or disamenity on property values. Using only post-treatment prices is problematic since the locations of amenities and disamenities are not randomly selected, and

⁷ Other disamenities that may affect property values, airports and waste disposal, are frequently opposed by homeowners. See, e.g., J.P. Nelson, *Airport and Property Values: A Survey of Recent Evidence*, 14 JOURNAL OF TRANSPORT ECONOMICS AND POLICY 37-52 (1980) (available at: http://www.bath.ac.uk/e-journals/jtep/pdf/Volume_XIV_No_1_37-52.pdf); J.B. Braden, X. Feng, and D. Won, *Waste Sites and Property Values: A Meta-Analysis*, 50 ENVIRONMENTAL AND RESOURCE ECONOMICS 175-201 (2011).

⁸ Excellent resources on the modern methods of causal inference for economic analysis include G.W. Imbens and J.M. Wooldridge, *Recent Developments in the Econometrics of Program Evaluation*, 47 JOURNAL OF ECONOMIC LITERATURE 5-86 (2009); J.D. Angrist and J. Pischke, *MOSTLY HARMLESS ECONOMETRICS: AN EMPIRICIST’S COMPANION* (2008); and J.D. Angrist and J. Pischke, *MASTERING ‘METRICS: THE PATH FROM CAUSE TO EFFECT* (2015).

disamenities are typically located away from residential density to minimize impact and to placate NIMBY resistance.

The non-random selection of a quarry site greatly complicates the quantification of a quarry on housing prices due to selection bias. Finding that housing prices rise at increased distance from a quarry may merely reflect the economics of site choice (i.e., real estate is cheaper per unit in less densely populated areas on the outskirts of town) rather than any causal effect on property values. Also and consequently, empirical work may be frustrated by the lack of housing density near the site, rendering small sample sizes, which may, in turn, lead to the undue influence of outliers. Many quarries, especially new ones, have almost no housing within a mile or two of the site (the typical distance within which negative effects are claimed), as shown in the maps provided in the Appendices. And, given the lengthy approval process, if a quarry does affect housing prices, then such effects may occur prior to operations by an “announcement effect.” In conducting empirical work on quarries and housing prices, the researcher must address, and deal with the theoretical and empirical consequences of, the non-random nature of site location.

A. *Quantifying the Effect of a Quarry on Housing Prices*

Resistance to new quarry sites (or the expansions of old ones) based on property values rests exclusively on the *Hite Report*. In that report, the effect on prices is quantified by comparing the mean, quality-adjusted transactions prices around the quarry outside of Delaware, Ohio, as the home’s distance from the quarry increases. This “experiment,” however, has little hope of accurately measuring the effect of quarries on home prices.

To better grasp the nature of the problem, let there be two types of residential locations: (1) locations proximate to and potentially affected by quarry operations (labeled N , for “near”); and (2) locations distant from and entirely unaffected by quarry operations (labeled F , for “far”). Also, let there be two periods: the period prior to ($t = 0$) and after ($t = 1$) the initiation of quarry operations. For now, assume the approval process is instantaneous and that the quality and type of homes in the two locations are very similar (or, that such differences can be accounted for by statistical methods).

Prior to quarry operations homes sell for the average price P_0^N if near the future location of the quarry and P_0^F otherwise. (A numerical example is provided later.) For various reasons, these prices need not be equal. After quarry operations begin, the average, quality-adjusted prices for houses are P_1^N and P_1^F . The

differences in the prices across time ($P_1 - P_0$) are δ^N and δ^F . Other things constant, the effect of the quarry operations can be measured as,

$$\Delta = \delta^N - \delta^F = (P_1^N - P_0^N) - (P_1^F - P_0^F), \quad (1)$$

where Δ is the difference-in-differences (“DiD”) estimator.⁹ The DiD estimator looks for a difference in outcomes after the treatment that is difference than the differences in outcomes before the treatment (thus, explaining the term difference-in-differences). Under certain conditions, the DiD estimator plausibly measures the causal effect of the quarry.

Many studies of the effect of amenities or disamenities on housing values looks only at the difference between *near* and *far* locations in the *post-treatment* period, or the difference in P_1^N and P_1^F (or δ_1). This post-treatment approach is the one used in the *Hite Report*, where all the data is from sales decades after the quarry operations began. If, however, there is a difference in prices before the quarry operations begin, this post-operations difference is clearly not a measure of the effect of proximity to the quarry. A numerical example may prove helpful.

B. A Numerical Example

Before a quarry opens, assume the average, quality-adjusted price for a home near the quarry site is \$80,000, but the average price is \$100,000 for homes far from the future quarry site. Thus, there is a \$20,000 or 20% difference in prices prior to quarry operations, perhaps reflecting the lack of locational rents for homes far from residential density. Plainly, since quarry operations have not begun, this difference cannot be attributed to the quarry. In fact, the quarry site may have been chosen because of the lower property values or lack of residential housing in the area.

As a benchmark case, say that the quarry operations once initiated have *no effect* on property values and the sales prices of homes are unchanged after quarry operations begin (\$80,000 and \$100,000, respectively). If a researcher were to

⁹ See, e.g., B.D. Meyer, *Natural and Quasi-Experiments in Economics*, 13 JOURNAL OF BUSINESS & ECONOMIC STATISTICS 151-161 (1995); J.D. Angrist and A.B. Krueger, *Empirical Strategies in Labor Economics*, in HANDBOOK OF LABOR ECONOMICS Vol. 3A (eds., O. Ashenfelter and D. Card) (1999); S. Galiani, P. Gertler, and E. Scharfrodsky, *Water for Life: The Impact of the Privatization of Water Services on Child Mortality*, 113 JOURNAL OF POLITICAL ECONOMY 83-123 (2005); D. Card, *The Impact of the Mariel Boatlift on the Miami Labor Market*, 13 INDUSTRIAL AND LABOR RELATIONS REVIEW 245-257 (1990).

simply compare prices based on distance from the quarry after operations begin, then a difference of 20% would be found. Yet, that difference existed prior to the quarry's opening, and thus the quarry did not *cause* that difference, implying any causal claim made about that difference is mistaken. The truth (by assumption) is that the quarry had *no effect*. The DiD estimator (Δ) is, in fact, zero, correctly identifying the causal effect of the quarry [= (80,000 - 80,000) - (100,000 - 100,000)].

Assume instead that the quarry does reduce prices for nearby homes. Let the post-quarry average prices be \$70,000 near and \$100,000 far from the quarry, other things constant.¹⁰ Prices near the quarry fall by \$10,000 and those far from the quarry are unchanged. The DiD estimator accurately quantifies the effect of the quarry, which is a \$10,000 reduction in value [= (70,000 - 80,000) - (100,000 - 100,000)]. Looking at data after the quarry operations begin, alternately, which is the *Hite Report's* approach, would find an effect size of \$30,000 [=70,000 - 100,000], or three times the true effect. Selection bias accounts for the \$20,000 error in the estimated effect.

Ideally, then, to properly identify the causal effect of a quarry operation, the researcher must observe prices both before and after the quarry may reasonably be expected to affect housing prices (among other considerations such as the similarity in pricing trends prior to the treatment). The analysis of transactions occurring well after the quarry opens offers little hope for quantifying the effect of the quarry, absent unique circumstances. Certainly, the empirical demands are considerable, and the identification of the causal effect must be explicitly set forth and proper empirical methods applied.

C. Key Assumptions for Estimating Causal Effects

With regard to the location of homes and quarries, we do not have the luxury of experimental data. Rather, the data is observational and the data generation process occurs over many decades. The observational nature of the data is crucial: quarry site and housing locations are non-random and not independent of economic activity near the site or each other. Thus, research on the price effects of quarry sites must pay careful attention to selection bias, which is caused by the non-random process by which sites are chosen to avoid residential density but still

¹⁰ For instance, a large condominium complex may have built near the quarry. The researcher must adjust for the difference in average prices resulting from this changing mix of household types).

remain close to the point of demand for aggregates (i.e., sand, stone and gravel). Thus, the “treatment” and “outcome” are related through observed and potentially unobserved factors.¹¹

As explained by Imbens and Wooldridge (2009), when estimating the causal treatment effect in observational studies the researcher must be alert to two key concepts stemming from selection bias: (1) unconfoundedness (or the conditional independence assumption) and (2) covariate overlap (or common support).¹² Unconfoundedness implies that, conditional on observed covariates X , the treatment assignment probabilities are independent of potential outcomes. If we have a sufficiently rich set of observable covariates, then regression analysis including the variables X leads to valid estimates of causal effects. Since the X must be observed to be included in the regression model, this approach is often referred to as *selection on observables*. It is difficult to know and impossible to test whether the observed and included X are sufficient to guarantee unconfoundedness (so the regression error and treatment are uncorrelated), though some guidance is available through pseudo-treatment tests (as applied later).

The conditional independence assumption (or *unconfoundedness*) implies that the observed factors included in the statistical analysis fully account for all the differences in the types of homes sold both near and far from the quarry (or other site of interest).¹³ In quantifying the effect of education on income, for instance, it is not enough to simply compare the incomes of persons with and without a college education. Work ethic, for instance, affects both the probability that a person will obtain a college degree and his or her future income. A hard-working person may earn a higher income even without a college education. If work ethic cannot be observed, then a comparison of average incomes across those with and without a college degree does not measure the true value of a degree. The difference is a positively biased estimate of the payoff of education.

¹¹ In regression analysis, this problem appears as a correlation between the regression residual and the treatment variable.

¹² *Supra* n. 8.

¹³ That is, the regression model includes all the regressors needed to make the conditional *near* and *far* prices equal prior to the treatment.

The second factor to consider for the measurement of the causal effect is covariate overlap, which Imbens and Wooldridge (2009) observe is, after unconfoundedness, the “main problem facing the analyst.”¹⁴ This condition implies that the support of the conditional distribution of X for the control group overlaps completely with the conditional distribution of X for the treatment group. That is, the covariate distributions for the treated and untreated groups are sufficiently alike, thereby lending credibility to the extrapolations inherent to regression analysis between groups. If the characteristics of untreated observations (homes *far from* the quarry) are very different from the treated observations (homes *near to* the quarry), then the projections from the controls to the treated units will be a poor one.

Say, for instance, that a sample used to assess the effect of an experimental cancer treatment includes only persons over 65 years old in the experimental treatment group (or simply treatment group) and only persons below 45 years old in the non- treatment group (or control group). The purpose of the control group is not simply a counterweight to the treatment group. Rather, the control group measures the outcomes for the treated group if that group did not receive the treatment. To fix ideas, what we actually want to estimate is what would the treatment group have looked like had they not been treated, which is the sole purpose of a control group. It is unreasonable to expect, we believe, that the survival outcomes of 45 year-old persons provides an approximation of survival outcomes of persons 65 years and over that did not receive the experimental treatment. To extrapolate this discussion to the case of housing values, if the control group includes almost all homes in a golf course community with swimming pools and the treatment group—the properties near some disamenity—includes mostly one-bedroom condominiums, then the difference in sale prices between the two is a nearly meaningless statistic. Regression models are powerful tools, but they cannot make up for such large differences in characteristics across treatment and control groups (even if observable and included in the regression model as explanatory variables), which is important given that the control group is being “projected” onto the treatment group.

A number of statistical techniques are used to address confoundedness and covariate imbalance in observational studies. In a housing study, for instance, a researcher may choose the control group by finding a group of homes comparable to the treatment group—that is, similar square footage, amenities, lot sizes—from a population of homes unaffected by the treatment. This approach, which we

¹⁴ Imbens and Wooldridge, *supra* n. 8 at 43.

employ here, ensures that the characteristics of homes in the treatment and control groups are sufficiently similar, adding credibility to the control group as a suitable “stand in” for the treatment group if it had not received the treatment.

The *Hite Report* is silent on both of these key assumptions, and there is good reason to suspect the analysis fails on both counts. All the pricing data is for home sales occurring long after the quarry operation began and the regression model is quite basic, so the experiment is almost certainly plagued with selection bias. As for covariate overlap, from what few descriptive statistics are provided in the *Hite Report* we observe that the range of home prices within 0.5 miles of the quarry has a minimum of \$80.1 and a maximum of \$178.9 (in thousands). In contrast, the range of prices for homes further from the quarry is \$60 to \$798.6. This difference in the maximum prices is sizable, suggesting that the homes near the quarry may be very much unlike those far from the quarry, thus risking biased results of the effect of distance.

III. Revisiting the *Hite Report*

In NIMBY campaigns challenging quarry development, the *Hite Report* is the sole empirical analysis supporting the claim that quarries reduce housing prices. Subsequent works by Erickcek (2006), the Center for Spatial Economics (2009), Smith (2014), among others, conduct no new empirical analysis, choosing instead to extrapolate the *Hite Report*'s results to different locations (a questionable practice on its own).¹⁵

¹⁵ G.A. Erickcek, *An Assessment of the Economic Impact of the Proposed Stoneco Gravel Mine Operation on Richland Township*, W.E. Upjohn Institute for Employment Research (August 15, 2006) (available at: <http://www.stopthequarry.ca/documents/US%20Study%20on%20the%20impact%20of%20pits%20quarries%20on%20home%20prices.pdf>); *The Potential Financial Impacts of the Proposed Rockfort Quarry*, Center for Spatial Economics (February 26, 2009) (available at: http://wcrpc.org/FinancialImpacts_RockfortQuarryCanada.pdf); G. Smith, *Economic Costs and Benefits of the Proposed Austin Quarry in Madera County*, Report (October 23, 2014) (available at: <http://www.noaustinquarry.org/wp-content/uploads/2016/08/Austin-Quarry-Economics-Report.pdf>). Other works relying on the *Hite Report* (directly or indirectly) include, e.g., M. Conklin, et al., *The Quarry Proposed by St. Marys Cement Inc. for a Location Near Carlisle, Ontario Should Not be Permitted: Proponents' Brief*, 5 STUDIES BY UNDERGRADUATE RESEARCHERS AT GUELPH (2011) (available at: <https://journal.lib.uoguelph.ca/index.php/surg/article/view/1338/2345>); *Business Suirvey and Economic Assessment of Locating a Quarry and Asphalt and Cement Plants within Aeortech Park*, Group ATN Consulting, Inc. (October 13, 2014) (available at: http://stopthefallriverquarry.com/wp-content/uploads/2015/10/GATN_Aeortech_Park_FINAL_Report_Oct_13_2015-2.pdf); M.A. Sale,

This uniform reliance on the *Hite Report* is somewhat surprising. On the face of it, the report is a seven-page document consisting of 1.5 pages of double spaced text (about 250 words) along with a few tables and figures. It is more an “abstract” than it is a “study.” Moreover, even a brief review of the *Hite Report* points to a number of serious problems that should give any researcher pause. First, there are almost no details regarding model specification and few details on the data used. Not even descriptive statistics are provided. Second, the choice of model specification is entirely ad hoc, treating nearly identical variables (distance) differently with respect to functional form and using a non-standard and unnecessary estimation procedure. Such inconsistent, unconventional and inconvenient choices are symptomatic of ends-driven analysis. Third, no explanation is provided as to how the chosen model and analysis of transactions occurring decades after the quarry operations began might identify the effect of *that particular* quarry (or any new quarry) on housing prices. Selection bias is clearly a concern, but it is neither mentioned nor addressed. Fourth, no analysis is provided to suggest that the homes near the quarry are sufficiently similar to those distant from the quarry to provide reliable estimates of the effect of distance (i.e., covariate overlap). Comparing prices of the homes in rural areas on the outskirts of town to those near the local university risks confusing the vagaries of real estate development with the impact of the quarry.

Setting aside the question of causality for the moment, whether the relationship estimated in the *Hite Report* can be replicated is an important first step in evaluating the report’s credibility and the suitability of the methods used to answer this policy-relevant empirical question. To that end, we collect data on home sales within five-miles of the same quarry in Delaware, Ohio, evaluated in the *Hite Report*.¹⁶ It appears the data from the *Hite Report* was from the 1990’s (though it is impossible to be certain given the lack of detail), so we collect data on

Quarry Bad for Area, THE NEWS & ADVANCE (September 28, 2008) (available at: http://www.newsadvance.com/opinion/editorials/letters-to-the-editor-for-sunday-september/article_ca388ca4-14c7-534b-9b17-1b78d1cecc40.html).

¹⁶ Data is obtained from www.agentpro247.com. For all our analysis, we limit the prices to greater than \$25,000 and less than \$1,000,000, and look only at the “full” sales of single-family homes not in distress. The National Lime & Stone Quarry near Delaware, Ohio, is located near Latitude 40.281005 and Longitude -83.135828.

sales over the ten-year period 1998 through 2007.¹⁷ These data appear to immediately follow that used in the *Hite Report* but precedes the housing market crash in 2008 and the broader economic malaise that followed.¹⁸ For further analysis, we also collect data on sales near a quarry outside of Murfreesboro, Tennessee, over the same ten-year period.

A. A Review of Empirical Methods

To reproduce the *Hite Report's* analysis, we obtain transactions prices on 2,114 single-family homes between 1998 through 2007 that are located within five miles of the National Lime & Stone Quarry near Delaware, Ohio. Using latitude and longitude coordinates, distance from each home to the center the quarry (D) is calculated. Other explanatory variables used the *Hite Report* include, for each transaction, the sale date ($DATE$), the distance to Delaware City (DDC), the house-to-lot size ($H2L$), the number of bathrooms ($BATH$), and the number of total rooms ($TOTR$). We measure the sale date as the year of sale; the *Hite Report* does not indicate how the sale date is measured.¹⁹

The regression model of the *Hite Report* takes the following general form,

$$p_{it} = \exp(\delta_1 \ln D_i + \beta_0 + \sum_{j=1}^k \beta_j X_{j,i}) + \varepsilon_{i,t}, \quad (2)$$

where p_{it} is the transaction price (in thousands) for home i at time t , $\ln D$ is the natural log of distance from the quarry (in miles), and X_j are the k regressors listed above (with coefficients β_j as coefficients).²⁰ For reasons unexplained in the *Hite Report*, only the distance from the quarry is transformed by the natural log

¹⁷ See also D. Hite, *The Impact of the Ajax Mine on Property Values*, ARMCHAIRMAYOR.CA (March 5, 2015) (available at: <https://armchairmayor.ca/2015/03/05/letter-the-impact-of-the-ajax-mine-on-property-values>) (stating that the analysis was completed in 1996-1998).

¹⁸ Our data source does not offer data in the early-to-mid 1990s, so we cannot replicate the same time period as the *Hite Report*. We are trying to obtain such data for further analysis.

¹⁹ It is preferred to measure $DATE$ as a fixed effects, as this specification requires prices to rise monotonically over time.

²⁰ The variables in the model are listed at *Hite Report*, *supra* n. 6 at p. 3. A similar specification is used in D. Hite, *A Hedonic Model of Environmental Justice*, Working Paper (February 14, 2006) (available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=884233).

transformation; distance from the city center (DCC) and the other regressors are not transformed. The specification seems purely ad hoc.

Equation (2) is non-linear in the parameters and must be estimated by Non-Linear Least Squares (“NLS”). This specification is highly irregular in econometric practice. Normally, hedonic models of housing prices are estimated by Ordinary Least Squares (“OLS”). A regression model quite similar to Equation (2) and very common in hedonic analysis is,

$$\ln p_{i,t} = \delta_1 \ln D_i + \beta_0 + \sum_{j=2}^k \beta_j X_{j,i} + v_{i,t}, \quad (3)$$

where the dependent variable is the natural log of price and where the X s might be transformed to logs as well.²¹ While Equation (3) is typical of hedonic price functions, we are unable to find the estimation of Equation (2) anywhere in the literature. In fact, we were unable to locate a single instance where even the author of the *Hite Report* estimates a hedonic price function using Equation (2), but plenty of instances where Equation (3) is used.²² As detailed later, a test of functional form can inform us as to whether the natural log transformation of the dependent variable is a better approach and infinitely more common.

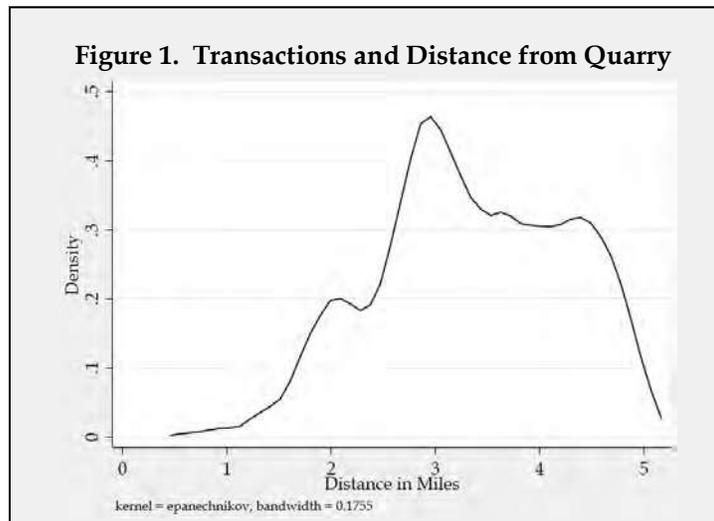
²¹ Note that Equation (3) is not simply the log transformation of Equation (2) because of the additive error term in Equation (2).

²² See, e.g., D. Hite, W.S. Chern, F. Hitzhusen and A. Randall, *Property Value Impacts of an Environmental Disamenity*, 22 JOURNAL OF REAL ESTATE FINANCE AND ECONOMICS 185-202 (2010) (draft available at: <https://ssrn.com/abstract=290292>); D. Hite, A. Jauregui, B. Sohngen, and G. Traxler, *Open Space at the Rural-Urban Fringe: A Joint Spatial Hedonic Model of Developed and Undeveloped Land Values*, Working Paper (November 1, 2006) (available at: <https://ssrn.com/abstract=916964>); D.M. Brasington and D. Hite, *A Mixed Index Approach to Identifying Hedonic Price Models*, 38 REGIONAL SCIENCE AND URBAN ECONOMICS 271-284 2008 (August 5, 2006) (available at: <https://ssrn.com/abstract=928252>); E. Affuso, C. de Parisot, C. Ho, and D. Hite, *The Impact of Hazardous Wastes on Property Values: The Effect of Lead Pollution*, 22 URBANI IZZIV 117-126 (2010) (available at: <https://ssrn.com/abstract=1427544>); D. Hite, *Factors Influencing Convergence of Survey and Market-Based Values of an Environmental Disamenity*, Mississippi State University Agricultural Economics Working Paper No. 2001-011 (November 29, 2001) (available at: <https://ssrn.com/abstract=292447>); C. Ho and D. Hite, *Economic Impact of Environmental Health Risks on House Values in Southeast Region: A County-Level Analysis*, Working Paper (2005) (available at: <https://ssrn.com/abstract=839211>); D. Hite, *A Hedonic Model of Environmental Justice*, Working Paper (February 14, 2006) (available at: <https://ssrn.com/abstract=884233>).

The coefficient of primary interest in the *Hite Report* is δ_1 , which measures the percent change in the transaction price for a percentage change in distance from the quarry (D), but only *after* the quarry operations began (see Eq. 1). In this specification (and also for Eq. 3), this elasticity is constant across the full range of distance. With data on 2,812 sales, the *Hite Report* estimates the coefficient δ_1 to be 0.125, where the positive sign indicates the average sale price of homes is higher the further away the homes are from the quarry (statistically significant at the 1% level). The *Hite Report* concludes, as do subsequent reports that adopt the result, that this positive coefficient implies quarries reduce the price of nearby homes. As detailed above, the positive sign on the coefficient δ_1 cannot reasonably be interpreted in this manner since the data is for sales occurring long after quarry operations began, among other concerns.

B. National Lime & Stone Quarry in Delaware, Ohio

Replication is the essence of science. Even if the estimated price-distance relationship from Equation (2) lacks a causal interpretation, it is worth evaluating whether the *Hite Report's* findings can be confirmed. We do so by estimating Equation (2) using data on 2,114 transactions in the same area over the period 1998-2007. Figure 1 offers the kernel density of the distribution of transactions by distance from the quarry. The thinness of the market very near the quarry is plain to see, which is also apparent from a map of the area surrounding the quarry (see Appendix 1).



Regression results from Equation (2) are summarized in the first column of Table 1, along with descriptive statistics for the full sample and the sample divided

into homes closer to the quarry than two miles and those further than that distance. The model has a Pseudo-R² of 0.25, which is very close to that reported in the *Hite Report* (0.254).²³ Five of the seven estimated coefficients (including the constant term) are statistically different from zero at the 1% level or better.

Table 1. Regression Results and Descriptive Statistics
National Quarry near Delaware, Ohio

	Coef (t-stat)	Mean (St. Dev)	N = 0 Mean (St. Dev)	N = 1 Mean (St. Dev)
lnD (δ_1)	-0.1413*** (-4.00)	1.166 (0.304)	1.227 (0.230)	0.518 (0.224)
DATE	0.0450*** (11.13)	2002.7 (2.952)	2002.5 (2.969)	2004.4 (2.125)
DDC	0.0409*** (5.92)	2.876 (2.139)	2.859 (2.207)	3.050 (1.207)
H2L	-0.102 (-0.81)	0.1498 (0.1110)	0.148 (0.111)	0.1668 (0.102)
BATH	0.0419 (1.09)	1.806 (0.584)	1.788 (0.597)	1.995 (0.384)
TOTR	0.1398*** (7.59)	5.099 (1.016)	5.065 (1.031)	5.099 (1.016)
Constant	-85.71*** (-10.57)	...	...	...
Pseudo-R ²	0.250			
Obs.	2,114	2,114	1,930	184

Statistical Significance: *** 1%, ** 5%, * 10%

Despite using exactly the same regression model and data on sales around the same quarry, we find that the transaction prices of homes *decrease* (not increase) as the distance from the quarry increases. The negative coefficient (-0.141) is similar in size *but different in sign* from that found in the *Hite Report* (0.125) and is statistically significant at the 1% level. The estimated coefficient implies a 1% increase in distance reduces home average, quality-adjusted home prices by about 0.14%. Since the coefficient is less than unity, the price-distance relationship is subject to diminishing marginal returns.²⁴ Figure 2 illustrates the relationship

²³ The Pseudo-R² is the squared correlation coefficient between the predicted value of the regression and the dependent variable.

²⁴ For any fixed change in mileage, the percentage change falls as distance increases.

between sale prices and distance from the quarry, revealing sizable reductions in average prices as distance from the quarry increases.

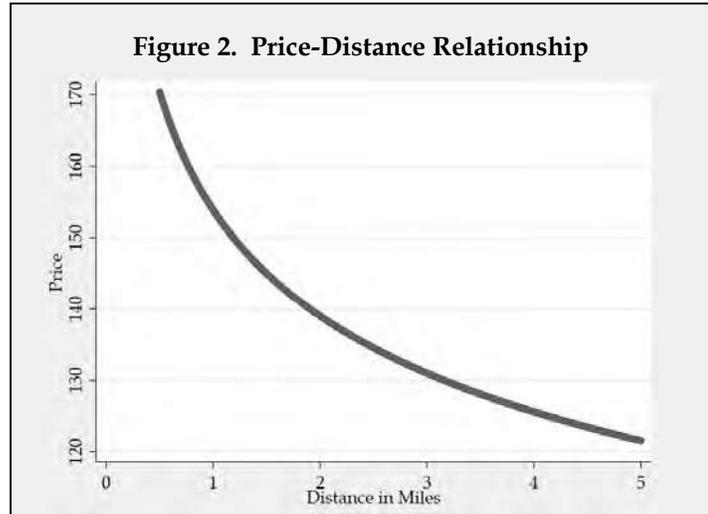


Table 2 summarizes the average predicted prices and price effects at varying distances from the quarry. Interpretation of the table is straightforward. A home sold 3 miles from the quarry will have a price 22% lower than that of a home sold within 0.5 miles of the quarry, or 16% lower than the average home sold within 1.5 miles of the quarry. At two miles, the differences are 18% and 11%; at five miles, the differences are 28% and 22%. These are sizable effects.

Table 2. Home Values by Distance from Quarry

	<i>Distance in Miles from Quarry</i>							
	0.5	1.0	1.5	2.0	2.5	3	4.0	5.0
Avg. Price ('000)	169.8	153.9	145.4	139.6	135.2	131.8	126.5	122.6
Reduced Value (from 0.5 miles)	...	-9%	-14%	-18%	-20%	-22%	-25%	-28%
Reduced Value (from 1.5 miles)	...	...	...	-11%	-14%	-16%	-19%	-22%

These estimates and their predicted effect on prices are based on the estimation method (Eq. 2) used in the *Hite Report*. There are other equation specifications and estimation methods that are more consistent with standard practice in the analysis of housing prices (hedonics). In order to assess the robustness of the result, we offer alternative analyses below.

1. *Alternative Estimation Approaches*

As discussed above, Equation (2) is a non-standard method to estimate the relationship of interest. Normally, a researcher would avoid the non-linear Equation (2) and use the natural log of price to estimate Equation (3) by OLS. Statistical testing (such as the Box-Cox test of functional form) may be used to evaluate whether the linear or log-form of the dependent variable is preferred.²⁵ Other advantages of Equation (3) over Equation (2) is that the linear equation is amenable to estimation by Median Regression (“MReg”) and Robust Regression (“RReg”), both of which are less sensitive to outliers in the data than is NLS or OLS.²⁶ Outliers are common in home sales data, so it is sensible to evaluate the effect on the estimates by these alternative estimation procedures, especially when the results are used in a policy relevant setting that may have significant financial implications.²⁷ We summarize the results from both methods.

Modern research on housing prices increasingly accounts for the spatial nature of real estate markets using new spatial methods.²⁸ We estimate the price-distance

²⁵ W.E. Griffiths, R.C. Hill and G.G. Judge, *LEARNING AND PRACTICING ECONOMETRICS* (1993) at pp. 345-7.

²⁶ See, e.g., R. Koenker, *QUANTILE REGRESSION* (2005); B.S. Cade and B.R. Noon, *A Gentle Introduction to Quantile Regression*, 1 *FRONTIERS IN ECOLOGY AND THE ENVIRONMENT* 412-420 (2004) (available at: <http://www.econ.uiuc.edu/~roger/research/rq/QReco.pdf>); O.O. John, *Robustness of Quantile Regression to Outliers*, 3 *AMERICAN JOURNAL OF APPLIED MATHEMATICS AND STATISTICS* 86-88 (2015); P.J. Rousseeux and A.M. Leroy, *ROBUST REGRESSION AND OUTLIER DETECTION* (2005); R. Andersen, *MODERN METHODS FOR ROBUST REGRESSION* (2008); T.P. Ryan, *MODERN REGRESSION METHODS* (2008).

²⁷ C. Janssen, B. Söderberg and J. Zhou, *Robust Estimation of Hedonic Models of Price and Income for Investment Property*, 19 *JOURNAL OF PROPERTY INVESTMENT & FINANCE* 342-360 (2001); S.C. Bourassa, E. Cantoni and M. Hoesli, *Robust Hedonic Price Indexes*, 9 *INTERNATIONAL JOURNAL OF HOUSING MARKETS AND ANALYSIS* 47-65 (2016).

²⁸ Including papers by the *Hite Report's* author. See, e.g., D.M. Brasington and D. Hite, *Demand for Environmental Quality: A Spatial Hedonic Analysis*, 35 *REGIONAL SCIENCE AND URBAN ECONOMICS* 57-82 (2005) (draft available at: <https://ssrn.com/abstract=491244>); see also J.M. Mueller and J.B. Loomis, *Spatial Dependence in Hedonic Property Models: Do Different Corrections for Spatial Dependence Result in Economically Significant Differences in Estimated Prices?*, 33 *JOURNAL OF AGRICULTURAL AND RESOURCE ECONOMICS* 212-231 (2008) (available at: <http://ageconsearch.umn.edu/bitstream/42459/2/MuellerLoomis.pdf>); L. Osland, *An Application of Spatial Econometrics in Relation to Hedonic House Price Modeling*, 32 *JOURNAL OF REAL ESTATE*

relationship using a Spatial Regression Model (“SReg”). To do so, a spatial weighting matrix (W) is computed and spatially-weighted lags of the dependent and independent variables are included in the regression as well as an adjustment for autocorrelated errors.²⁹

Table 3. Alternative Estimation Methods
National Quarry near Delaware, Ohio

	<i>OLS</i>	<i>MReg</i>	<i>RReg</i>	<i>SReg</i>	<i>OLS-CEM</i>
	Coef (t-stat)	Coef (t-stat)	Coef (t-stat)	Coef (t-stat)	Coef (t-stat)
<i>lnD</i>	-0.2726*** (-7.31)	-0.2021*** (-14.21)	-0.1220*** (-5.59)	-0.1558 *** (-2.65)	-0.147*** (-3.00)
<i>DATE</i>	0.0433*** (12.45)	0.0342*** (15.76)	0.0367*** (16.58)	0.0440*** (12.86)	0.0453*** (6.30)
<i>DDC</i>	0.0273*** (3.90)	0.0460*** (8.64)	0.0551*** (15.00)	0.0679*** (5.09)	0.0483*** (3.31)
<i>H2L</i>	0.0794 (0.68)	-0.1131 (-1.47)	-0.2591*** (-3.74)	-0.1779 (-1.48)	0.1812 (0.94)
<i>BATH</i>	0.0485 (1.46)	0.0997*** (5.41)	0.1499*** (7.94)	0.0166 (0.56)	-0.0092 (-0.10)
<i>TOTR</i>	0.1540*** (8.97)	0.1523*** (14.00)	0.1508*** (14.12)	0.1497*** (9.11)	0.2047*** (6.44)
Constant	-82.47*** (-11.82)	-64.31*** (-14.80)	-69.52*** (-15.67)	-77.07*** (-11.25)	-86.77*** (-6.02)
Spatial Terms (χ^2)				242.3***	
Pseudo-R ²	0.246	0.216	0.243	0.265	0.214
Obs.	2,114	2,114	2,114	2,114	1,461
Statistical Significance: *** 1%, ** 5%, * 10%					

RESEARCH 289-320 (2010) (available at: http://pages.jh.edu/jrer/papers/pdf/past/vol32n03/03.289_320.pdf).

²⁹ D.M. Drukker, H. Peng, I.R. Prucha, and R. Raciborski, *Creating and Managing Spatial-Weighting matrices with the spmat Command*, 13 STATA JOURNAL 242-286 (2013); D.M. Brasington and D. Hite, *Demand for Environmental Quality: A Spatial Hedonic Analysis*, 35 REGIONAL SCIENCE AND URBAN ECONOMICS 57-82 (2005) (draft available at: <https://ssrn.com/abstract=491244>). We truncate the distance at 0.5 miles.

Results for the alternative estimation methods are summarized in Table 3.³⁰ Across all four alternatives, the price-distance relationship is negative and statistically different from zero at the 1% level or better. Plainly, the negative price-distance relationship is robust to estimation method. The price-distance elasticity is a good bit larger for OLS and MReg, but similar to that estimated by Equation (2) for both the RReg and SReg methods (in the full sample). Note that more of the regressors are statistically significant in MReg and RReg, suggesting these estimation alternatives are worth consideration.

2. Coarsened Exact Matching

Thus far, we have paid no attention to whether homes near the quarry are like those far from the quarry (i.e., covariate overlap). What evidence is available in the *Hite Report* suggests that in her sample the types of homes sold near the quarry may have been very different than those sold at a distance from it. While distance from the quarry is a continuous variable, we can consider covariate overlap by comparing the characteristics of homes near to and those far from the quarry, using a two-mile cutoff. In Table 1, we do observe some meaningful differences between homes within two miles of the quarry and those further away especially in the year sold and the number of bathrooms and total rooms.³¹ To ensure we are comparing like homes, we apply Coarsened Exact Matching (“CEM”) to the data and match on these three variables.³² All 184 transactions within two miles of the quarry are matched to 1,277 (of 1,930) homes further than

³⁰ The Box-Cox test statistic for the Delaware County data is 64.1, which is statistically significant at better than the 1% level. The test statistic is distributed $\chi^2(1)$ with a critical value of 2.71 at the 10% level. The natural log transformation, consistent with Equation (3), is preferred to the specification estimated in the *Hite Report*. Or, we might say the problem is not so much in the estimation by NLS rather than OLS but that the natural log transformation of the dependent variable is the better specification.

³¹ Standardized differences (the absolute value of the means difference divided by the square root of the summed variances) are used. See Imbens and Wooldridge, *supra* n. 8 at p. 24. The rule of thumb for a large difference is a standardized difference exceeding 0.25. For the DATE variable, the standardized difference is 0.51, and about 0.30 for bathrooms and total rooms.

³² S.M. Iacus, G. King, G. Porro, *Causal Inference without Balance Checking: Coarsened Exact Matching*, Working Paper (June 26, 2008) (available at: <https://ssrn.com/abstract=1152391>), later published *Causal Inference without Balance Checking: Coarsened Exact Matching*, 20 POLITICAL ANALYSIS 1-24 (2012) (available at: https://gking.harvard.edu/files/political_analysis-2011-iacus-pan_mpr013.pdf).

two miles from the quarry. The weights created by the CEM procedure are then used to estimate Equation (3) by weighted OLS.

Results for the CEM-weighted regression are reported in the final column of Table 3. The estimated coefficients are comparable in most respects to the other models.³³ Most significantly, the price-distance relationship remains negative (-0.147) and statistically different from zero. While we do not present the results in the table, we note that when estimated using the non-linear Equation (2) with CEM-weighted data the price-distance relationship is negative (-0.053) but not statistically significant, a difference we will return to later.

C. Rogers Group Quarry near Murfreesboro, Tennessee

It is reasonable to expect that the relationship of home prices to distance from a quarry might vary by location. Earlier research suggests this is so in other contexts.³⁴ To further evaluate the results reported in the *Hite Report*, we collect data on home sales around the Rogers Group Quarry near Murfreesboro, Tennessee.³⁵ Transaction data is again collected for years 1998 through 2007 and the sample includes 2,311 transactions. Given differences in data availability, we replace the total number of rooms with square footage (*SQFT*). Distance from the city center (*DCC*) is measured from Murfreesboro. We apply the same methods as before, estimating Equation (2) by NLS and then Equation (3) by OLS, MReg, RReg, and SReg. Results are summarized in Table 4. We do not observe large differences between the characteristics of home sold near to and far from the quarry, so we do not apply CEM for this quarry.

³³ CEM-weighting often alters the coefficients and their significant levels since the data is better matched.

³⁴ See *supra* n. 7 and citations therein.

³⁵ The quarry is located at coordinates: 35.884699, -86.530625.

Table 4. Regression Results and Descriptive Statistics
Rogers Quarry near Murfreesboro, Tennessee

	<i>NLS</i>	<i>OLS</i>	<i>MReg</i>	<i>RReg</i>	<i>SReg</i>
	Coef	Coef	Coef	Coef	Coef
	(t-stat)	(t-stat)	(t-stat)	(t-stat)	(t-stat)
<i>lnD</i>	-0.0655*** (-4.99)	-0.0383*** (-2.63)	-0.0320*** (-3.01)	-0.0327*** (-3.78)	-0.0222 (-0.72)
<i>DATE</i>	0.0522*** (27.09)	0.0443*** (20.36)	0.0407*** (31.73)	0.0404*** (35.55)	0.0444 (23.05)
<i>DDC</i>	-0.0035* (1.85)	-0.0006 (-0.26)	-0.0007 (-0.44)	-0.0011 (-0.84)	-0.0012 (-0.15)
<i>H2L</i>	-0.6590 (-1.11)	0.6404 (0.42)	-2.170*** (-4.47)	-2.676*** (-5.84)	0.3311 (0.42)
<i>BATH</i>	0.1395*** (17.65)	0.1666*** (13.44)	0.1811*** (24.06)	0.1759*** (28.87)	0.1344*** (12.17)
<i>SQFT</i>	0.00026*** (17.40)	0.00021*** (5.82)	0.00032*** (25.01)	0.00033*** (29.27)	0.00018*** (9.10)
Constant	-100.3*** (-17.40)	-84.59*** (-19.52)	-77.57*** (-30.57)	-76.87*** (-33.79)	-77.84*** (-20.17)
Spatial Terms (χ^2)					385.2***
Pseudo-R ²	0.692	0.590	0.529	0.678	0.605
Obs.	2,311	2,311	2,311	2,311	2,311
Statistical Significance: *** 1%, ** 5%, * 10%					

The fit the regressions (R^2 is around 0.60) is much higher than for the Delaware data, but the negative coefficients on distance are seen again. For the NLS model, the price-distance relationship is -0.0655 and the coefficient is statistically different from zero at better than the 1% level. Across the alternative specifications and estimation methods, the price-distance relationship is consistently negative and statistically different from zero, save one exception. Only in spatial regression is the price-distance relationship not statistically significant, though the coefficient is negative and similarly sized to the other models.

Additional evidence also leads to questions about the negative views of quarries. If quarries were a disamenity, then we might expect people to avoid living around them. Figures 3A-3C in Appendix 3 demonstrate population movements for Rutherford County, Tennessee, with emphasis on the Rogers Group quarry. Population is measured using U.S. Census Bureau population data for years 1990, 2000, and 2010. These figures show population density increasing

dramatically over this time period in the same census block as the Rogers Group quarry. These population movements toward the quarry in conjunction with the econometric results further indicate the Murfreesboro quarry is not a great disamenity, if a disamenity at all.

D. *Randomized Inference and the Implausibility of the Model*

Our analyses of home prices near the quarries in Delaware, Ohio, and Murfreesboro, Tennessee, find a negative and statistically significant relationship between home prices and distance from a rock quarry in most specifications and estimation methods. Consequently, we find no evidence that supports the findings of the *Hite Report*, despite using the same model and, in one instance, the same quarry from that earlier study. We fear, however, that these estimated relationships are mainly the consequence of the *Hite Report's* poor experimental design than they are a measure of any real effect of the quarry. Indeed, we question whether the quantification of the effect of a disamenity or amenity can be plausibly estimated by a price-distance relationship. In Delaware County, for instance, it is not hard to find a statistically-significant price-distance relationship (using Eq. 2) from just about anywhere: the Church of the Nazarene off Highway 101 ($\delta_1 = -0.058$, $t = -2.79$); The Greater Gouda gourmet grocery on North Sandusky Road ($\delta_1 = 0.268$, $t = 6.92$); and the Foot & Ankle Wellness Center off South Hook Road ($\delta_1 = -0.043$, $t = -2.99$).

Given patterns in real estate development, it seems plausible that a positive or negative price-distance relationship would be observed from almost any location. A sensible way to evaluate the reliability of the distance-based hedonic regressions is to apply the method of randomized inference (a type of pseudo-treatment).³⁶ In this procedure, the location of a “disamenity” or “amenity” is randomly chosen in the geographic area under study. Given the random assignment of location, we might expect the price-distance relationship to be statistically significant in proportion to the alpha-level of the statistical test (say, a 10% significance level) due to random variation. That is, a valid statistical test conducted at the 10% level

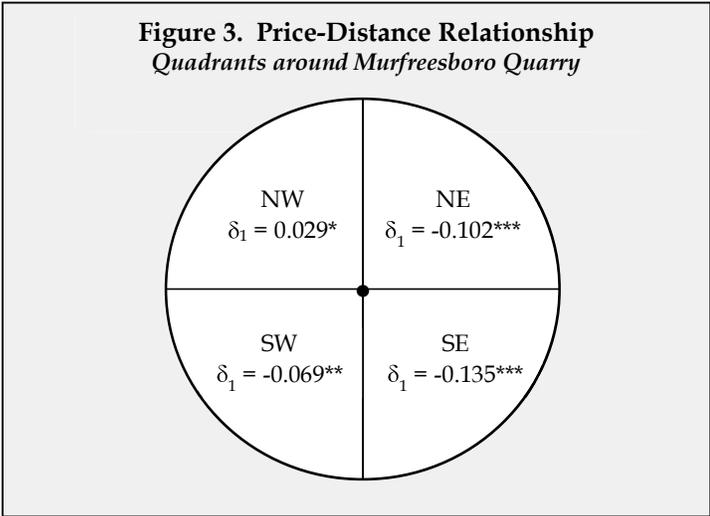
³⁶ R.A. Fisher, *THE DESIGN OF EXPERIMENTS* (1935); P.R. Rosenbaum, *OBSERVATIONAL STUDIES* (2002); M.D. Cattaneo, B.R. Frandsen, and R. Titiunik, *Randomization Inference in the Regression Discontinuity Design: An Application to Party Advantages in the U.S. Senate*, 3 *JOURNAL OF CAUSAL INFERENCE* 1-24 (2015); T. Fujiwara and L. Wantchekon, *Can Informed Public Deliberation Overcome Clientelism? Experimental Evidence from Benin*, 5 *AMERICAN ECONOMIC JOURNAL: APPLIED ECONOMICS* 241-255 (2013).

will reject the null hypothesis 10% of the time even if the null is true (e.g., Type I error).

We conduct such tests using the following simulation. First, a random location (latitude, longitude) within the Delaware area is chosen (see Appendix 4 for an illustration of the process). Second, the distances from this location to all home sales is computed. Third, we replace in the regression model the variable measuring distance from the quarry (D) with this alternate distance measure (D'). Fourth, we estimate a regression of price on the same variables as above, obtaining the coefficient, t-statistic and its probability on δ_1 . Fifth, this process is repeated 1,000 times. Finally, from these 1,000 simulations, we can compute how often the null hypothesis of “no effect” is rejected.

At the threshold significance level of 10%, the null hypothesis is rejected in a whopping 67% of the simulations for the data from Delaware County, sometimes with positive and sometimes negative coefficients. Conducting the same simulation for Murfreesboro, the rejection rate is an even larger 93%. Given the random selection of locations in the simulation, this result is a powerful indictment against the sort of model employed in the *Hite Report*. A researcher may pick just about any location and find a statistically-significant price-distance relationship. We conclude based on this analysis that the addition of a distance variable to a hedonic model in an effort to identify the effect of a quarry on home prices is a poor experimental design with grossly inaccurate inference tests, especially when using asymptotic critical values for hypothesis testing and only data on post-operation transactions. In fact, we suspect many of the hedonic studies using distance from disamenities may be similarly unable to identify an effect of interest, but leave that question to future research.

Another problem with estimating the price-distance relationship is that unlike square footage, distance from a quarry is not unidimensional but occurs on a coordinate plane. A house may be located to the east or to the west, to the north or to the south, of a quarry, and moving closer to or away from the town center, a university, a landfill, or any other site that may influence prices. To see this, we divide the transaction data near Murfreesboro into four quadrants around the quarry (northeast, northwest, southeast, and southwest) and estimate a price-distance relationship unique to each quadrant (using Eq. 2). Results are summarized in Figure 3.



From Figure 3, we see that the price-distance relationships are not equal across quadrants but rather differ substantially by the direction of the movement away from the quarry. From Table 4, we know that the average price-distance relationship from this quarry is negative (and statistically significant). Yet, from Figure 3, we see that the price-distance relationship in the Northwest quadrant is positive, but negative in all other quadrants. All the estimated price-distance relationships are statistically different from zero at the 10% level or better. It appears, therefore, that there is no “price-distance relationship” but many “price-distance relationships” from any given site. We believe these results are more evidence of the spurious nature of the price-distance relationship estimated using hedonic models of housing prices.

In light of our randomized inference procedure and additional evidence, we conclude, for now, that the type of model and experimental design used in the *Hite Report* is entirely unsuited to the task of identifying the price impact of quarries. Our results from replication efforts, which consistently find a negative price-distance relationship, are no less implicated by the defect than those of the *Hite Report*. Identifying the effects of quarries on housing prices requires a different experimental design, and careful attention to selection bias, covariate overlap, and the numerous ramifications of thin markets around the site. We attempt to offer some better evidence below.

E. *Spurious Regression and the Search for Results*

In light of the evidence that a statistically significant price-distance relationship is found for no less than seven-out-of-ten randomly chosen locations,

we conclude the *Hite Report's* experimental design is incapable of quantifying the effect of quarries on house prices. The results from such models are spurious. Consequently, we expect that the price-distance relationship will be sometimes positive, sometimes negative, sometimes statistically significant and sometimes not for any given quarry. Statistical significance is the flip of a coin heavily weighted toward the rejection of the null hypothesis. Our analysis also shows that the choice of estimation method may alter the estimated coefficient and its significance, a common trait of spurious regression.

The fact different quarries and different estimation methods produce different results advises caution in conducting and assessing such studies, especially in a policy-relevant context when economic development is at stake. Inference errors may be inadvertent, or an advocate may exploit the spurious nature of the relationship by searching for a location, model specification, and time period to produce an outcome supporting a favored policy position. We can demonstrate the risks of such an ends-driven search by looking at more recent data for Delaware, Ohio, using data on prices for the five-year period 2012 through 2016 (1,429 transactions). The models and variables are measured in the same way as above.

Table 5 summarizes the results from a few estimation methods. For expositional purposes, we present only on the price-distance relationship. Using the unconventional Equation (2) from the *Hite Report*, we find that the price-distance relationship for this period is positive – a statistically significant result (by asymptotic convention). The result is opposite of that estimated for the data from the 1998-2007 period, even though the location is the same. Without any constraint on the choice of time period to analyze, an unscrupulous advocate is free to choose data from different periods in search of results to support his or her position.

Table 5. Results Delaware Quarry, Years '12-16

	<i>NLS</i>	<i>OLS</i>	<i>MReg</i>	<i>RReg</i>	<i>SReg</i>
	Coef	Coef	Coef	Coef	Coef
	(t-stat)	(t-stat)	(t-stat)	(t-stat)	(t-stat)
lnD	0.1285*** (3.45)	0.0192 (0.52)	-0.0065 (-0.32)	0.0412 (1.63)	0.0780 (1.10)
Spatial Terms (χ^2)					41.28***
Pseudo-R ²	0.392	0.332	0.263	0.377	0.347
Obs.	1,429	1,429	1,429	1,429	1,429
Statistical Significance: *** 1%, ** 5%, * 10%					

Model selection and variable choice may also be used in an ends-drive search for results. As shown in Table 5, estimating Equation (3), a standard functional form for hedonic regressions, the positive coefficient is now a sixth the size of that estimated by Equation (2) and is no longer statistically different from zero at standard levels.³⁷ Also, Median, Robust and Spatial Regression do not find statistically significant price-distance relationships. In fact, the only model that produces a statistically-significant positive effect is the non-standard regression equation used in the *Hite Report*. Moreover, if we replace the *TOTR* variable with the *SQFT* variable in the NLS model, the price-distance relationship shrinks to 0.02 (one-sixth the size) and the coefficient is no longer statistically significant. Again, a researcher may pick-and-choose model specification, along with time period analyzed and regressors, to obtain a desired result. Skepticism is warranted for any analysis of the price effects of quarries (and amenities or disamenities generally) absent robustness analysis across time and model specifications.

Table 6. Results Delaware Quarry, Years '98-07 & '12-16

	<i>NLS</i>	<i>OLS</i>	<i>MReg</i>	<i>RReg</i>	<i>SReg</i>
	Coef	Coef	Coef	Coef	Coef
	(t-stat)	(t-stat)	(t-stat)	(t-stat)	(t-stat)
<i>lnD</i>	0.10028 (0.11)	-0.1361*** (-5.04)	-0.0963*** (-6.33)	-0.0501*** (-2.89)	-0.1059** (-2.10)
Spatial Terms (χ^2)					41.28***
Pseudo-R ²	0.302	0.262	0.219	0.288	0.151
Obs.	3,543	3,543	3,543	3,543	3,543
Statistical Significance: *** 1%, ** 5%, * 10%					

As another check on robustness (or a lack thereof), we combine the data from 1998-2007 and 2012-2016, excluding those years when the housing market and economy generally were in turmoil (2008-2011). Results on the price-distance relationship are summarized in Table 6. Now, Equation (2) estimated by NLS reports a statistically insignificant (but positive) coefficient for the price-distance relationship. The other estimation methods, however, all confirm the negative and statistically significant relationship consistent with the results in Tables 1 and 3. It appears, therefore, whether or not quarries affect prices hinges on model selection and dates selected, which simply demonstrates the spurious nature of these sorts of experiments. Plainly, care must be given to model selection, and robustness analysis should be thorough and explicit. And, in light of the randomized

³⁷ The Box-Cox test indicates a preference for the transformation ($\chi^2 = 40.7$).

inference and quadrant analysis above, the utility of the price-distance relationship for quantifying the effects of quarries and disamenities should be regarded as defective, at least until further research demonstrates otherwise.

The analyses presented here, we believe, offers compelling evidence that the *Hite Report's* experimental design is a flimsy method, easily manipulated to produce nearly any desired result through the selection of location, model specification, estimation technique, and the time period analyzed. The *Hite Report's* findings cannot be reliably replicated and conflicting results are readily obtained. The spurious nature of the price-distance relationship from such experiments is clearly demonstrated, and the defective approach allows for nearly any result imaginable. Using data long after a quarry opens poses no limits on the selection of time period, enhancing the risk of the exploitation of spurious regression for economic and political advantage.

IV. A Difference-in-Difference Approach

As detailed above, to quantify the effect of a quarry on home prices the researcher ideally needs pricing data both before and after quarry operations begin.³⁸ With this data, statistical analysis can determine how the relationship between price and distance from the quarry *changes* after the quarry opens, thus quantifying, under some well-known assumptions, a plausible causal effect.

There are some potential shortcomings with a simple before-and-after analysis, however. New quarries take years to get approval and normally we expect equity prices to reflect new information quickly, so price effects may precede that event. In this section, we offer two before-and-after analyses of the effect of a quarry on home prices. First, we evaluate pricing activity around the Vulcan quarry in Gurley, Alabama, which began operations in 2013. Gurley is a rural area not far from the city of Huntsville, Alabama. Consistent with the analysis above, we use the general format of the *Hite Report* (and several

³⁸ Another possible identification strategy involves exploiting policy experiments with respect to residential distance from a quarry. For example, if some states required houses to be a certain distance away from a quarry while other states did not, then a credible counter-factual could be constructed allowing the researcher to estimate the effect of quarry distance on home prices. A regression discontinuity design could be used to identify the price-distance relationship if regulations required potential home buyers to be informed of the quarry for homes within a certain distance. Homes just inside and just outside this cut-point would be used as treatment and control units to identify the causal price-distance relationship.

alternatives) to test for a *change* in the price-distance relationship after the quarry opens.

Second, we evaluate the price effects of the contested Austin Quarry in Madera, California, which was approved in 2016.³⁹ Located in the southwest corner of the intersection of Highway 41 and Highway 145, the site is proximate to two subdivisions, one located on Highway 145 and the other on Highway 41. Thus, not only are the subdivisions proximate to the quarry, but both are expected to deal regularly with the quarry’s traffic flow. Though first proposed in 2010, media coverage and public protest did not begin until 2013, at which time the new quarry might be expected to affect home prices through an announcement effect.⁴⁰ A control group is chosen using CEM from homes sales in subdivisions not too far from the quarry site but beyond the range of influence. We find no statistically significant effect of the quarry in either model, though in both cases the estimated coefficients indicate, if anything, the quarry raises property values.

A. *The Empirical Model*

For these analyses, we employ the standard regression model for the DiD estimator. Using a log-linear form common to hedonic regressions, the regression equation is,

$$\ln p_{it} = \Delta T \cdot N_i + \delta_0 N_i + \beta_0 + \sum_{j=2}^k \beta_j X_{j,i} + v_{it} , \quad (4)$$

where T is dummy variable equal to 1.0 after the treatment and N_i is a dummy variable for homes near the quarry site (or a continuous measure of distance from the quarry). The estimated coefficient δ_0 measures the difference in average sale prices for homes near the quarry (or the effect of distance from it) *prior to the treatment*. After the treatment, the difference in price between homes near and far from the quarry is $\Delta + \delta_0$. The difference between the two effects is Δ , which is the DiD estimator, as defined in Equation (1), or $\Delta = \delta_1 - \delta_0$. The t-test on the coefficient

³⁹ J. Rieping, *Controversial Quarry Up for Vote*, MADERA TRIBUTE (July 16, 2016) (available at: <http://www.maderatribune.com/single-post/2016/07/16/Controversial-quarry-up-for-vote>); M.E. Smith, *Austin Quarry Approved in 3-2 Vote*, SIERRA STAR (July 20, 2016) (available at: <http://www.sierrastar.com/latest-news/article90713132.html>).

⁴⁰ Lexus-Nexus search conducted on February 20, 2018. B. Wilkinson, *Concerns Over Truck Traffic on Road*, SIERRA STAR (February 21, 2013).

Δ is, therefore, a direct test of the statistical significance of the effect of a quarry on home prices.

As an alternative, we estimate,

$$\ln p_{it} = \Delta T \cdot N_i + \beta_0 + \sum_{j=2}^k \beta_j X_{j,i} + \lambda_t + v_{it} \quad (5)$$

where the continuous *DATE* variable is replaced with year fixed effects (λ_t), which is a somewhat standard treatment of time in the DiD regression. Due to collinearity with the fixed effects, the $\delta_0 N$ term is no longer included in the regression, but the interpretation of Δ is unchanged.

For consistency with the earlier analysis, we also estimate the model specification of the *Hite Report*, adding as a regressor the interaction of a treatment dummy variable for years 2013 and later (T). The regression model is,

$$p_{it} = \exp(\delta_0 \ln D_i + \Delta \ln T \cdot D_i + \beta_0 + \sum_{j=2}^k \beta_j X_{j,i}) + \varepsilon_{it} \quad (6)$$

where the variables are defined the same way as the Murfreesboro analysis (i.e., total rooms is replaced with square footage). The coefficient δ_0 quantifies the price-distance relationship prior to the initiation of quarry operations in 2013. Starting in 2013, the price-distance relationship is measured by $\delta_0 + \Delta = \delta_1$, where Δ measures the *change* in the slope of the price-distance relationship. If the quarry reduces home values near the quarry, then Δ should be positive and statistically significant. Equation (6) is estimated by NLS.

B. *Vulcan Quarry in Gurley, Alabama*

As with the earlier analysis, data is obtained on home sales within a five-mile radius of the quarry location in Gurley, Alabama. The quarry began operations in 2013, and our data spans 2005 through portions of 2017. The sample includes 593 transactions, but we note only 83 are for sales prior to 2013.⁴¹ Since there is no “city

⁴¹ The low samples are likely the consequence of the rural nature of the market and data collection in such areas. We cannot exclude the possibility the sample is peculiar in some respect.

center" in the area, the DCC variable is measured as the distance from the WalMart Supercenter in the nearby town of Big Cove.

Table 7. Regression Results and Descriptive Statistics
Vulcan Quarry in Gurley, Alabama

	NLS-Eq. 6	OLS-Eq. 4	OLS-Eq. 5	Mean (St. Dev)
	Coef (t-stat)	Coef (t-stat)	Coef (t-stat)	
lnD	0.0876 (0.97)	0.2723*** (3.64)	0.3679** (2.20)	3.445 (0.987)
T:lnD	-0.1205** (-2.41)	-0.0543 (-1.07)	-0.1587 (-0.88)	2.936 (1.50)
DATE	0.0162* (1.67)	0.0191* (1.85)	...	2014.1 (2.30)
DDC	-0.0456*** (-5.85)	-0.0529*** (-5.99)	-0.0512*** (-5.80)	4.484 (2.27)
H2L	-1.2185 (-0.79)	-0.2457 (-0.11)	0.1868 (0.08)	0.063 (0.029)
BATH	0.1752*** (6.92)	0.2672*** (8.84)	0.2655*** (8.71)	2.875 (0.932)
SQFT	2.2E-04*** (5.97)	2.0E-04*** (3.22)	1.9E-04*** (3.11)	2,870.3 (1,139.8)
Constant	-27.99 (-1.43)	-27.57 (-1.32)	10.61*** (36.57)	...
λ_t	No	No	Yes	...
Pseudo-R ²	0.641	0.602	0.608	...
Obs.	593	593	593	593

Statistical Significance: *** 1%, ** 5%, * 10%

Results are summarized in Table 7.⁴² Many of the coefficients are statistically significant and similar to those estimated using the Murfreesboro data. First, for Equation (6) estimated by NLS, we find that housing prices rise as distance from the quarry increases (the coefficient on lnD is positive), but this positive effect is observed *prior to the beginning of quarry operations*. After the quarry opens, the positive (though statistically insignificant) price-distance relationship is attenuated; the estimated Δ coefficient is -0.103 and the null hypothesis of "no effect" for the DiD estimator is rejected at the 5% level. Prior to 2013, the price-

⁴² Since we do not observe large differences in the characteristics of homes near to and far from the quarry, we do not apply CEM.

distance elasticity is 0.088 (δ_0), but after 2013 it is -0.033 (δ_1), a small effect that is statistically indistinguishable from zero (F-stat = 0.16, prob = 0.69).

Turning to Equation (4), the price-distance relationship is again positive (and much larger than with NLS) but is now statistically significant prior to the beginning of quarry operations. The Δ coefficient is -0.054, which while negative is no longer statistically different from zero at standard levels. The positive price-distance relationship is attenuated after the quarry began operating, but not to a statistically significant degree. The results are similar for Equation (5). Though not summarized in the table, we note that for MReg and RReg neither of the quarry-distance coefficients is statistically different from zero. The SReg results, also not presented in the table, are not wholly unlike the OLS estimates of Equation (4); the coefficient δ_0 is positive (0.331, $t = 4.45$) and statistically significant, but the Δ coefficient is negative (-0.055, $t = 0.98$) and not statistically different from zero.

The lack of robustness to specification leads us to conclude that the most likely effect of the quarry is no effect at all. Also, we acknowledge that the defects in the *Hite Report's* empirical strategy is as relevant here as before: our randomized inference simulation computes a rejection rate on δ_0 of 65% and for Δ of 67% (at a nominal 10% significance level). While we recognize the limitations of the data and the methods, on whole the results are entirely at odds with the claim that quarries reduce housing prices. If anything, the effect is the opposite.

C. Austin Quarry in Madera County, California

Quarry sites often take years for approval. Our model of the Gurley quarry presumed that prices do not reflect the quarry operations until after the quarry is operational. A reasonable argument may be made, however, that home prices might adjust before the quarry opens when the local population becomes aware of the future quarry site. We consider that possibility now.

The Austin Quarry in Madera, California, was approved in September 2016 despite a substantial NIMBY effort.⁴³ A search of news outlets reveals that public attention to proposed quarry initiated in early 2013 and was very active is

⁴³ M. Smith, *Supervisors Approve Austin Quarry 3-2*, SIERRA STAR (September 12, 2016) (available at: <http://www.sierrastar.com/news/local/article101492412.html>).

subsequent years.⁴⁴ Thus, we define the treatment dummy T as having values of one in years after 2013 (and also consider other years). Data is collected for the ten years preceding the treatment date, so the data spans 2007 through 2016.

The Austin Quarry site is well outside of town, but there are two subdivisions proximate (less than three miles) to the site: Bonadelle Rancheros-Madera Ranchos and Bonadelle Rancheros Nine. Both subdivisions abut the major highways (Highways 41 and 145) servicing the quarry site. If any homes are to be affected by the quarry, then these are the most likely candidates, and they represent our treatment group. The dummy variable N takes a value of 1 for these subdivisions (zero otherwise). Visual inspection of the area points to a number of subdivisions in the vicinity that are neither on the major highways serving the site nor within ten miles of the site: Madera Estates, Madera Country Club, Lake Madera Country Club, Chuk Chanse, Valley Lake Ranchos, Madera Acres, Madera Knolls, and Madera Highlands. A control group will be selected from home sales in these subdivisions.

Estimation of the DiD estimator employs Equation (5). Regressors include the age of the home at the sale data (AGE), square footage ($SQFT$), the number of bedrooms (BED) and bathrooms ($BATH$), a dummy variable indicating whether the home a two story home ($STRY$), a dummy variable indicating the presence of a fireplace ($FIRE$), a dummy variable indicating whether the home has a swimming pool ($POOL$). Year fixed effects are included.

⁴⁴ B. Wilkinson, *Concerns Over Truck Traffic on Road*, SIERRA STAR (February 32, 2013); G. Smith, *Economic Costs and Benefits of the Proposed Austin Quarry in Madera County* (October 23, 2014) (available at: <http://www.noaustinquarry.org/wp-content/uploads/2016/08/Austin-Quarry-Economics-Report.pdf>); M.E. Smith, *Progress Continues on Austin Quarry*, SIERRA STAR (February 10, 2016) (available at: <http://www.sierrastar.com/news/article87816032.html>); B. Wilkinson, *Group Opposes Proposed Rock Quarry*, SIERRA STAR (November 12, 2014) (available at: <http://www.sierrastar.com/news/article87802492.html>); D. Joseph, *Quarry Issues Need to be Addressed*, SIERRA STAR (December 3, 2014) (available at: <http://www.sierrastar.com/opinion/article87803072.html>).

Table 8. Descriptive Statistics
Austin Quarry in Madera County, California

Variable	ALL Mean (St.Dev)	N=0 Mean (St.Dev)	N=1 Mean (St.Dev)	Stan. Diff.
<i>AGE</i>	16.13 (12.16)	16.50 (12.22)	15.21 (11.95)	0.075
<i>SQFT</i>	1811.6 (522.7)	1706.7 (490.6)	2072.9 (509.5)	0.518*
<i>BED</i>	3.32 (0.59)	3.27 (0.54)	3.43 (0.70)	0.179
<i>BATH</i>	1.99 (0.68)	1.83 (0.66)	2.38 (0.56)	0.639*
<i>STRY</i>	0.024 (0.15)	0.016 (0.12)	0.043 (0.20)	0.115
<i>FIRE</i>	0.632 (0.48)	0.730 (0.44)	0.390 (0.49)	0.515*
<i>POOL</i>	0.068 (0.25)	0.033 (0.17)	0.159 (0.36)	0.311*
Price	215.4	195.0	266.3	
Price/ <i>SQFT</i>	120.8	116.4	131.9	
Obs.	887	633	254	

Descriptive statistics for the treatment and control pool are provided in Table 8. The homes are similar in some respects, but large standardized differences (> 0.25) are found for square footage, the number of bathrooms, and the presence of a fireplace or pool.⁴⁵ CEM based on *SQFT*, *BATH*, *FIRE*, and *POOL* reduces the standardized differences to acceptable levels for all the regressors. We are able to match 229 of 254 homes in the treated group to 450 of 633 homes in the control pool, for an estimation sample of 679 home sales.

⁴⁵ Imbens and Wooldridge, *supra* n. 8.

Table 9. Regression Results and Descriptive Statistics
Austin Quarry in Madera County, California

	OLS Coef (t-stat)	CEM-OLS Coef (t-stat)	CEM-MReg Coef (t-stat)	SReg Coef (t-stat)
N (δ_0)	0.1166** (2.47)	0.1277** (2.08)	0.1194*** (4.99)	0.1913** (2.11)
$T-N$ (Δ)	0.1663*** (2.95)	0.1005 (1.21)	0.1161*** (3.14)	0.0878 (1.32)
AGE	0.0017 (1.20)	0.0087*** (3.47)	-0.0003 (-0.35)	-0.0055* (-0.35)
$SQFT$	1.7E-04*** (3.40)	1.3E-04** (2.05)	3.0E-04*** (12.68)	2.0 E-04*** (4.39)
BED	0.0349 (0.90)	0.01205*** (2.63)	0.0450** (2.49)	-0.0542 (1.54)
$BATH$	0.0288 (1.08)	-0.0439 (-0.60)	-0.0777*** (-2.60)	-0.0218 (-0.61)
$STRY$	-0.0878 (-0.70)	-0.0408 (-0.33)	0.0043 (0.05)	-0.1378 (-1.29)
$FIRE$	0.0770** (2.43)	0.0650* (1.73)	0.0422*** (2.94)	0.0305 (0.88)
$POOL$	0.1833*** (3.71)	0.1577*** (4.03)	0.0853*** (3.68)	0.2346*** (3.63)
Constant	11.21*** (98.08)	10.92*** (70.30)	11.35*** (20.67)	11.62*** (83.17)
λ_t	Yes	Yes	Yes	Yes
Spatial Terms (χ^2)				27.17***
Pseudo-R ²	0.482	0.491	0.361	0.186
Obs.	887	679	679	887

Statistical Significance: *** 1%, ** 5%, * 10%

Regression results are summarized in Table 9. For comparison purposes and to illustrate the important effects of covariate balance, estimates for both the full and CEM-weighted samples are provided. The models fit the data well for both samples. For the full sample, which we caution does not rely on balanced data, the estimated δ_0 coefficient (0.117) indicates that prices in the treated group were about 12% higher [$\exp(\delta_0) - 1$] in the pre-treatment period. After the treatment, the prices were even higher ($\Delta = 0.166$), a statistically significant result of about an 18% increase. The remaining coefficients are sensibly sized and many are statistically different from zero. A swimming pool, for instance, raises price by about \$38,000.

Turning to the CEM-weighted model, the price difference before the treatment is a bit larger ($\delta_0 = 0.128$), and the difference is statistically significant at standard

levels. As in the full sample, the DiD estimator Δ is positive (0.100), but now it is not statistically significant. For the balanced sample, we cannot reject the null hypothesis that the quarry's announcement effect is zero, though the coefficient is relatively large and the t-statistic is much larger than 1.00. In contrast, for the CEM-weighted MReg, prices are higher in the treated area during both the pre-treatment and treatment period, and both coefficients are statistically different from zero at better than the 1% level.

In the final column of Table 9, we summarize the results from SReg using the full sample. The spatial terms are statistically significant at the 1% level. The results are comparable to the others. Prices are higher in the treated area before the treatment, but we do not see a statistically significant change is seen after the treatment. The DiD estimator Δ is positive and relatively large (0.09), but statistically significant only at the 20% level.

Table 10. Regression Results, Annual Treatment Effect
Austin Quarry in Madera County, California

	2013	2014	2015	2016
	Coef	Coef	Coef	Coef
	(t-stat)	(t-stat)	(t-stat)	(t-stat)
<i>T:N</i> (Δ)	0.2721*** (2.65)	0.0018 (0.01)	0.0322 (0.42)	0.3949 (1.41)

Statistical Significance: *** 1%, ** 5%, * 10%

Finally, we can estimate the Δ coefficient for each year beginning with our chosen treatment date (2013), thereby assessing whether that choice is influencing the estimate.⁴⁶ The results by year are summarized in Table 10. Large positive coefficients are observed in years 2013 and 2016 (the latter close to being statistically significant), and smaller positive coefficients for the other years. These results are consistent with those reported in Table 9.

Notably, we do not estimate a price-distance relationship in these equations. Distance from the quarry site is not a regressor. Unlike the distance-based model, the rejection rates for randomized inference (assigning the homes in the treatment group randomly from those in the sample) are very close to the nominal level of the test (11% rejection rate versus 10% nominal test level). The statistical reliability

⁴⁶ The coefficients are year specific and do not quantify the average after the treatment year, as do the results from Table 9.

of this approach is much superior to the price-distance approach used in the *Hite Report*.

Taken together, we conclude from these results indicate that the effect of the quarry may very well be zero, at least in the form of an announcement effect. If there is any effect, it is positive. Whether or not the quarry will affect prices, either positively or negatively, after operations begin (assuming they do) is unknowable at this time. In light of the evidence presented here and in prior research, the expectation must be that there will be little to no effect on home prices and, if anything, that effect may be positive.

V. Conclusions

We estimate the effect of rock quarries on home prices with data from four quarry locations across the United States, a wide range of econometric specifications and robustness checks, and a variety of temporal circumstances from the lead-up to quarry installation to subsequent operational periods. We find no compelling statistical evidence that either the anticipation of, or the ongoing operation of, rock quarries negatively impact home prices. While our study extends the literature on estimating the effects of “disamenities,” primarily as a critique of existing methods, the empirical problem is difficult and likely requires advanced research methods beyond what we provide here. The primary obstacle to estimating these effects is the lack of data and that lack of data is actually driven by the quarry site selection process, which limits our ability to infer a causal relationship. Thin markets and a subsequent lack of sales data are a serious problem since quarries are today (and typically in the past) located, by design, away from residential density.

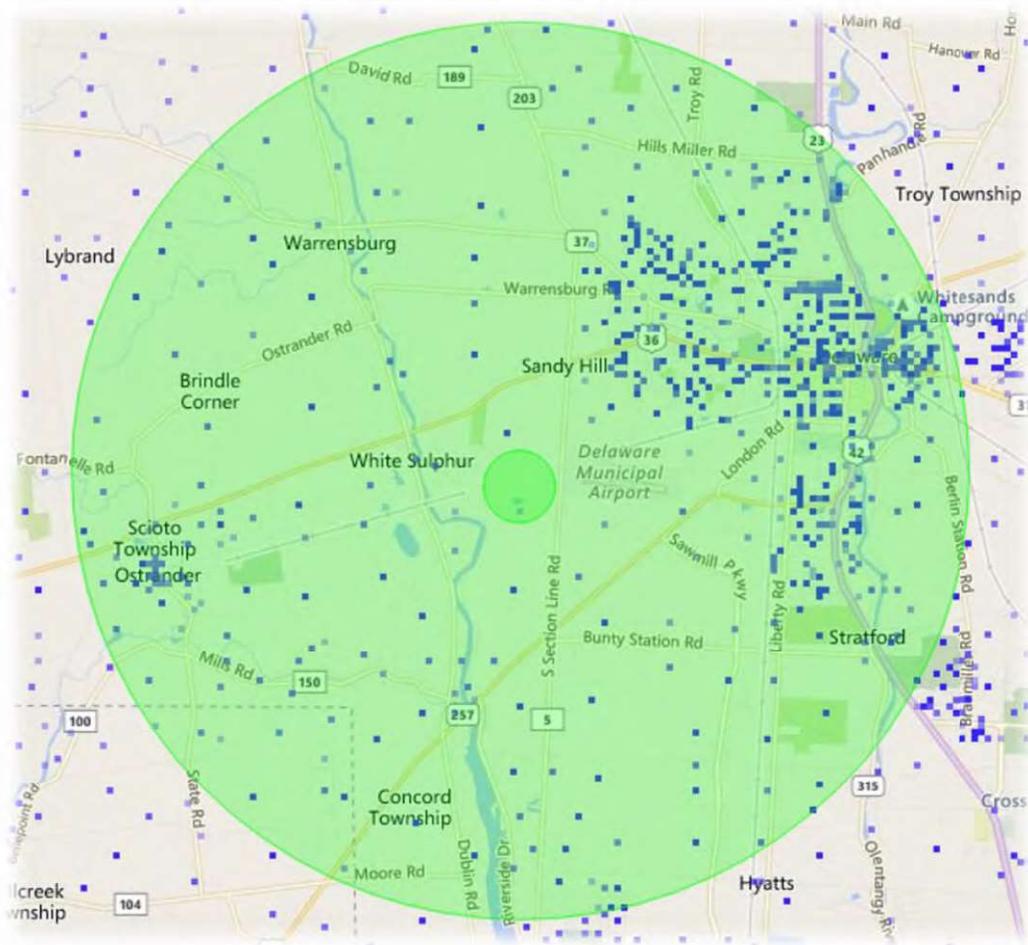
Our study highlights a number of shortcomings in the empirical methodologies generally used to estimate the effect of disamenities on real estate prices. First and foremost, the vast majority of studies do not (or even attempt to) identify the causal effect of disamenities. That is, existing studies are naïve as to the empirical conditions necessary to identify a causal relationship and do not establish credible strategies to estimate the counter-factual outcome – i.e., how the real estate around quarries would have looked, on average, without a landfill or other disamenity. To evaluate the credibility of existing studies and their methodologies, we first employ permutation tests to examine whether or not the existing methodologies yield higher than expected rejection rates of the null hypothesis. We accomplish this by randomly assigning a location in our sample space with a “disamenity” (i.e., a placebo quarry) and then estimate the effect on surrounding home prices. The null hypothesis of “no effect” of the placebo

quarries is rejected in no less than 7 out of 10 simulations, and at a rate as high as 9 out of 10 simulations.

In an attempt to produce a meaningful counter-factual we employ a difference-in-differences estimation strategy which exploits the timing and placement of a quarry. We use this strategy in two different contexts: (1) before and after operations of a quarry in Gurley, Alabama; and (2) before and after local debate (and subsequent approval) of a quarry in Madera County, California. The first exercise estimates the effect of quarry operations on home prices and the second exercise estimates the anticipatory effect of a quarry on home prices. Neither exercise yields evidence of a negative impact on home prices. Given a number of data concerns and model limitations (since our interest is primarily in replication), further research is advised.

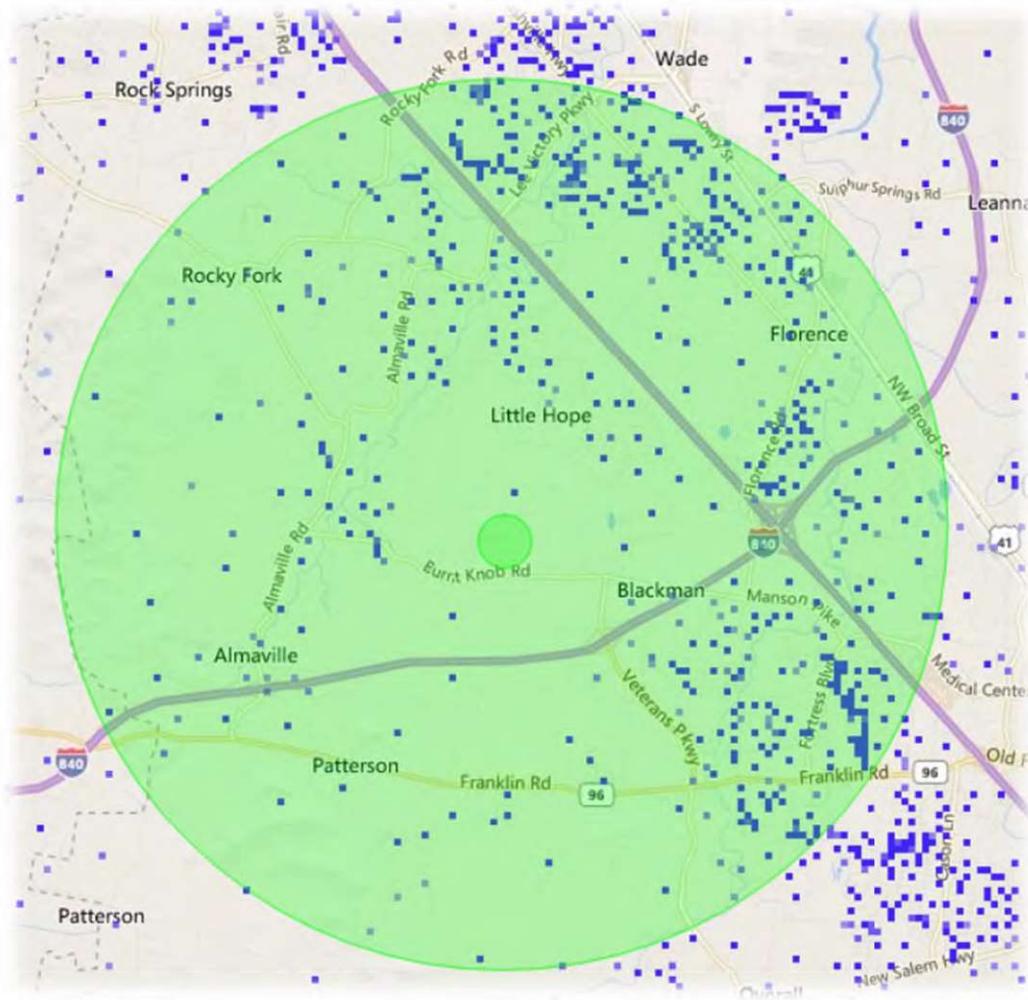
APPENDIX 1. MAP OF NATIONAL LIME & STONE QUARRY NEAR DELAWARE, OHIO

Notes: The small, inner green circle marks the National Lime & Stone Quarry near Delaware, Ohio. The larger green circle is a five-mile radius around the quarry location. The blue dots mark areas of population density using 2010 census data. Map generated using censusviewer.com.



**APPENDIX 2. MAP OF ROGERS GROUP QUARRY NEAR MURFREESBORO,
TENNESSEE**

Notes: The small, inner green circle marks the Rogers Group Quarry near Murfreesboro, Tennessee. The larger green circle is a five-mile radius around the quarry location. The blue dots mark areas of population density using 2010 census data. Map generated using censusviewer.com.



APPENDIX 3. CENSUS BLOCK POPULATION GROWTH NEAR ROGERS GROUP QUARRY NEAR MURFREESBORO, TENNESSEE

Notes: Figures 3A-3C demonstrate population movements for Rutherford County, TN, with emphasis on the Rogers Group quarry. Population is measured using U.S. Census Bureau population data for years 2000, 2010, and 2016. Darker blues imply greater population.

Fig. 3A: Rutherford County, TN, 1990 Population Density

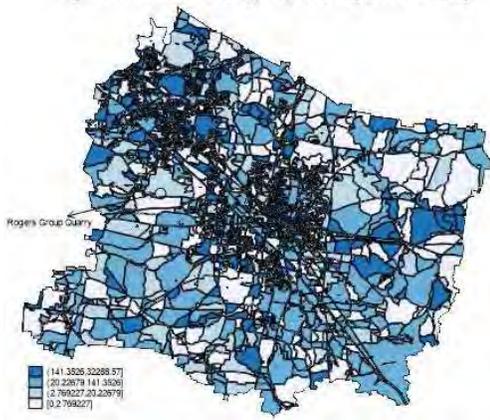


Fig. 3B: Rutherford County, TN 2000 Population Density

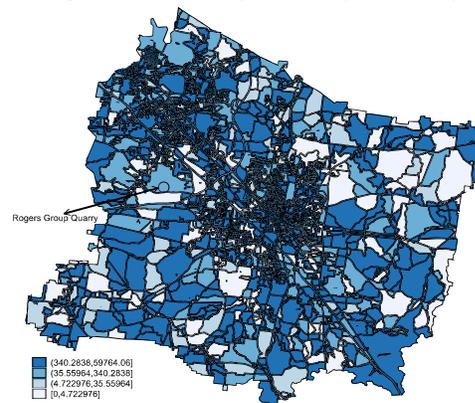
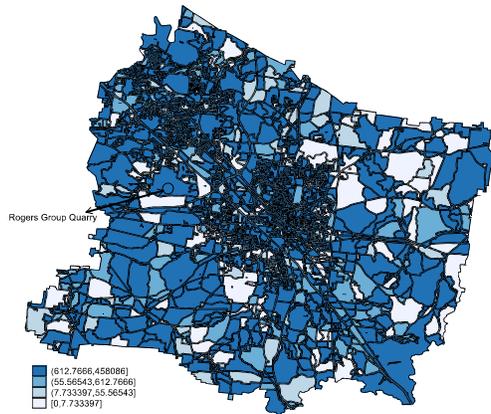
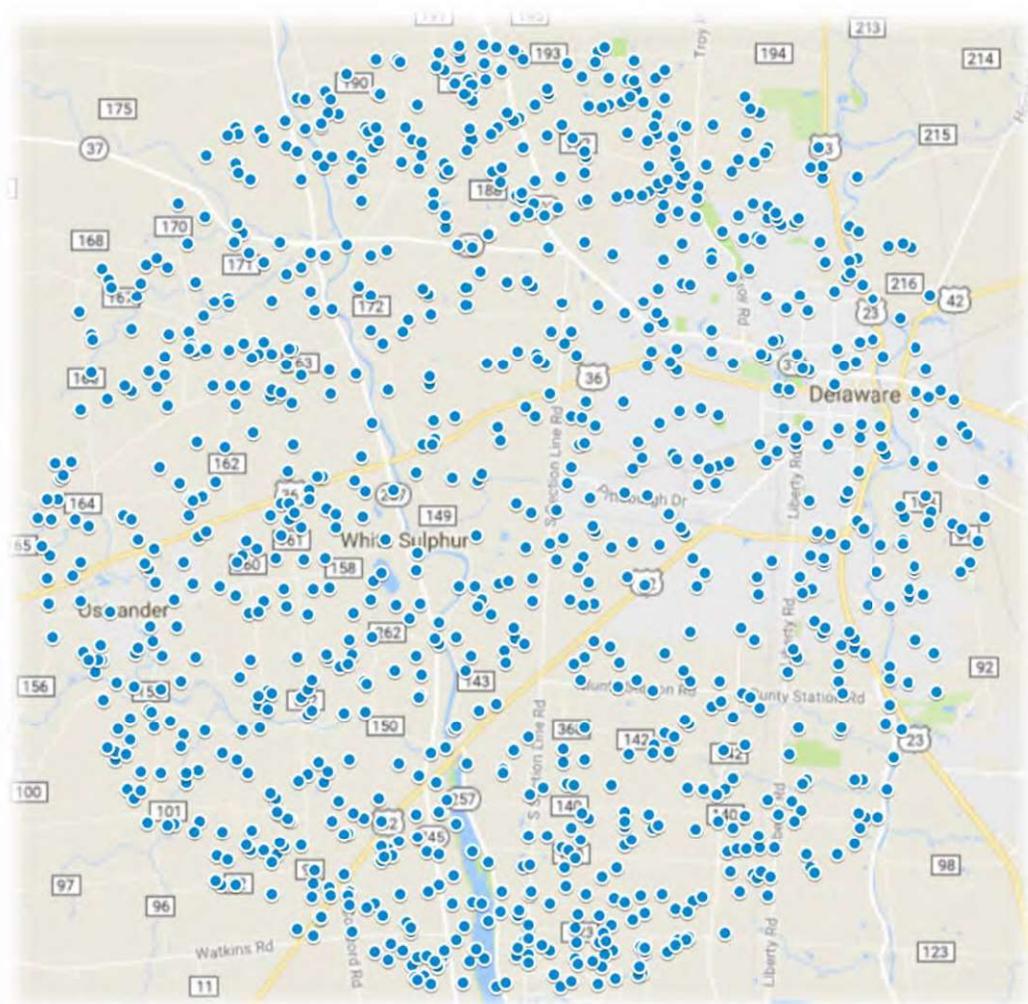


Fig. 3C: Rutherford County, TN 2010 Population Density



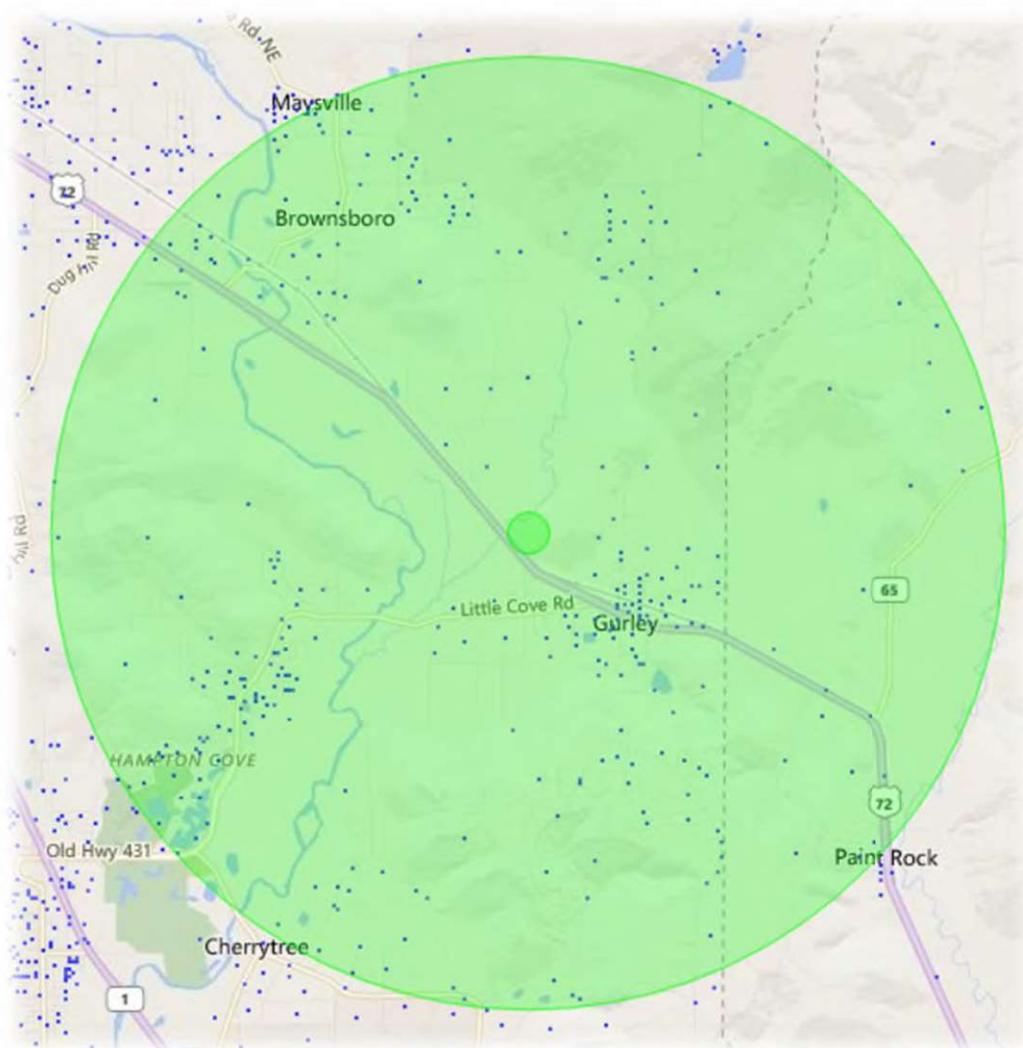
**APPENDIX 4. ILLUSTRATIVE MAP OF RANDOM LOCATIONS USED FOR
RANDOMIZED INFERENCE ANALYSIS FOR DELAWARE COUNTY**

Notes: The blue dots represent the random locations chosen by the randomized inference simulation for Delaware County, Ohio. Map generated using Google maps.

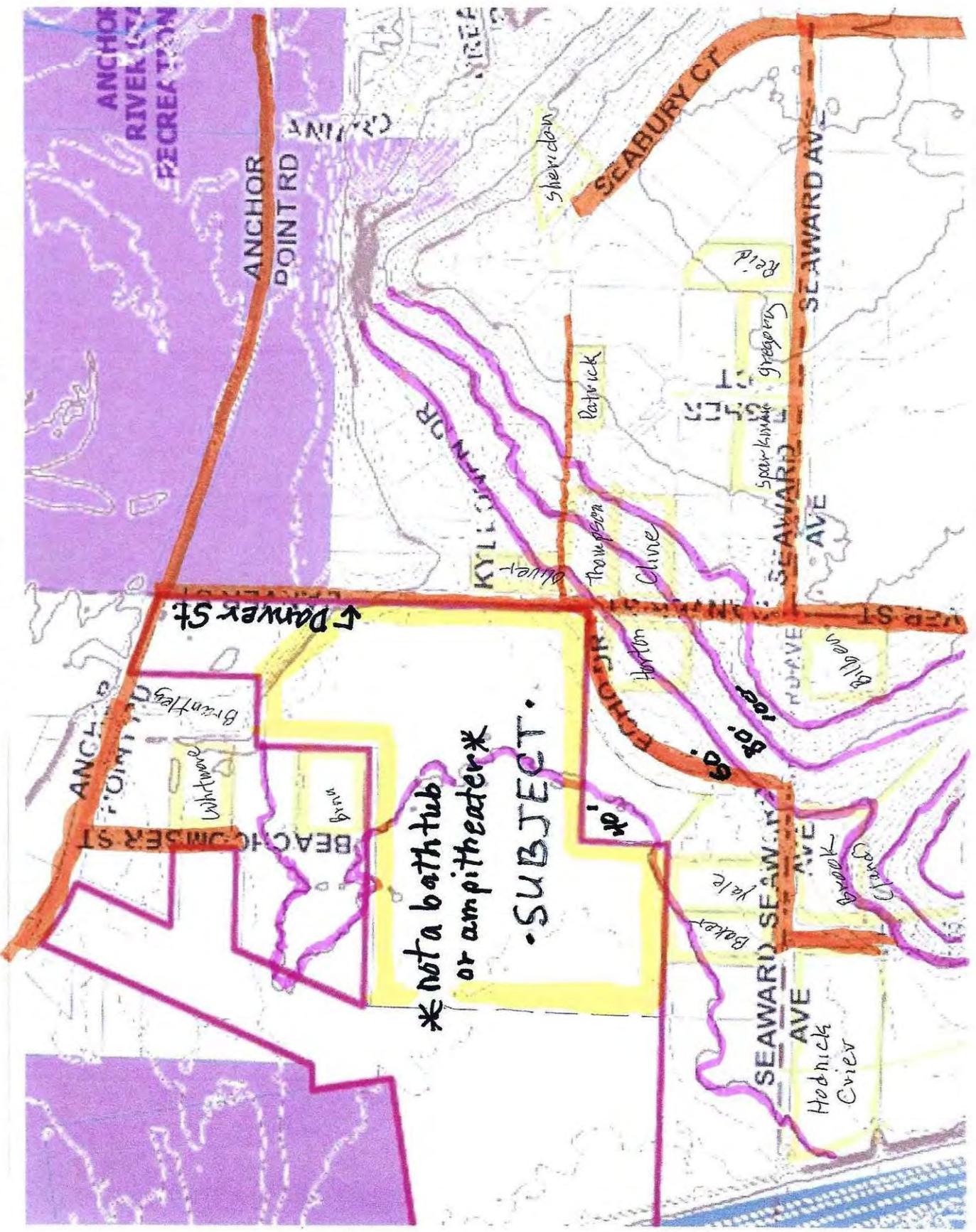


APPENDIX 5. VULCAN QUARRY NEAR GURLEY, ALABAMA

Notes: The small, inner green circle markets the Vulcan Quarry near Gurley, Alabama. The larger green circle is a five-mile radius around the quarry location. The blue dots mark areas of population density using 2010 census data. Map generated using censusviewer.com.



Beachcomber LLC Contour Map



*not a bathtub
or amphitheater*

SUBJECT.

DESK PACKET

MEMORANDUM

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

FROM: Max Best, Planning Director 
Holly Montague, Deputy Borough Attorney 

DATE: March 25, 2019

RE: Planning Commissioner Conflict/Bias

Two issues regarding planning commissioner conflict or bias have been raised. Conflicts of interest and bias are two separate concepts. The principles regarding conflict of interest and bias are found in pages 12-15 of the planning commission training manual which are attached. KPB 2.58.040 "voting on certain questions prohibited: is also attached. To be clear the issues raised here have nothing to do with the individual integrity of the planning commissioners.

Following are the facts as staff understands them; the Planning Commissioner involved should correct any factual errors:

1. After the Planning Commission heard the Beachcomber CLUP application in July 2018 and prior to Jeremy Brantley being appointed to the Planning Commission, Hilcorp hired Cook Inlet Construction ("CIC") on a project which required a gravel source. Commissioner Jeremy Brantley is a principal in CIC. The initial gravel source for the Hilcorp project is the same parcel owned by Beachcomber that is currently subject to the CLUP application. A counter permit had been issued to Beachcomber for the extraction work by CIC. The area subject to the counter permit lies within the area subject to the CLUP application. CIC through Jeremy Brantley commenced work on the project and cleared land and established berms. Surrounding land owners complained about the material site. Hilcorp informed CIC to use a different gravel source. CIC terminated work on the parcel. While the relationship between CIC and Beachcomber was apparently terminated, CIC had direct contact with the applicant and worked on the property giving the commissioner intimate knowledge of the parcel not of record with the rest of the commission. Therefore, while reasonable minds can differ on these issues staff believes the better avenue would be for Mr. Brantley to recuse himself from hearing the Beachcomber CLUP application.

2. The Mayor's office received the attached email with an allegation that Commissioner Venuti's business "could" have a relationship with Beachcomber principle Emmitt Trimble. Staff has no knowledge of Mr. Venuti's relationship, if any, with Emmitt and Mary Trimble. There are no statements by Mr. Venuti indicating bias in this matter to staff's knowledge. It is staff's view that Commissioner Venuti should state the nature of any relationship on the record and whether he has an open mind on the question of the permit. If he has made his mind up regarding the permit in advance of hearing the case, he should recuse himself from voting; if he has an open mind and can remain impartial he should hear the matter.

On Mar 14, 2019, at 6:30 PM, Marie Carlton <seaburyroad@live.com> wrote:

Good morning Mayor Pierce. I trust this note finds you and your family well. In concern for the upcoming Planning Commission hearing slated for March 25, 2019, at 1930 at the Borough, I would like you to consider this move for improved balance, proper oversight and fairness. As Venuti and Associates established in 1981 for Inspection and fixed facilities, I am troubled by the potential favoritism to Emmitt and Mary Trimble (Beachcomber LLC, Coastal Realty).

Mr. Franco Venuti's career could have established a close, inappropriate relationship with Emmitt and Mary Trimble over many years resulting in future unethical behavior as a member of the Planning Commission. The possibility of historical and continued contact with Emmitt and Mary Trimble may and could be realized as slanted or partisan support. I believe Mr. Franko Venuti should be recused from any further involvement in current or future issues with Emmitt and Mary Trimble involving the Anchor Point gravel pit decisions. An imbalance in this scenario, moving forward would possibly create inequality and nefarious decisions in nature. Please review and consider this option. Thank you again for the privilege of your time.

Marie Carlton

2.58.040. - Voting on certain questions prohibited.

- A. No assembly member or member of any service area board or commission may vote on any question on which he or she has a substantial direct or indirect financial interest unless an assembly member is not excused from voting as provided in KPB 22.40.140.
- B. The following do not constitute a vote on a question on which an assembly member, a service area board member or commission member has a substantial financial interest:
 - 1. A vote to adopt or approve a variance request, a conditional use request, or an amendment to a zoning text or map, unless the assembly member, service area board member or commission member is directly or indirectly the applicant initiating the request;
 - 2. A vote on the question of recommending, approving or directing a condemnation proceeding;
 - 3. A vote on a question of granting or modifying a franchise, or a vote on a question of setting the rates charged or charged by a corporation, firm or partnership whether under franchise or not and whether authorized by law, ordinance or contract to set or alter such rates, provided the assembly member, service area board member or commission member has an interest in such franchise or rate-setting solely by reason of employment as an officer or employee of such corporation, firm or partnership, and the remuneration of such employment will not be affected as a result of such franchise grant or modification or such rate-setting, and the duties of such employment do not directly or indirectly involve the negotiation or setting of the terms of the franchise or rates; or
 - 4. Provided he has an interest solely by reason of the ownership of stock in the corporation if it is listed on the New York or American Stock Exchanges ownership direct or indirect of less than 5 percent of the outstanding stock or shares in the subject corporation.

(Ord. No. 99-74, § 2, 1-18-00; Ord. No. 83-65, § 1(part), 1983)

7. When should a planning commission member be recused from voting due to bias?

Bias is prejudging a matter. There is not a borough ordinance prohibiting bias. However, quasi-judicial decisions resulting from prejudice, arbitrary decision making, or improper motives may be invalidated under case law. The integrity required of public office holders demands that even an “appearance of impropriety” be avoided. Whether bias requires recusal may vary depending on whether the planning commission is performing a quasi-judicial function as opposed to a quasi-legislative function.

Not all prejudgment eliminates a commissioner’s ability to debate and decide issues. Often the planning commission serves in an advisory capacity on legislative issues, e.g., recommending the passage of a code ordinance which the commission helps administer. For this advisory and quasi-legislative role, it is expected that commissioners have preconceived notions regarding issues of law and policy. For example, planning commissioners are often selected by region because of their familiarity with local conditions and concern regarding land use issues. This type of familiarity is likely to result in the formation of opinions on the ordinances, resolutions, and policies that will be placed before the board or commission, and it is not generally grounds for recusal, but is rather seen as an advantage as the commissioner can educate his colleagues about issues in his district.

The planning commission is acting in a quasi-judicial capacity when it applies adopted laws and policy to an individual’s application. When acting in a quasi-judicial capacity, it is analogous to a judge who must fairly hear and weigh the evidence received and objectively apply the established standards to the facts of the case. Commissioners who have prejudged the facts of an individual case pending before it to the extent that they can no longer be impartial are biased, and their participation in decisions may invalidate the commission’s decision. A commissioner voicing a general opinion regarding certain types of issues does not necessarily mean he will judge a particular application regarding that type of issue without regard to the applicable standards. However, land use decisions are particularly prone to bias because commissioners are drawn from the immediate geographical area and because of the legislative, adjudicative, and political nature of the land use and zoning process.

The bias test is whether a commissioner has actually made up his mind regardless of any argument that might have been advanced at the hearing. Indicators of prejudgment include a commissioner making a clear statement suggesting that a decision has already been reached. The test is objective and queries whether a disinterested observer would conclude that the commissioner has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it. Some cases indicate that the *appearance* of bias, rather than actual bias, disqualifies the board member or commissioner.

Following are types of acts that have been found to constitute bias: (1) ex parte contact with board or commission members;¹ (2) making public statements or authoring letters regarding a particular case prior to the case coming before the board or commission;² (3) paying expenses of board member to make a site visit; (4) vote-trading; (5) soliciting persons to testify for or against a permit or application and (6) gifts given to influence a vote.

It is recommended that commissioners keep an open mind. Commissioners should judge the permit or application based on whether it meets the standards in the borough code or other applicable law or policy which the board or commission is expected to apply. Commissioners should not make conclusory statements on or off the record about someone's application or permit before the close of hearing and the matter being turned over to the board for discussion and decision. Commissioners should ask the applicant, interested parties, and staff questions about the permit application and how it relates to the applicable standards. Planning commissioners should explain their reasons on the record for voting for or against an application. The reasons should relate to the applicable standards.

If a commissioner feels strongly about an individual permit one way or another so that the commissioner cannot keep an open mind and apply the general standards to the individual application, the commissioner should recuse himself from voting.

If a commissioner has made statements that indicate prejudgment of an individual permit or application, those statements should be declared on the record and the commissioner should indicate that he has an open mind and will still apply the applicable standards to the permit or application. Caution: Whether this will cleanse the bias will depend on how strong the statements made were, when and where they were made, and how controversial the particular permit or application is. Since even the "appearance of impropriety" should be avoided if statements indicating bias have been made it may be in the best interest of the decision-making process for a commissioner to recuse himself even if he thinks he can still be fair and impartial. Recusal will best protect the decision's credibility and avoid reversal on appeal based on bias.

¹ Ex parte contact occurs when a commissioner has discussions or correspondence with a party interested in a matter pending before the board outside the application and hearing process. While such private contacts are appropriate and even encouraged in advisory and legislative matters, such contact can fatally undermine a fair hearing process in a quasi-judicial matter.

² Please note that even when the remarks were made prior to the commissioner or board member's appointment, they may still constitute bias. Also, a letter written or statement made in an individual capacity, rather than as a commissioner or board member, showing prejudgment of a particular case may still result in disqualifying bias.

8. When should a planning commission member recuse themselves due to a conflict of interest?

Conflict of interest differs from bias. Bias is prejudgment of an issue pending before the planning commission, i.e., the potential inability to keep an open mind. Bias is not governed by any statute or ordinance. The borough has an ordinance governing conflict of interest which occurs when a planning commission member or an immediate family member has a financial interest in a matter pending before the planning commission. KPB Chapter 2.58 disallows a planning commissioner from entering a contract with the borough unless certain code requirements are met which involve filing a "notice of intent to do business" form with the borough clerk ten days before entering the contract disclosing the conflict, the nature of the business relationship, and specifying the department involved in the contract. Filing a notice of intent to do business, however, does not allow the affected member to vote on a matter where the member has a substantial direct or indirect financial interest in a matter pending before the board. A substantial financial interest is a pecuniary or material benefit accruing as a result of a private, business, or professional transaction with the borough. A planning commissioner is deemed to have an interest in the business affairs of your spouse, spousal equivalent, minor children or dependents, certain companies of which you are a member, employee, officer or director, or if you own more than 5 percent of the stock of a corporation. There are exceptions to the "substantial financial interest" provision including (1) where the planning commission member is only deemed to have an interest because they are an officer or employee of the contracting entity but their pay will not be directly affected by the contract and their duties do not directly involve obtaining, preparing for, or performing the contract duties; (2) where the contract was entered before the planning commission member's appointment, but this would not authorize renewing the contract; (3) where the only interest is stockholdings and the stock is listed on the NY or American stock exchanges or less than 5 percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the official; and (4) a contract or sale where the total amount paid during the fiscal year does not exceed \$100.00.

Conflict issues are often not crystal clear. There are times where a conflict issue may be raised either by a commissioner about himself or by someone else about a commissioner. The chair can rule on whether the planning commission member has a substantial financial interest or refer the question of the commissioner's participation to the planning commission for a determination. If it is ruled that a commissioner has a conflict because of a substantial financial interest he must not vote on the issue.

From: kcbaker@kcbakerlaw.com
Sent: Tuesday, March 19, 2019 1:16 PM
To: Wall, Bruce
Cc: 'Emmitt Trimble'
Subject: Beachcomber - Applicant's Request for Continuance

Due to unforeseen issues the Applicant requests a continuance of the March planning commission hearing scheduled for its conditional land use permit. The Applicant has not requested a prior continuance. The Applicant is prepared to attend either the first or second planning commission meeting in April.

Best, Keri-Ann

March 12, 2019

Angela Roland
4014 Ben Walters Lane C6
Homer, Alaska 99603
angelaroland@gmail.com
(907) 231-1502

Planning Commission Chair
144 N. Binkley St.
Soldotna, AK 9966

RE: CLUP for Material Site, Beachcomber LLC, Parcel Number 169-010-67, 74185 Anchor Point Road

Dear Chairperson,

I own property in the area and I enjoy the peaceful serenity of the Anchor River with the State Parks' camps that are situated on Anchor Point Road. I enjoy riding my bike from the bridge all the way to the end at the beach. I love to ride through the Halibut Campground near the proposed pit, then back up Anchor Point Road.

I read KPB Code 21.25 and 21.29 for the CLUP. Even though they are extremely lacking in substance for such a sensitive environmental habitat, I am strongly opposed to this permit for the following reasons:

1. It will create an unsafe roadway with gravel trucks going up and down the road all day. In the summer it's a congested area with tourists (who don't know where they are), RVs, campers, and boats, pedestrians, strollers, dog walkers, and bicyclists.
2. Gravel flies out of gravel trucks and breaks windshields.
3. The environmental damage to the area - Erosion is bad enough already in the area, and we don't have any information on the impact on wildlife. The dust will be awful - air quality will be diminished.
4. The roads are narrow and have plenty of pot holes and ruts. Heavy, loaded dump trucks will make it much worse.
5. The noise of the operation – digging, loading trucks, equipment running, dump trucks going back and forth within hearing and view of my property.
6. Decreased property values.

I am opposed to this permit. Thank you for hearing my comments.

Sincerely,

Angela Roland

From: Deena Benson [mailto:nosnebaneed@gmail.com]

Sent: Sunday, March 17, 2019 1:45 PM

To: Best, Max <MBest@kpb.us>; G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>; Planning Dept, <planning@kpb.us>

Subject: Anchor Point Conditional Use Permit

Planning Director Max Best and KPB Planning Commission;

This letter is in regards to the 15 Year Conditional Land Use Permit for Beachcomber LLC that is being considered at the March 25th KPB Planning Commission meeting.

I am a resident of Anchor Point. I encourage the Planning Commission to vote NO on this permit.

I have studied the map of the **location** of this proposed conditional use permit to extract gravel over the next 15 years. Anchor Point State Park adjoins this property!

The economy of Anchor Point is already struggling. Our biggest asset and best course for recovery is visitors to our community who recreate in our State Park.

The fishing charters and personal boats launched from the State Park that adjoins this proposed gravel pit are a large draw during the summer season. Gravel pit equipment noise, trucks on the roadway from 6AM to 10PM will certainly disrupt the peaceful beauty of our park visitors and drive them away. Access to the proposed gravel pit is questionable as well.

Anchor Point Beach Road is already too narrow, in abysmal repair and funds for maintenance are non-existent. Gravel trucks on that road will further damage it, making it difficult, at best, for recreational traffic to access the State Park.

A gravel pit will NOT bring prosperity to our community, but only to one party - the owner of the property, Beachcomber LLC. Please encourage the land owner to develop their property in a more meaningful way that will bring them income AND enhance the economy of our community.

Thank you for voting NO on this proposed permit.

Deena Benson

nosnebaneed@gmail.com

PO Box 243, Anchor Point.

Planning Commissioners:

In 1972, Emmitt and I became Alaska residents and in 1975 we bought a homestead near Homer and started the process of creating homesites for the other newcomers. In 1976, we bought a tourist business on the Anchor Point Beach Road, living there for 3 years while also investing in other properties in the area and continuing our business of developing land. We created around 150 parcels for people wanting to live or invest in a small town near the Anchor River and Cook Inlet Beach. It was possible partially because of successful gravel businesses and related jobs that were an integral part of the Anchor Point economy then, and are even more important to our town today.

We take pride in what we have accomplished in our many years here and that we have managed to survive the ups and downs of the economy. Emmitt and I currently own 32 parcels of residential land, 9 residential homes, 1 commercial building and 9 commercial properties for a total tax assessed value of \$3,210,900. In 1991, we started Coastal Realty in order to help others buy and sell real estate. Preserving property values is important to us. We are obviously heavily invested in Anchor Point and we care about the town. We raised our family here. We have one daughter, who is building homes in Anchor Point, and her young family who live adjacent to the proposed material site who will benefit from the CLUP.

We purchased the McGee Tracts in 2015 after managing it for many years. We immediately cleaned up 20 acres of stumps and slash piles to make it the beautiful green pasture for our horses that the neighbors enjoy and want to claim rights to. We also opened up a small bluff area on Denver St, across from a PEU pit, where we found and exposed gravel and built a pad in order to access and use the gravel. It was obvious to anyone passing by what we were doing. Interestingly, at least 7 people that bought their property after seeing that small pit and not inquiring about it, are now opposing our project.

We are long standing members of the National Association of Realtors. The Realtor Code of Ethics, which we abide by, states that we are to "recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership." Highest and Best Use is defined as the likely use, selected from a number of available choices, to which an area of land may be put, based on what is physically possible and in compliance with zoning and regulations and which produces the most profitable present value of the land and likely to produce the highest return to an investor.

KPB 21.29 attempts to balance a variety of public needs, including residential area protection, a private party's right and ability to use their land to its highest and best use, and the public's need for gravel. Whether one agrees or not with KPB 21.29, it is the law and standards that control what the Planning Commission can or can't do. This is about ensuring there is a fair process that abides by the existing code. If a governmental body acts in violation of the code or statute the rule of law is undermined and that is harmful to the overall democratic process.

There has been testimony and letters from the "organized opposition" containing hearsay, inaccurate, untruthful, unsubstantiated assertions about our application, the neighborhood, and issues unrelated to the code and potential effects that may or may not result from our mining project. It is disturbing the lengths some people have gone to – gross exaggerations and disparaging remarks about us and the Borough. Claims that fishing and tourism is the life blood of Anchor Point and that the town would dry up without it is simply not true. It is a huge insult to the many year round hardworking people and businesses such as the grocery stores, restaurants, gravel businesses, contractors, thrift and pawn shops, gas stations and more that are the real contributors.

This has been a very costly and unpleasant experience for all concerned, much of it unnecessary. The process is obviously flawed as shown by the fact that unsworn testimony containing unsubstantiated claims can sway the Planning Commission to go against the code, the professional staff recommendations and the borough attorney's opinion. It is a fiduciary obligation of the Planning Commissioners to thoroughly read and listen to what is presented, dismiss any irrelevant information, and make an informed decision based solely on the code and substantiated facts.

With the CLUP we will only be a small "Mom and Pop" business and are not intending, able or willing to even try to compete with the large operations. It just isn't practical. The 27.7 acres that would be permitted, less the buffers, is actually less than 20 acres and is planned in 3 phases and will be reclaimed as progress is made as stated in our application and is required by the state. As mentioned before, our prime use for the gravel will be to improve our other properties and sell some gravel to the limited local area market.

We believe in "Rights with Responsibilities" and this is a situation where we are agreeing to take on responsibility in exchange for the right to excavate gravel on our property. The "opposition" wants the right to protect their property but are unwilling to consider/accept the fact that they have a responsibility to do what they can to minimize visual and noise, if it is bothersome, by building a fence or berm on their property and/or installing blinds that raise up from the bottom so they still have their Inlet view. They do not have rights to our land, so we should not bear all the responsibility for mitigating their perceived discomfort for how we use it.

We are responsible stewards of the land, we have a good track record of that, and believe we have a right and duty to use our property in a responsible way that results in its "highest and best" use. Our commitment to putting the berm closest to the excavation site, as suggested in the staff report, will eliminate any visual issue that the few neighbors might have, that are at a higher elevation.

This unique parcel is a legacy property for our family and we desire to build a home on it. We would like to continue improving it and other properties we own but in order to do that we need the CLUP so we can use the gravel resource this property contains.

So, this is who we are and what we are about. We want a future here for our grandchildren. We are builders/constructors, who have spent a life time building and now are up against destroyers/destructors that want to impede or stop legitimate development and accept no responsibility for mitigating their perceived issues on their own property.

At this hearing on the 25th, you will again be bombarded with the same type of rhetoric you have heard before - emotional testimony with unsubstantiated claims from the same people and those they have recruited who are uneducated to the facts of the code. They are sure they can overwhelm you again and you will believe them again. It is the responsibility of the Planning Commission to abide by the borough code when it is complied with, by the Applicant, Beachcomber LLC.

Respectfully submitted,

Mary Trimble, Trustee

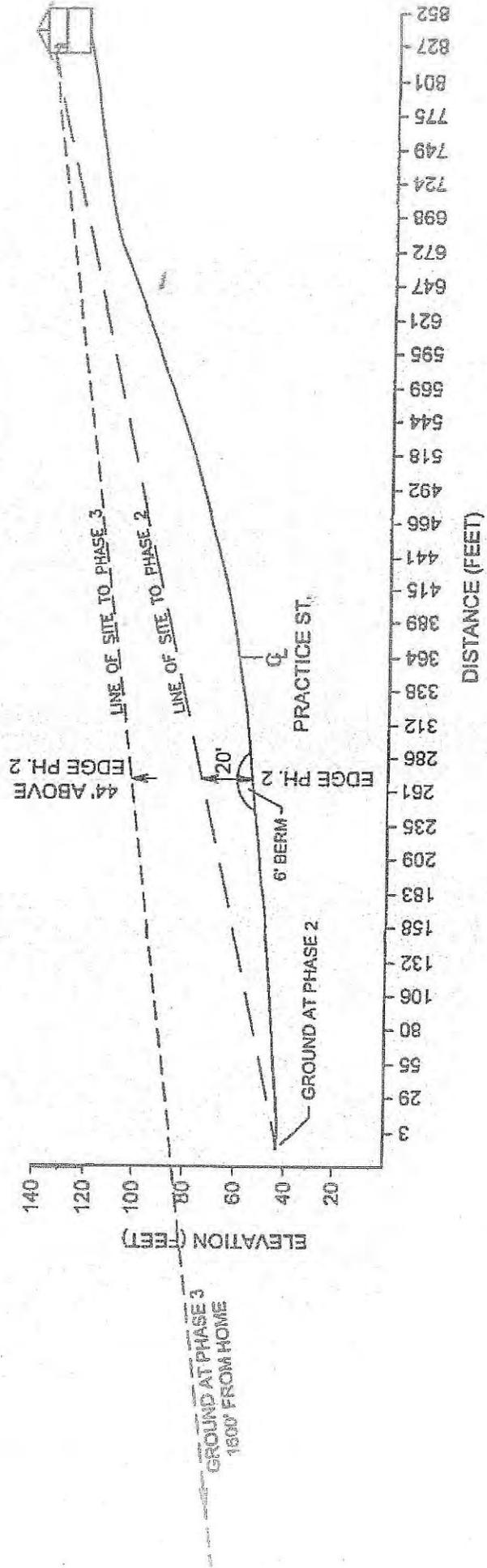
Beachcomber LLC

There is an elevation map in attached that clearly shows that the subject area is not akin to a bathtub or an amphitheater.

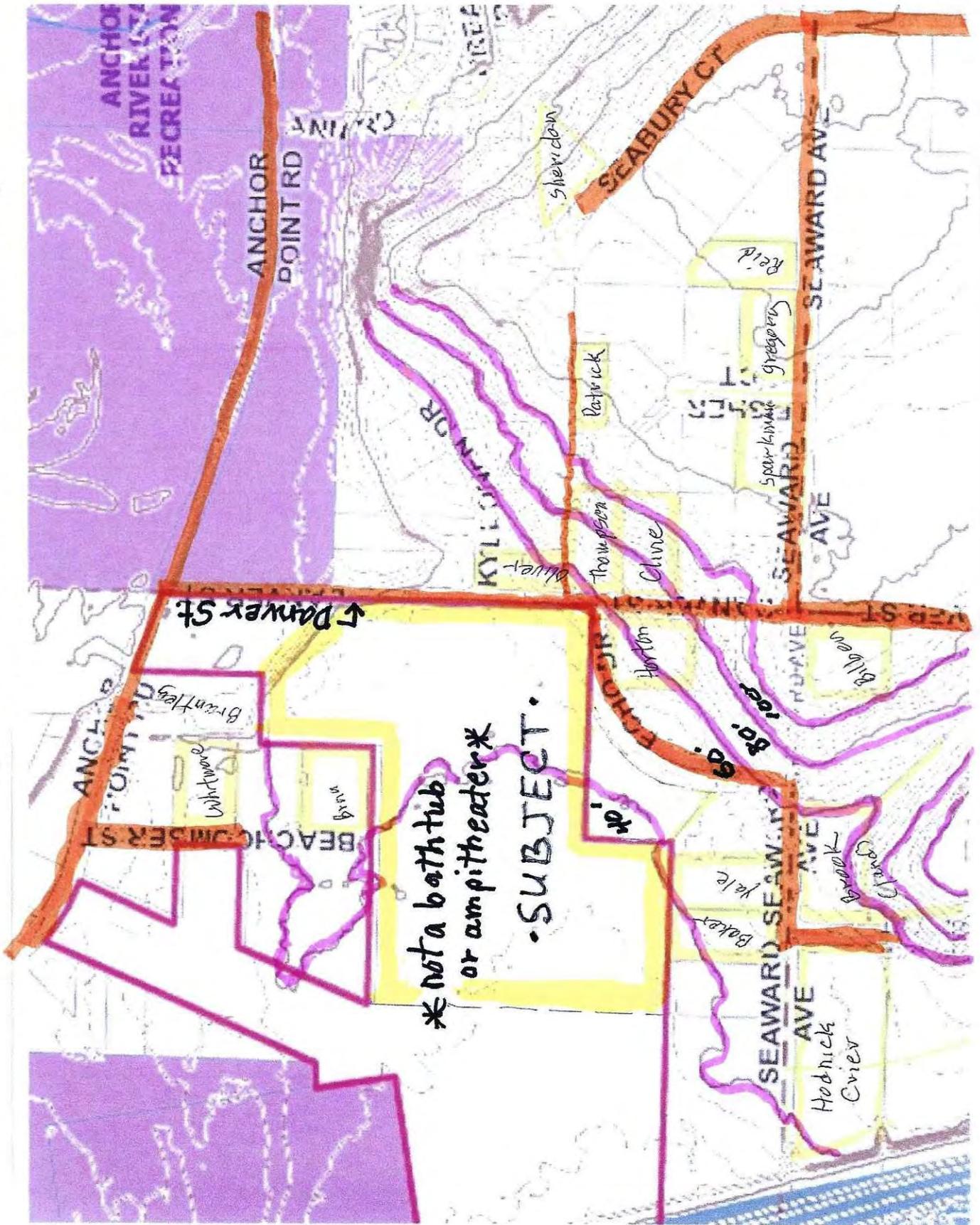
Also, in your packet is a drawing submitted and created by members of the opposition that intends to show that a 6' berm at the property line would do little to minimize visual and noise impact, when in fact the staff recommendation (see #14G and J) is to place a 12' berm between the extraction area and the vegetative buffer which will effectively minimize sound and visual impacts.

SAMPLE

PROFILE (From KPB LIDAR)



Beachcomber LLC Contour Map



*not a bathtub
or amphitheater*

•SUBJECT•

From: Hans <catchalaska@alaska.net>
Sent: Tuesday, March 19, 2019 11:20 AM
To: Wall, Bruce
Cc: Dunne, Willy
Subject: Beachcomber comments

To Planning Commission Members:

Emmit Trimble always likes to talk about all of the stupid neighborhood people who purchased view property (often from or through his company) next to an operating PEU gravel pit. The listing below is that “operating” pit. Think he might be stretching the truth just a bit... We purchased our land on Denver Street in 2003 and since then the owner of that property did some landscape work and made the “lake” deeper, but there has been no commercial mining there since we bought our property 16 years ago. Denver Lake Retreat, as it is now called, was the only property on Denver Street that had visible signs of gravel mining, it is less than two acres, and it was for all practical purposes mined out decades ago.

One thing Trimble points out in his comments is absolutely the truth—this area is a historical gem. Since the days of Captain Cook white settlers and adventurers have moved through here and prospered. Prior to that time there is evidence that Native populations spent time living on this very parcel that he wants to turn into an industrial gravel mine. Archeologists have confirmed that this parcel is rich in history, and contains both artifacts and burial sites.

The mentality of a person who would permanently disfigure this historical gem in the middle of what has now become a residential area in the middle of a recreational Mecca becomes apparent through his words and his actions. In his comments he advises existing neighbors overlooking his “mine” to invest in heavy insulated blinds if they don’t want to see his atrocities—I think that’s his idea of a “good neighbor” policy! One common complaint about gravel pits is that they eventual become dump grounds and depositories for any number of unwanted, or undesirable commodities. Well, it seems that Trimble isn’t going to disappoint anyone there. The bottom picture is taken from Denver Street looking west at his land. The pile you see was deposited by Trimble last year and you can see what a good steward of the land he is by the contents—got old crab pots and other crap to get rid of, that’s easy, just dump it in the “pit”!

Yes, the KPB Code spells out conditions that are required for issuance of a CLUP, and what I have written here addresses none of them! My point being that there are hundreds of legitimate reasons to not allow a gravel mine that is so detrimental to neighboring property owners and to the thousands of visitors who come to this area every year—BUT—the Planning Commission has the authority, and the mandate to stop this ill conceived project by recognizing and enforcing the conditions of KPB 21.29.050 which can not be achieved with improperly designed buffers and berms.

Jeanne Bilben
35039 Denver Street
Anchor Point

COASTALREALTY



[★ Save Property](#) [i More Information](#) [Mortgage Calculator](#) [Printable Fly](#)



17A-18A Denver Lake Retreat

Anchor Point, AK 99556

1.860
ACRES

16-10160
LISTING ID

Listing office: Coastal Realty

[View Photo Gallery \(26\)](#)

[Share Property](#)

Rare property ready for your dream home overlooking a Private Lake!



Philip J. Brna
5601 E. 98th Avenue
Anchorage, AK 99507
(907) 346-2131

March 19, 2019

Planning Commission Chairman
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669

Via email to bwall@kpb.us

RE: Comments on Conditional Land Use Permit for Material Site; Beachcomber LLC; 169-010-67; Remand on Appeal

I am again providing comments on the referenced Land Use Permit application. I originally provided comments on July 12, 2018 and I testified at the Planning Commission Hearing on July 16, 2018. I also filed notice in support of the original Commission decision in response the applicant's appeal.

First, I want to note for the record that I am disgusted with the KPB gravel pit regulations and the actions of Planning Department staff. The regulations and the process are stacked against adjacent property owners and meaningful public comment in favor of gravel pit developers. The regulations do little to protect property values or uses adjacent to gravel pit locations. Many property owners go outside in the winter, and they are therefore unable to fully participate in hearings or meetings. Additionally, Planning Department staff have been less than honest with adjacent property owners.

I am opposed to development of a material site and approval of a land use permit at this location. I request that the KPB deny the permit application.

I am the owner of the residential parcel (PID 169-022-08), which is immediately to the north of the proposed processing area and which is bordered by the proposed material site on two sides.

I purchased this property in 2001 and installed an access road and pad several years later. My intent was to build a cabin at this location when I retired and spend a good portion of the year there. I fully retired in 2015, and I began investigating building a cabin on my property at PID

169-022-08. However, I put those plans on hold when I first heard about the proposed gravel pit. I discussed this with the applicant's daughter who told me that her parents had no plans to develop a gravel pit. At about the same time the applicant began mining gravel on a portion of his property.

I offer the following specific comments with regard to compliance with Borough regulations at 21.29.

1. According to KPB 21.29.040.A, "These material site regulations are intended **to protect against** aquifer disturbance, road damage, physical damage to adjacent properties, **dust, noise, and visual impacts**. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards: 1. Protects against the lowering of water sources serving other properties; 2. Protects against physical damage to other properties; 3. Minimizes off-site movement of dust; 4. Minimizes noise disturbance to other properties; 5. Minimizes visual impacts; and 6. Provides for alternate post-mining land uses." These regulations are internally inconsistent in that they are intended to "protect against dust, noise and visual impacts," yet the individual standards only require off-site movement of dust be minimized, that noise disturbance to other properties be minimized, and that visual impacts be minimized. Therefore, in my comments which follow, I will focus on the more stringent requirement which is "**to protect against**."
2. Approval of the proposed material site application will preclude me from building a cabin because of noise, dust and visual disturbances which is contrary to the regulations. Nothing can **protect** my property other than no gravel pit. Additionally, a material site will significantly diminish my property value and will impact my ability to sell this property. Development of a material site at this location effectively constitutes a taking of a significant portion of my property value and my enjoyment of this property. Imposition of the conditions set forth in the regulations are not sufficient to **protect** my property.
3. The idea that construction of berms or retention of vegetative buffers, as required by the code, can protect my property or other adjacent properties against the noise, dust, or visual effects of a gravel pit is ludicrous. The only method available to mitigate the adverse effects of noise, dust, and visual effects as required by the code is no pit or increased and adequate distance. In this case increased distance is impossible which leaves only the no pit alternative.
4. The proposed onsite processing area is located 200 feet south of my parcel 169-022-08. I disagree with the statement in the public notice that my parcel is "undeveloped." I have constructed a road and building pad. I have not proceeded with construction of a cabin because of the threat of gravel pit development. I am caught in a "catch 22 situation." I would be an idiot to build a cabin for spring, summer and fall use, which is exactly the period of time when gravel would be mined. I also note that while I presently do not camp on this parcel, I do let friends camp there during the summer, and I camped there many times in the past.
5. According to KPB 21.29.050.A.2.c, "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." As I previously noted, I put my cabin construction plans on hold because of the threat of gravel pit development, but I did construct a road and pad, and friends camp on my property. Therefore, my recreational use of my property has proceeded the application for a gravel pit, and therefore buffer waivers are not appropriate.

6. According to KPB 21.29.050.A.3, "In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time." The planning commission should not waive the 300-foot processing distance requirement from my property boundary because it would further preclude my use and enjoyment of my property. As mentioned in the previous paragraphs, my use of my property has proceeded the gravel pit proposal.
7. According to KPB 21.29.050.5, "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." Compliance with this condition cannot presently be determined because the applicant has not yet gathered the required the required data or conducted the required studies.

I also offer the following additional comments.

1. This is a residential and recreational area and it is inappropriate for the KPB to allow development of a material site at this location. A material site will significantly impact property values and use and enjoyment of residential and recreational property, including the Anchor River Recreational Unit, a part of the State Park System. A material site will conflict with existing residential and recreational use of the area.
2. There is considerable recreational use of the Anchor Point Road and Denver Street by people, including children, walking, running, walking dogs, bicycle tours, and riding bikes in the summer. Use of these roads by gravel trucks is a disaster waiting to happen.
3. Relative to the effects of a gravel pit on adjacent property values, I am no expert on this subject. However, I wonder how many planning commission members, borough staff,

- or anyone in their right mind, would purchase property or build a cabin adjacent to an active gravel pit which is allowed to operate between the hours of 6:00 am and 10:00pm for 15 years? If there is anyone, I would be happy to sell them my property.
4. I believe the material site contains historic and archeological resources of concern. There is an old homestead wagon road on my property which goes on to the material site property. I have observed house and cache pits on the material site property in years past. I have heard there are also old graves on the property. I believe the Borough should further investigate this issue.
 5. If the applicant had decided to subdivide his property and put in residential lots, no one would have said anything. We could all live and recreate in peace, and we would have all saved a lot of money and aggravation.
 6. The staff report was posted to the Planning Commission website on March 18, 2019 (or that is when I first saw it). I have not had adequate time to review the 332 page report. I do know that it contains one report on the effects of material sites on adjacent property values. A quick glance at the report titled "Quarry Operations and Property Values: Revisiting Old and Investigating New Empirical Evidence" by Ford and Seals, leads me to believe this paper was not published in a peer reviewed, scientific journal and that is a propaganda piece for the industry. I further note that one of the studies cited in the report was related to a material site about 3 miles from several subdivisions, and not 300 feet. I have not had time to research this issue, and it is likely that other studies might show that material sites have a detrimental effect on adjacent property values. I can also say that I have absolutely no confidence that bought staff has adequately researched this issue.

Thank you for taking my comments under consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Philip J. Brna". The signature is written in a cursive, flowing style.

Philip J. Brna

To: KPB Planning Commission
From: Linda and Mike Patrick, Anchor Point parties of interest
Subject: Proposed Beachcomber LLC gravel pit
Date: March 18, 2019

*?? Notice From Planning Department: Planning Commission will approve permit and it includes the gravel processing area previously denied? Should we even bother to write this? Has the Commission considered getting input from **the Anchor Point Advisory Commission, which is now functioning with a quorum?** I am sure they have not had time to thoroughly read the 300+ pages just put out. I would guess that the other parties of standing won't have ample time to digest it nor will the Planning Commission themselves have the time.*

Aquifer Protection: We would really appreciate some expert opinion (Hydrologist) to verify no damage to water table and natural springs in the immediate area. I am sure you are all aware of the existence of the spring fed water system that is in the area. How about a clear determination of seasonal water levels?

Physical Damage to Adjacent properties (*Big question here*) Two real estate representatives told us that our property will be devalued. The first was Emmitt Trimble of Coastal Reality. To verify that he was being truthful, I had a property evaluation done by Kachemak Realty on our house and two lots. The agent estimated a 30% reduction in value because of a pending gravel pit being so close, compounded by it being located in direct line with the spectacular view. **Estimated damage to our properties \$140,000. Who would be responsible for this damage? KPB or Beachcomber LLC?**

Road Damage: **All traffic**, homeowners, tourist, campers, fishermen, people on foot and bicycles have only one route here. (River Road & Denver Rd) Has the Planning Department obtained written assurances from DOT that Anchor River Rd is safe for this heavy commercial traffic and that its already crumbling surface will not be destroyed by this large increase in heavy vehicle traffic? Also, has the Planning Department presented an estimate to you of the cost for increased grading and repair for the Denver Rd. in the area of the pit entrance and the intersection with Anchor River Road? Has the Planning Department requested additional money for warning signs and modifications to Denver Rd to allow dump trucks to make the turn off of and on to Anchor River Road without crossing into oncoming lanes?

Noise is defined as an unwanted sound. Do any of you want the sound of a fully operational gravel pit in your neighborhood? I am going to guess that 99% of you don't want it were you live. Therefore, gravel pits produce noise. No matter how you craft your legal language this pit will bring noise to this Anchor River residential, recreational, tourism area. (Imagine camping next to an operating gravel pit.) The

pit will be a point source of noise and dust, while operating gravel trucks will be a mobile source of noise and dust that will move through much larger areas of the neighborhood. There is only one route to this proposed pit location, it is also the only route to tourist attractions at the beach, public and private campgrounds, beach launching for fishing charters and to our homes. This route also has foot traffic and bicycle traffic. In addition, these mobile platforms, average width at the mirrors is 9.5 ft., will move down a road that is narrow, with no shoulders, and literally crumbling apart. These trucks will then turn on to a gravel road that requires frequent grading by the Borough with just normal community traffic. (Note: you wouldn't believe the noise the grader makes.) These mobile sources of noise will also add **Particulate Matter** to the air as they travel on Denver Rd. They will add **PM** all along the route including the Old Sterling Hwy. (Note: Old Sterling Highway has a very steep grade, many sharp curves, several driveway entrances and intersections, little to no shoulders, and several homes lining the road.)

This area of the Peninsula's coast provides natural land contours, cool moist air at sea level, and wind. These conditions serve to increase the speed and amplitude of sound. The commission is aware of the phrase amphitheater effect in verbal and written statements submitted to you. Noise that escapes the pit will reflect off of the hillsides above the 44ft pit level (Note: land around the pit site rises up to over the 100ft level.) these hillsides provide large sound amplifying structures. The unwanted sound, AKA Noise, will reflect off these hills, off houses located there and even tree trunks will contribute. When the noise reflects it will collide with other sound waves causing constructive interference. *This type of interference will serve to amplify other sound waves, which increases the noise level. These factors explain why noise will not be minimized.* This noise will become even more disturbing with the added noise of the mobile noise emitting diesel-powered dump trucks. Don't forget the haul trucks high frequency back up beepers, we can all agree they are truly unwanted sound.

Why don't we talk about negative health effects of noise and dust? Ask your planning department to provide you with data on this subject. Check out the web and see what the AK DEC says about dust in rural Alaska. Read up on the new name for dust, Particulate Matter, especially, *PM_{2.5} and PM₁₀*. Did you know that diesel engines are major producers of PM_{2.5} and that it can transport in the air 30 to 100 miles? In addition, both of these PM's when breathed in can be very harmful, particularly to children and older people.

Questions:

1. Are there any old people that live near the pit?
2. Can short-term exposure to these particles be harmful?
3. If somebody camps near a gravel pit for a few days can it be considered a short-term exposure?
4. Is there an elementary school located within 2 miles of this pit site?

5. Are there daily sea breezes that blow up the river that are capable of carrying PM to the Anchor River Inn, Chapman School, Dental Office, Trooper Station, New SVT Health Clinic, Blue Bus, Ramiro's, Warehouse Store, *Costal Reality*, and the thousands of people who travel to Homer in the summertime?
6. Will the pit negatively affect 100's of people or 1000's of people? **By the way, how many pits are concentrated in the area?**
7. Will the noise and dust nuisance affect the moose, eagle, gull, and magpie populations?
8. Will the pit have any negative affects on the nearby Anchor River or the microorganisms along Cook Inlet?
9. Is there anything remarkable about the location proposed for the Beachcomber pit?

10. Have any of the commissioners visited this site to gather first hand impressions of what our objections are? Please come. People here would appreciate your interest. Break bread with us, look at where we live, maybe you will understand why we are committed to this issue and will not give up.

11. Do the material site codes protect the people who live here from the negative affects of gravel pits or do they just protect the gravel pits from people who just want to live here? (Hint: How many permits have been approved vs. denied?) THE PIT IS MOVING INTO AN EXISTING NEIGHBORHOOD. THE PIT IS THE NUSIANCE THAT THE COMMISSION AND THE ASSEMBLY ARE REQUIRED TO PROTECT RESIDENTS FROM!

21.29.040 A States the following:

These material site regulations are **intended to protect against** aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. The next statement, in my opinion, is absurd in the real world. "Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:" This statement implies that every physical location on the Kenai Peninsula has the same characteristics. **It is very safe to say that the Peninsula is not identical in terms of topography, wind currents, temperature, soil content, infrastructure access, population density, recreational opportunities, tourism, etc.... Perhaps this is why KPB has a material sites committee investigating the code. Maybe the ASSEMBLY should not allow any new pits to be grandfathered in until this process is completed and thoroughly reviewed by all interested parties.**

I applaud the Planning Commission for recognizing immediately in the first permit review of the Beachcomber pit request at this location is not feasible for gravel mining. This location does not permit the **intent to protect concept** of 21.29.040 to be carried out, the laws of physics cannot be denied when it comes to light (visual) and sound. Basically, all you need are eyes and ears to gather data on these two areas of concerns. The Commission was presented with hours of testimony and 100's of pages of objections presented in advance by parties of interest who have both the eyes and ears to collect data on sight and sound. The planning commission was correct in its conclusion. The decision was sound and based on solid testimony and written submissions of persons with standing in this matter. If these presentations, both written and oral, don't have legitimate standing, why is this process even here? Is the KPB legal advisor working with the commission or against it?

Paradox: Where is the data that supports the pit will not impact this area as per the six areas of protection? Yet they argue the pit permit must go forward because the motion was not worded correctly, not because the Planning Department has gather sufficient data to insure the protection that is supposed to be provided by 21.29.40. A paradox exists when the hypothetical solutions of 21.29.50 can't account for real observations. The topography of the land is a major factor that won't allow protection from visual and noise impacts to the neighborhood. The topography and prevailing sea and land breezes will drive PM into our homes, parks, businesses, school, and health services. Show us the research and data that this won't happen. At least show us how these concerns were investigated. You should have to convince the citizens not the other way around! Now, the Pl. Department has informed us that the permit will more than likely be approved at the next hearing in advance of the hearing and that the rock processor that was denied at the last hearing is back in. Wow, now more noise is being added. **Why did KPB send out letters to notify people and entities that a permit was being sought and if you had objections come forward? Apparently, pit permits can't be denied and therefore the people have no say in their own lives!**

According to a 2006 public document from Dibble Creek to then Mayor Williams of the Kenai Borough, once the permit is issued the Borough becomes liable for the protections in 21.29.040. If gravel pit interests say you are liable for what they might do, then you have the right to say no on our behalf because we, KPB, can't provide protections to the people of Anchor Point at this particular location due to special circumstances. Take some time to answer some of the questions we have asked. It might help you define specific reasons. **Please! "Do the right thing."**

Respectfully Submitted,

Linda and Mike Patrick

From: Mark <msberger@horizonsatellite.com>
Sent: Tuesday, March 19, 2019 9:10 PM
To: Wall, Bruce
Subject: Gravel Pit near Danver road

Hello Bruce,

I'm writing with regards to the Danver Road gravel pit application.

The proposed gravel pit goes against borough codes for a conditional land use permit. The buffer and berms would be inadequate against dust and noise, on top of being a eyesore to residents that live nearby. Residential property values would decline if this gravel pit were granted. I urge you to stop this project from happening.

Respectfully,

Mark Schollenberger
69195 Karen Circle
Anchor Point, AK 99556

3/18/19

RE: Anchor Point Beach Access Road

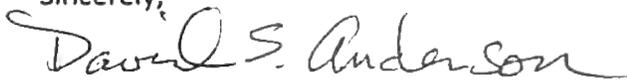
To whom it may concern:

I am a lifelong Alaska resident, born 4/1/1954 in Fairbanks. In 1979 I purchased property off the North Fork Road. Before the bridge was built crossing the Chakok River, I built a small log cabin with my land partner, crossing the river by walking across a fallen cottonwood tree and hiking a mile to the cabin site. Obviously, Anchor Point has changed a lot since then.

I'm now very concerned about a gravel pit being planned off the beach access road near the mouth of the Anchor River. The road from the Anchor River Inn to the beach is heavily used throughout the year, and especially in the summer by families, fishermen and local residents. It provides access to the beach, several campgrounds and residences. The road is narrow. And though paved, is not a road that should be used by heavy truck traffic.

The gravel pit proposed by Emmitt and Mary Trimble, and the resulting large truck and excavating equipment traffic, poses a hazard to visitors and residents who visit, fish, camp, and live in the area. I would encourage the Planning Commission to deny a conditional use permit for excavating and hauling gravel and fill in this area. Thank you.

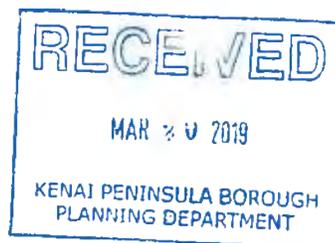
Sincerely,



David S. Anderson

PO Box 475

Anchor Point, AK 99556



From: Sandy Cullip <buffycody@msn.com>
Sent: Wednesday, March 20, 2019 6:10 PM
To: Wall, Bruce
Subject: Emmitt pit application

This is gary and sandy cullip at the end of seaburry. we own 2.5 acres over looking the site where the proposed pit is located. There is no way you can issue this permit as there is two conditions that no way can be met. The noise and visual parts cannot be met for any of us many property owners so please pay attention to the current regulations for gravel pit applications as they are very specific as need to be met!!!!

Thank you gary cullip

Sent from my iPad



Dear Borough Planning Committee,
You are about to *reconsider* the permit for the Trimble/Danver gravel pit, to start operating right in the middle of our main recreation sight with world class steel head fishing, beaches, camping sites and small businesses, all related to recreational activity in Anchor Point.

By allowing this mining industry to go ahead, you would be, at the same time, condemning many other established businesses in Anchor Point to dismal futures. There are people, before Mr. Trimble and his pit idea that have put their savings into ventures of their own, related to the interests and betterment of Anchor Point. These businesses invite people into our town and utilize restaurants, food stores, bait shops, Air BNB's, Inns, campsites and boat launch. By allowing a mine to come into Anchor Point tells all these already established proprietors that what they envision for Anchor Point matters less to you than Mr. Trimble's enterprises.

We all know there are some businesses that are NOT appropriate or compatible operating next to others. A gravel pit like the one proposed is one of these types of businesses. A gravel pit operation does not stay within its property lines. Its affects go way beyond to miles around, i.e. noise, dust, water, esthetic pollution. What Anchor Point stands to get with this gravel pit is:

1. Large amounts of dust to our town as the wind blows which is pretty steady at the beach. (Certainly not a good place to be outside)
2. Pollution to the already vulnerable Anchor River without proper study and guidelines for the pit
3. Traffic problems and damage to road and bridge with huge gravel trucks traveling back and forth while boats head to the

beach for launch, also, more danger to pedestrians walking along the beach road who are utilizing the camping areas.

4. The bottom line of other businesses will be adversely affected.

5. Anchor Point will become a less desirable destination and you may as well head on down to Homer.

6. Loss of habitat for birds and wildlife in the area of the pit boundaries and way beyond the pit with noise air and water pollution.

Permits like this should not take a lot of thought or even a second consideration. As a resident of Anchor Point, I feel we seem to always be in defense mode just trying to maintain our quality of life from more and more gravel pits, Hilcorp drilling within residential areas, property theft, drug trafficking and now the possible closure of Chapman school. I feel like every other month there is something new we need to defend and protect our quality of life and homes against in this community and so far it really seems like we are not winning.

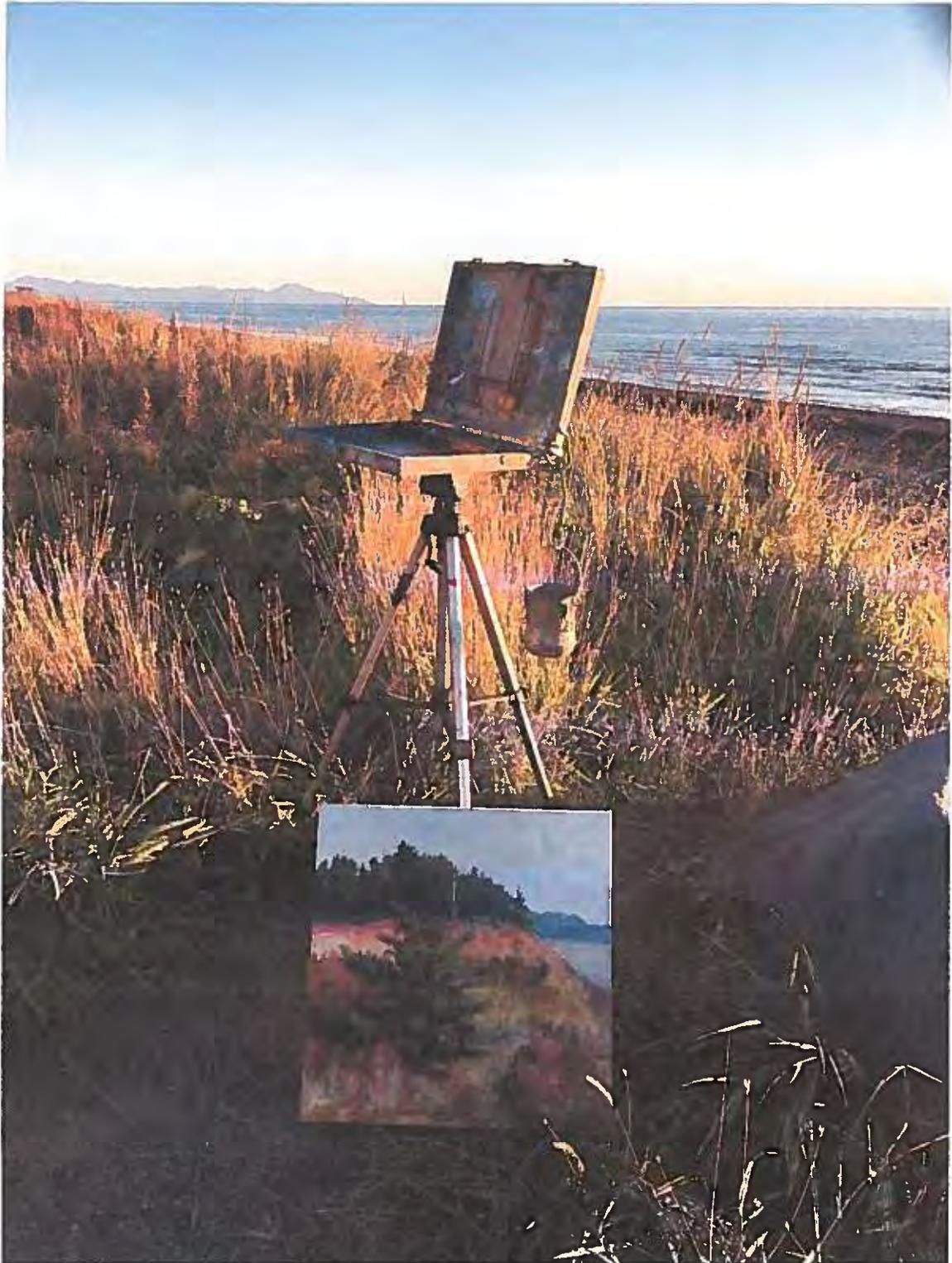
The decisions you make on this committee are very impactful to the viability and growth of Anchor Point. I have personally had second thoughts on my business idea and even whether to continue living here. I encouraged many other people looking outside of Homer for residency to join us in Anchor Point but they changed their minds, every time, because of the large amounts of gravel pits and drilling and the lack of authority we have as citizens of Anchor Point to do anything about it. Just because someone comes to the committee with an idea for a business like this does not mean it is good for the entire community or supports the community and other businesses. Do not allow this permit to go through and shut it down for future consideration once and for all. Do we really need ANOTHER gravel pit? Do a Google search and see what you

think. I think gravel is pretty well covered now in our area. Mr. Trimble, being a realtor, could develop this land a lot better than this or sell it and let someone else do it, and become an asset to the rest of the community instead of destroying acres and affecting the all the residents of the Anchor Point so adversely.

Anchor Point is full of good, hard working people who deserve better consideration from the committee when it comes to permitting. We like the beach, the river, quiet starry nights, great fishing and wildlife. We also want the chance to see our town develop with new, clean, businesses that do not destroy the environment.

I would just like to add; it is well known this area is a big draw for birders. There are large amounts of birds that migrate and nest in this area. People come year round to Bird. Every year there is an influx of 3 to 4 thousand people to Homer and Anchor Point during the Shore Bird Festival. Anchor Point Beach and marsh ponds along the Old Seward Hwy are ALWAYS highly recommended to those birders...gravel pits are not compatible to bird life and bird viewing.

Regards,
Lorri L Davis
lorrildavis.com



Preparing for a painting workshop
on Anchor Point Beach
(near proposed gravel pit)

From: Teresa Ann [mailto:tajg1234567@gmail.com]
Sent: Tuesday, March 19, 2019 5:33 PM
To: Planning Dept, <planning@kpb.us>
Subject: Anchor Point Danver rd gravel pit proposed by Beachcomber LLC

Kenai Peninsula Borough Planning Commission
144 N Binkley St Soldotna, Ak 99669

March 19, 2019

Greetings to the Planning Commission Members,

Regarding the CULP for Beachcomber LLC in Anchor Point Ak on Danver Rd.

As you can see from the map below it is pristine area filled with State campgrounds and Rv parks.

My husband and I live in Anchor Point above (100 ft above) the proposed gravel pit area. We are Alaska residents.

Before you again is the Conditional Land use Permit Application for sand, gravel and peat extraction of 25.6 acres over a 15 year period by Beachcomber LLC which is owned by the realtors Emmett and Mary Trimble of Coastal Realty Anchor Point.

We are Very Thankful that you listened to us at the first Planning Commission and denied this CULP permit to Beachcomber LLC. Since it is before you again we Hope You all will go thru each and every letter and picture and deny the permit again based on conditions that it is not possible to “minimize.”

Definition of minimize is:

reduce (something, especially something unwanted or unpleasant) to the smallest possible amount or degree.

Minimizes off-site movement of dust

Minimizes noise disturbance to other properties

Minimizes visual impacts

As for Code number 2.....

Protects against physical damage to other properties.

The our property value will decrease which is “physical damage” to each of us property owners.

This CULP permit will destroy our Anchor Point neighborhood, the State Parks and beach area of the recreation area of Anchor Point.

The Borough sent out letters to approximately 200 landowners and residents within a 1/2 mile of this area. There are numerous others to be affected from this devastation of the Anchor Point area.

Gravel operations run during the warmer days and summer time in Alaska as you all know. Permitted hours are from 6am to 10pm. These hours of operation in this area would shatter the Peaceful quiet and serene Beauty of this area all along the Anchor River and Anchor Point Beach area.

I have copied from the Department of Natrual Resources website about the Anchor Point Campgrounds.....

As Planning Commissioners under the Administration Planning Commission code
Ch 2.40.010
which says:

2.40.050. Investigation and recommendation authority.

The planning commission may consider and investigate subject matter tending to the development and betterment of the borough and make recommendations as it considers advisable to any department of the borough government and to the assembly. The commission may make or have made surveys, maps or plans.

(Ord . No . 73-34, §§ 1(part) and 2(part), 1973 ; Ord . No . 15, § 1(part), 1966 ; KPC § 20 .10 .005(e))

As I stated at the beginning I live 100 feet above this proposed Gravel Pit area.

On August 29, 2018 when Beachcomber LLC - Emmett and Mary Trimble Coastal Realty Owners - were using caterpillars to move the dirt on the gravel pit area i could hear the equipment running and the back up alarms very clearly from my deck and inside my house with the doors closed. I cannot "see" the pit area but hear everything. I can hear when he had dump trucks back into his area and drive away.

If you do not stop this gravel pit you will be changing the Anchor Point Recreation area forever.

A business and gravel pit owner needs to take the responsibility and the cost to provide a Environmental Noise Report to submit with their permit. Visual colored and drone pictures of the area they want to put a gravel pit and update drone pictures yearly for the Kenai Peninsula Borough to keep track of the pits and regulations. It should not be at the Boroughs expense but the gravel pit owners expense. If you research gravel pits are rarely denied in the Kenai Peninsula Borough. We need gravel pits but not in a recreational area or a pristine residential area. **There is access to gravel without destroying recreation areas and homes that people have worked all their lives to save for and retire.**

I Hope you will take the responsibility of your position as a Planning Commissioner of the Kenai Peninsula Borough and vote to DENY this CULP permit.

Thank you for reading and listening to our concerns for our Kenai Peninsula Community.

Teresa Ann Jacobson Gregory
PO Box 904 Anchor Point, Alaska 99556



GCI LTE 4:28 PM Personal Hotspot: 1 Connection
dnr.alaska.gov



Alaska Department of Natural Resources
DIVISION OF PARKS & OUTDOOR RECREATION

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Anchor River

State Recreation Area



The first written descriptions of the land and people of the Kenai Peninsula are found in the 1778 journals from the British sponsored expedition of Captain James Cook. According to legend, Anchor Point got its name when Captain Cook lost an anchor near the mouth of the river.

Homesteaders began to settle in the Anchor River area in the early 1900's. They came from Homer, to the South, and Kenai and Ninilchik, to the North, and survived by hunting, fishing, and farming. They were a hardy lot and many of them and their descendants still live in the area.

Wildlife abounds around the Anchor River, with moose, beaver, mink, bald eagles, a variety of ducks along the river, harbor seals, sea otters, and beluga whales near shore in the Cook Inlet.

Across the Cook Inlet from Anchor Point, three of seven volcanoes bordering the inlet can be seen: Mount Augustine to the South, then Mount Iliamna, and Mount Redoubt to the North. Mount Augustine's last eruption ended in March 2006; Mount Redoubt's latest eruption ended around July 2009. No eruption of Mount Iliamna has ever been recorded.

Anchor Point, where Anchor River State Recreation Area is located, is the most westerly point on the U.S. Highway System.

Driving Directions:

Take the Seward Hwy South, bear right at the Seward Cut-off onto the Sterling Hwy. Located at milepost 157 of the Sterling Hwy.



Mission Statement

"The Division of Parks and Outdoor Recreation provides outdoor recreation opportunities and conserves and interprets natural, cultural, and historic resources for the use, enjoyment, and welfare of the people."

Beachcomber Gravel Permit

To Members of the KPB Planning commission, and Planning Staff.

The gravel operation mentioned by name above has surely created more work for the KPB and its staff than anything that has come before it. That should tell you how important both you, the Commission and the Planning staff are to your community. With every task and every decision you make, you take on the responsibility to preserve and protect your community and its members, like me, a lowly voter, or my neighbor, scraping by just to live in Anchor Point, or the last of the homesteaders who cherish what the Anchor Point community holds deep in their heart, that last small portion of true Alaskan Values: Clean water, Safe neighborhoods and streets, family.

So therefore, I ask " If not **you**, then **who**?

Who will listen to the community,

Who will work to interpret the KB Code, and use that code as it was **intended**, to be a guide for a better future of the KPB, and not a legal tool to destroy it. After all, did you not choose to either work at the KPB, or be a member of the Planning Commission, or seek election as **OUR** representative to protect the community; if you are not there for those reasons then **WHY** do you choose this profession?

Who will stand with community for the sake of the Many, over the few. I am sure you see how many deem this gravel permit as unacceptable compared to the few who do not. That alone should resonate with all of you. So again I ask, **if not you then who** can see the disproportionate attention required of the many for the sake of a few.

Sadly, this permitting process is again back in yours, the Commission's hands, but only one side seems to have to prove that the permit, even with all the 20 added conditions, fail to meet the code: Per the hearing officer who states only Code 21.29.050 can apply.

Therefore: Fact: the existing topography will not allow standard barriers to be sufficient to reduce or eliminate the impact, from noise (#4), dirt, (#3) and visual impacts (#5), even Planning had to add 20 conditions to make it work...seriously, perhaps that was a hint to the fact that this permit should not be granted, but it is not the planners decision, is it?

Therefore: Fact, aquifer disturbance (#1) this gravel extraction could harm the recently approved DC water well, one for human consumption, and the adjacent wells that are only as deep as the water tested by the permit requester. Does anyone want to put residents at risk with "lets wait and see, maybe it won't affect them"..Good drinking water is hard to come by in Anchor Point, high iron, high mineral and now this too.

Therefore: Fact, the Post land use (#6), questions arise regarding its remediation plan, primarily the follow through, since the permit requester testified that he believes the small cabin next to an old pit, (non-remediated) is prime lake front property. After-all he even listed it as such and indicates that we should all be excited to have this pit and a new pit of polluted water in our neighborhood. We just don't know how good it is.

Therefore: Lastly, property damage, (#6) well that would primarily be the Anchor Point Road, and per the KPB, they were not concerned since it is a state road, and well frankly the state never helps out the borough so it would be deserving, to turn a KPB issue into a State one.

Finally and in summary:

The question remains, if not **You than Who...** has the authority, are we as community members asking the wrong parties to prevent the destruction of a neighborhood. Per the the hearing officer decision and order, it states; that the hearing officer can not make the determination, the commission cannot deny the permit and per the communication with our own district representative, W. Dunne, that he can not step on the rights of the Commission, therefore he too will not interfere with what he believes to be the commission's jurisdiction.

So I ask once more, **if not you than who....**just because a permit can meet the planning requirement, in form but not substance, it is said the commission cannot deny that permit, thus if the commission cannot deny a permit, then when would we need them to approve one.

This is a slippery slope for our community, because if someone chose to have a CLUP, like a nuclear waste site, and the planning department listed 13 findings and gave 20 conditions, and they met them on paper..but not substance.... we would have a nuclear waste site... This gravel permit is no different.. We will all have to be vary wary of who we elect and allow to be appointed to represent us in the future.

So if not you than who????

Sincerely

Shirley Gruber / Lanny Kelsey
Anchor Point

3-17-19

To whom it may concern,

I am writing to greatly discourage the Planning Commission to pass the Conditional Land Use Permit to Emmett and Mary Trumble for a gravel pit near the Campground at the mouth of the Anchor River.

Many families recreate there every summer, locals and tourists alike. The gravel pit operation would create noise pollution and gravel trucks steadily driving up and down the narrow road would present a danger.

Please reconsider this abomination to a popular recreational area. Thank you

Sincerely



Detricia Hahn
PO Bx 475
Anchor Point AK
99556



R407

320

From: William Scott <naturesventures@gmail.com>
Sent: Wednesday, March 20, 2019 10:29 AM
To: Wall, Bruce
Subject: NO to Beachcomber LLC in Anchor Point

3/20/2019

To: KPB committee

RE: Beachcomber LLC gravel extraction land usage permit hearing

I am writing today to oppose the Beachcomber project. My husband Bill and I are Anchor Point residents and we moved here because AP was a quaint fishing village and we greatly enjoy the fishing lifestyle. We also own a business that is reliant on this town continuing to be a quaint fishing village!

We live on the Sterling Hwy by Stariski Creek and our first few years here were very peaceful. Now across the street we have a gravel pit with trucks going in and out early and late... jake braking down the hill which noise decibels has set off my security system in our house. On the opposite side of us now contains the 40 acre oil fracking field in front of our beautiful ocean/mountain view.

Needless to say I am disgusted with the noise, dust and light pollution and am greatly impacted by what the KPB has approved in the past for projects in this neighborhood. The absolute last thing the Anchor Point community needs is an unsightly noisy gravel pit on the Beach Road. I also want to point out that is particular road is crucial in the summer for the fishing tourism that this community thrives on.

Also this beach road is already in desperate need of repaving and would be extremely dangerous if big heavy gravel truck were to use it as well. My other major concern is for the health of the Anchor River and the fish!

PLEASE PLEASE PLEASE consider the people and businesses in the small community of Anchor Point and not just one business owner who doesn't care about the thriving of the community as a whole.

Gravel pits need to be out of site of any community to maintain the Kenai Peninsula and Anchor Point as an attractive place for tourism and peaceful living.

Thank you for hearing my concerns and I urge you to vote NO on the Beachcomber permit.

Sincerely,

Leah and Bill Scott
28279 Sterling Highway, Anchor Point

From: Steve Thompson <stevethompson1961@yahoo.com>
Sent: Wednesday, March 20, 2019 8:30 PM
To: Wall, Bruce
Subject: Anchor Point - Gravel pit

Hello Mr. Wall , My name is Steve Thompson and I am writing to you , to express my view as to the proposed gravel operation on Denver Street / Road. There isn't a berm that could be built that would be enough to block the mess from the view off my deck. I work in the mining industry and have for 34 years. I do know the permitting process is a lot more stringent than that of these small gravel pits that are all over the State of Alaska. If you take a drive along the Knik river or just drive to Anchorage and count all the old stripped gravel operations along the road there are many.

I would hope should we get through this atrocity of an idea to permit a gravel operation in the middle of a residential and recreational area , that there might be some legislation in the future dealing with gravel permitting , locations and reclamation mandates. There are too many of them all throughout the State. It's kind of like , you see a can on the side of the road , and say to yourself... Why would someone just throw that on the side of the road. But , when you see lot's of them on the side of the road. You might say , when are we going to do something about this. Well , The Time is Now. I am totally against this Gravel operation and I know full well they can't meet the sight , noise and dust suppressions that would be needed in a residential area.

Just getting this out to you , so you are aware of my position on this matter. Thank You !
Sincerely yours , Steve Thompson 34900 Denver St. Anchor Point , Alaska 99556

From: Mary Barnett
[mailto:maryjbw@gmail.com] Sent: Thursday,
March 21, 2019 10:38 AM
To: Planning Dept, <planning@kpb.us>; Hindman, Julie
<jhindman@kpb.us> Subject: Gravel pit, Beachcomber LLC, Parcel
169-010-67

Planning Commission, KPB

RE: Beachcomber LLC, Parcel # 169-010-67, Tract B, McGee Tracts, 74185 Anchor Point Road. Mary and Emmitt Trimble. Gravel pit mine - land use permit

I oppose and strenuously object to a land use permit allowing a gravel pit mine to operate in close proximity to my home. My property is nestled quietly alongside State Park land, tourist and local use campgrounds, vacation fishermen, tourist season small business owners, and community householders. My home and property will suffer severe negative effects if a gravel pit operates so close to my home.

My home and property address is 74155 Anchor Point Rd. Beachcomber Heights Sub. Lot 1 (of three). My property fronts onto Anchor Point Rd., and is close to Denver Rd.. The proposed gravel pit area map shows this gravel pit beginning at Anchor Point Road, up along the side of Denver Rd., and then enlarging behind Beachcomber Heights Sub. Lot 3.

My property on Lot 1, and my neighbor's property on Lot 2 and 3, will suffer greatly from the operation of a gravel pit mine so close to home. Our personal health, as well as our neighbors' will suffer from dust and particulates generated from a gravel pit extraction. Our quality of life would be greatly diminished. Can you personally imagine living next door to the unrelenting noise of a gravel crusher, all day?

In the summer, we engage with and welcome vacationers, foreign and local, who simply want to spend their vacation time near the River or Cook Inlet to fish, camp out, be with family. Children riding bikes, visitors walking along the road from fishing to the campsites. The Anchor River and Cook Inlet beach host mating eagles in the spring. This area is a pristine area of Alaska that is worth saving away from industrial gravel extraction. We have visitors, needful tourist dollars, coming into Anchor Point every summer. This land use, in place for years, is not compatible with the idea of gravel trucks taking over the road to the exclusion of everyone else.

What will happen to our homes and air quality when the gravel pit is sending up clouds of dust and particulates into our breathing air? What does the Parks Dept. have to say about this gravel pit ?

While KPB decides to allow this land use permit, does it also include language that requires damage reparations to compensate homeowners who live in near proximity. Obviously I can not sell my home now that there is even a rumor of a gravel pit on my backdoor.

What are the damage reparations in place for the rebuilding and annual resurfacing after even one season of gravel trucks on that strip of road? The beach road will be ruined from the weight of gravel trucks. This means people who routinely drive this road will have constant problems with gravel trucks, falling stone fragments breaking headlights and windshields. Car body damages from thrown stones. If children are walking along the summertime vacation holiday and are hit by gravel truck chips from tires? Bicycles on the side of the road hit by gravel from those trucks?

What damage reparations are in place for annual cleaning of my house and land due to dust and particulates from

the gravel pit operations?

What lowered real property values will I suffer as result of a gravel pit next door? Is there a Lowered property value in my area as a whole, given the nearness of his 20+ acres of low value real estate gravel extraction land.

Is this a purpose built gravel pit, with a previous contract in place? Can this contract purchase gravel in a different location?

Mary Barnett
property owner, Anchor Point Road

Please do not allow a gravel pit near my home at the Anchor River.

From: maria.bleu.ak@gmail.com
Sent: Thursday, March 21, 2019 9:28 PM
To: Wall, Bruce
Subject: Trimble gravel trip

Dear Planning Commission Board,

I am a life long resident of Anchor Point, a wife, and a mother of three young children that I intend to raise in Anchor Point. I completely understand what has built Anchor Point and most of Homer. It was Anchor Point gravel. My husband is superintendent of a local construction company specializing in dirt work. He works with Emmitt Trimble regularly. Emmitt Trimble has completed several jobs that have improved our small town. This type of work is my families' lively hood, as well as many other hard working Anchor Pointers.

I feel the Trimbles have every right to develop their land in the proposed gravel extraction plan. This would bring revenue to our small community. And once the gravel extraction is complete they would finish out the property to increase property values of neighboring lots. I received a flyer informing me of the opposition to the gravel pit. The only actual concern I could find was gravel trucks on the beach road. My family uses the Anchor Point Recreational area regularly and don't see this gravel pit having much impact on our ability to enjoy ourselves there. Trucks travel that road every spring hauling gravel to repair the tractor launch ramp. Which is a job my husband has personally done several times. No one had issue with those trucks hauling gravel to provide the tractor launch to operate. Emmitt's gravel pit may have more trucks and more often but still just trucks. And not forever. The RVs the frequent the beach road are much larger. I also wanted to point out that there was a existing gravel pit already on Danver Rd. It was turned into a lake and little cabins built around it.

I don't feel that our tourism income is more than our gravel income. The Anchor River fishing numbers are down. Our camper fees go to the state, not our community. We have a restaurant and store right at the top of the beach road that was a failing business. Tourism income did not save it. Our small town was built on the backs of these gravel hauling men. This source of revenue surpasses any other in town. Please don't vote to hamper how we support ourselves because of a few annoyed individuals. People that live in houses built on top of gravel. I believe it would have far greater negative affects on our fragile economy. I trust the Trimbles to execute this job responsibly and see it to benefit the community. Thank you for your time to listen to my point of view.

Sincerely,
Maria Bernier

To Whom It May Concern:

Re: Proposed Denver Gravel Pit/Emmitt & Mary Trimble

I wish to voice my opposition to the proposed gravel pit on Denver. I recently purchased a home a half mile from the proposed gravel pit.

Some reasons I feel this to be a very poor decision are as follows:

1. Traffic in a heavily traveled recreational tourist area is already heavy during the summer months. Foot traffic, trucks pulling boats, campers, motorhomes, as well as 4-wheelers, horses, etc. The last thing we need on that road is more traffic.
2. Noise in a residential, recreational, and park-like neighborhood. People are camping and recreating close by. Some folks live right there.
3. Wear and tear on that road. The beach road is already breaking up. Further heavy traffic will cause more damage.
4. Properties near that gravel pit were sold by Mr. Trimble without him sharing with them the information that he intended to have a gravel pit there.
5. The beach road and the Old Sterling are both heavily traveled, especially in summer months, and are narrow already. There are bicyclists that use the Old Sterling and the beach road during the summer. A LOT of them. It is already dangerous for pedestrians and bicyclists due to the narrowness of the road, without adding larger vehicular traffic.
6. This is the crown jewel of Anchor Point, and the last stand for tourism dollars to support our community. People come to enjoy the beauty and the peace, not to deal with big trucks, gravel pit equipment and racket, as well as the dust and dirt associated with it. They come to enjoy the beauty there, and a gravel pit of this size, in this location may very well be the nail in the coffin for tourism. The RV park just across the street will be heavily impacted.

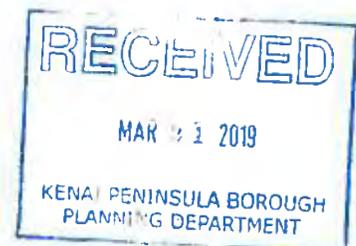
While I certainly support gravel pit operators and I understand the necessity for gravel pits, there are much better places to have a pit than in the center of a very popular recreational area for tourists and locals alike.

Thank you for taking the time to listen to my concerns.

Sincerely,



Chandra Caffroy
34980 Seabury Court
Anchor Point, AK 99556



To Whom It May Concern:

Re: Proposed Gravel Pit on Danver

I am writing to OPPOSE the proposed gravel pit on Danver, in Anchor Point, Alaska. My daughter recently purchased a home there, and my family and I live on the Old Sterling, just up the hill from the bridge.

My family and I own lots of property near other gravel pits, and one of my family members owns a gravel pit. I am not against gravel pits. However, this particular proposed gravel pit is in a very bad spot.

Here are some reasons I oppose this pit:

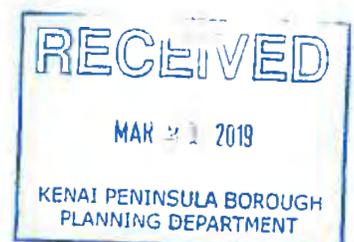
- 1) This area is a heavily used, year-round recreational area, for tourists and residents alike. The road is heavily traveled, with foot traffic in the summer, as well as trucks pulling boats, campers, trailers, and the residents who live there, work there, or just want beach access.
- 2) A few years ago, a friend of mine was walking with her dog on the beach road. A vehicle almost hit her, but ended up hitting her dog, and the dog lost one leg. The road is way too narrow to support the traffic it has in the summer months, already. A bunch of gravel trucks would make it much, much worse.
- 3) Noise. I used to live near a gravel pit. I got used to the noise, and it doesn't bother me so much. But if you have traveled down from Anchorage for some relaxing times, peace & quiet, near the beach ... the last thing you want to hear is the gravel pit. There are two RV parks directly next to or adjacent to that pit. They will lose business if that gravel pit is opened up.
- 4) The road itself is already in need of repair. More vehicular traffic in the form of heavy dump trucks will exacerbate the problem.
- 5) The Old Sterling is also a very narrow and winding road, also in need of lots of repair. The Old Sterling is used by bikers almost daily in the summer months, as well as by pedestrians, old and young alike. Adding heavy gravel trucks will create safety issues, in my opinion, as well as further degrade that road.
- 6) Bridge work is being done soon, on the Anchor River bridge just before the beach road. It will cause further congestion and safety concerns to add more traffic on the Old Sterling, especially when and if they completely close the bridge like they did last year, and we all have to drive the long way around. Sharing that narrow, winding road with big gravel trucks is intimidating, to say the least.

I want to be clear that I don't oppose gravel pits, per se. Just this one.

Sincerely,



Deanna L. Chesser
PO Box 515
35020 Scandinavian Drive
Anchor Point, AK 99556



R414

327

From: Biloon, Joselyn (DOT) <joselyn.biloon@alaska.gov>
Sent: Thursday, March 21, 2019 4:21 PM
To: Wall, Bruce
Cc: Reese, Jill (DOT); Vanhove, Todd E (DOT); Post, David E (DOT); Jones, Galen K (DOT); Thomas, Scott E (DOT)
Subject: Regarding Beachcomber proposed gravel pit
Attachments: 05-01-01_Landings.pdf; 05-01-01_chapter1190_Sight_Triangle_Minimum.pdf

Dear Mr Wall,

The gravel pit permit application submitted by Beachcomber LLC to the Borough brings up some concerns for the Alaska Department of Transportation. As the owner of Anchor River Road, directly adjacent to Danver Street, as well as Old Sterling Highway and the Sterling Highway, we have recommendations and requests to the eventual permitting of this proposed gravel pit.

As you know the Anchor River Bridge is currently load restricted and we expect the replacement bridge to be constructed in 2020 at the earliest. The pavement itself on Anchor River Road and on Old Sterling Highway is in extremely poor condition and additional heavy truck travel along these routes will only hasten further deterioration. Given these serious considerations we request the KBP to:

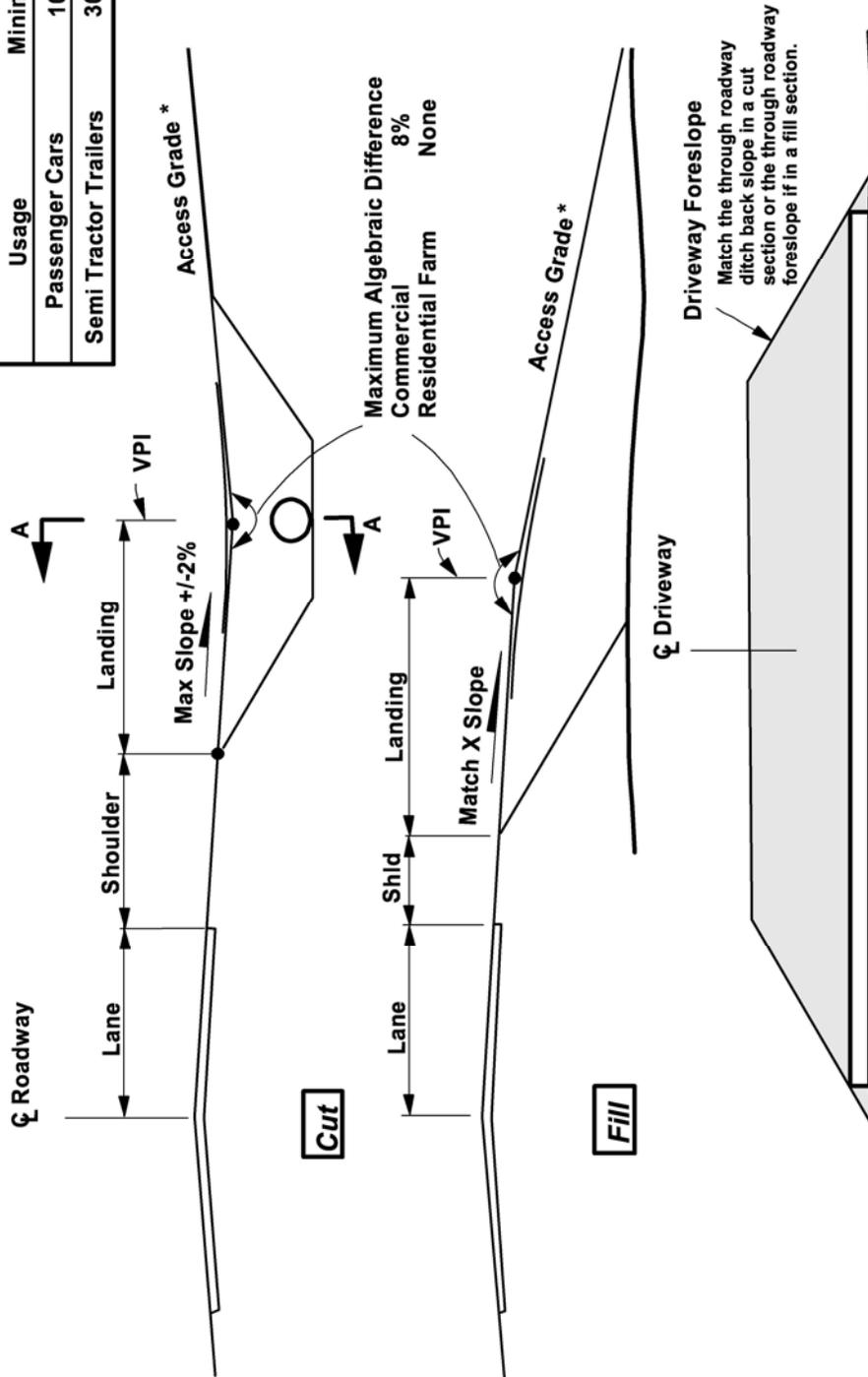
1. Verify sight triangles at the Danver Street STOP sign per attached detail. Verification is by an engineer, surveyor, or KPB Public Works official. KPB public works can coordinate with DOTPF M&O when reviewing sight triangles.
2. Verify the landing of Danver Street is suitable for trucks – 30 feet staging at the STOP signs, per attached detail.
3. Require dust control or sweeping in the event truck hauling creates obvious pavement debris on Anchor River Road.
4. Require pavement repair on Anchor River Road by KPB in the event truck hauling creates obvious potholes, rutting, or pavement damage.
5. Require a traffic control permit from DOTPF when truck hauling meets or exceeds 25 trucks per hour.

Absent these considerations being addressed through the Borough, we object to this application for a permit.

Thank you,

Joselyn Biloon
Area Planner
AKDOT&PF

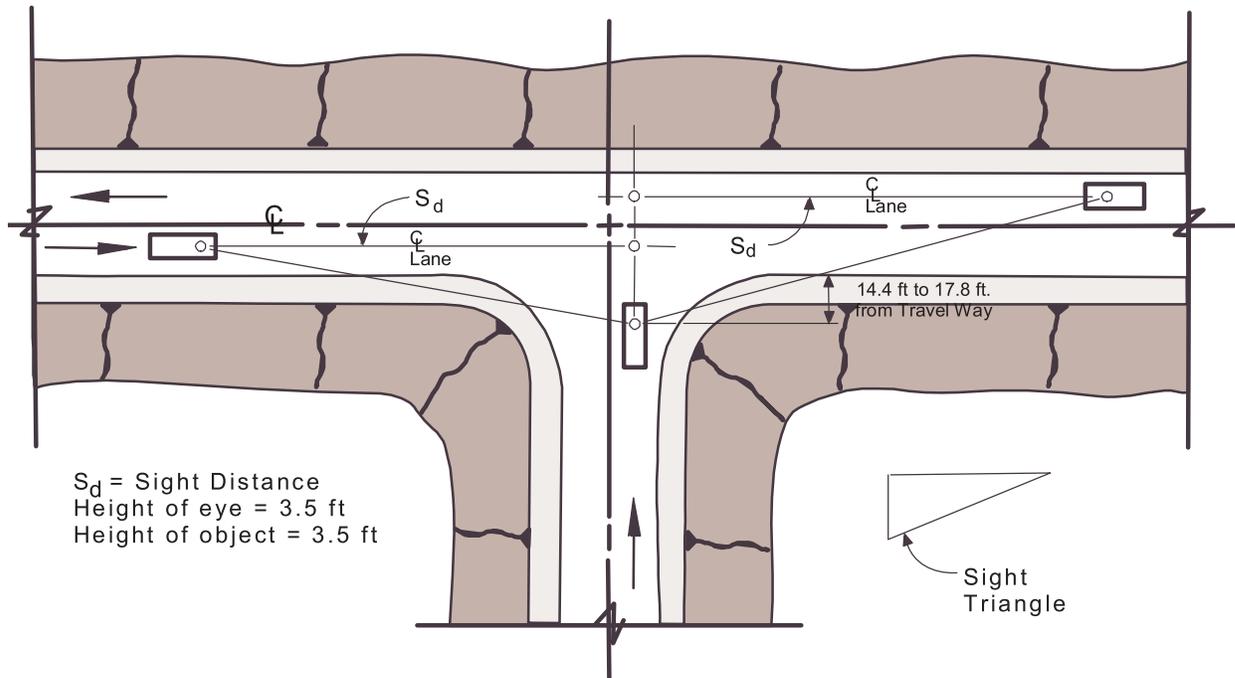
Landing Dimensions	
Usage	Minimum
Passenger Cars	10 ft
Semi Tractor Trailers	30 ft



* Access Grade
Max. 15%
Residential/Farm

Figure 1190-4
Driveway Profiles

DRIVEWAY SIGHT DISTANCE



DESIGN SPEED or POSTED SPEED LIMIT mph	SD MINIMUM (ft)
20	115
25	155
30	200
35	250
40	305
45	360
50	425
55	495
60	570
65	645

Note: Minimum sight distances are stopping sight distances for level grades, between -3% and +3%. Refer to AASHTO *A Policy on the Geometric Design of Highways and Streets 2001*, for desirable intersection sight distances and for grade adjustments.

**Figure 1190-1
Driveway Sight Distance**

From: Gary Drake <wolverinerockndirt@gmail.com>
Sent: Thursday, March 21, 2019 12:13 AM
To: Wall, Bruce
Subject: Anchor Point Gravel Pit

Dear Planning Commission Board,

I am writing about the gravel pit being considered on Danver Road in Anchor Point. I support development and believe the jobs created by the gravel business are very important to our whole Peninsula. I want the roads to continue to be sanded and maintained and I want gravel available to me and my family and friends when we want to build and develop our land. I do not want the planning commission to deny applications that meet the code or new regulations that cause the cost of gravel to go up so much that we can not afford to built or maintain our properties or our public amenities the way we want and need them to be.

I believe that a gravel pit provides a necessary commodity to our communities. Gravel pits already have strict regulations and laws to control what they can and can not do. The only business ventures in our borough that are regulated are gravel pits and marijuana operations. There are zero regulations for junk yards, dog lots, trailer parks or any other businessor personal property usages that some neighbors argue could lower their property values.

The borough does not have zoning. Personally, I do not want to be zoned, but putting stiffer regulations on a gravel pit and allowing the rest of the borough to have junky yards and do whatever they please with their property and be totally unregulated is not fair. Gravel pits actually provide a needed service to all of us, including you and your neighbors. Please take this in to consideration to make sure that needed service stays available!

Thanks for listening

Gary Drake

Anchor Point resident

Wall, Bruce

From: Jeanne Englishbee <jeanneenglishbee@gmail.com>
Sent: Thursday, March 21, 2019 3:37 PM
To: Wall, Bruce
Subject: Gravel on Denver

I live along the Old Sterling Hwy and am opposed to the gravel trucks going up and down Old Sterling because of the sound and dust and harm to the road. Also what will that do to the tourists that plan to come to Anchor River?

Sent from my iPhone

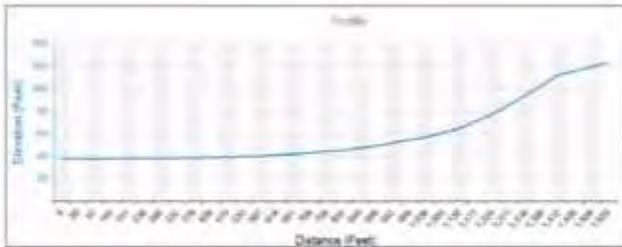
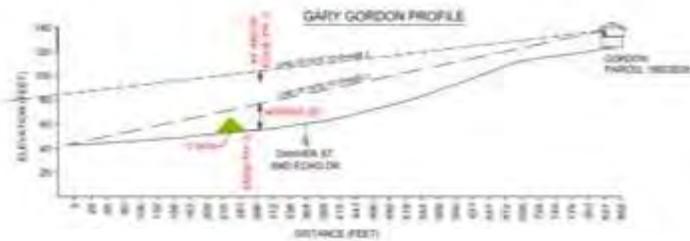
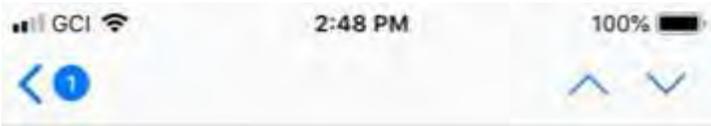
Wall, Bruce

From: Gary L. Gordon <garygordon4@gmail.com>
Sent: Thursday, March 21, 2019 2:08 PM
To: Wall, Bruce
Cc: Hans
Subject: Beachcomber material extraction permit

My name is Gary Gordon my wife and I have three parcels of property affected by this pit development, parcel ID# 16923026 shown below (green arrow) looks directly over the extraction area. There is no way any of us on the hill can be visually protected; nor, can any of us be protected from noise, dust and smoke. The second diagram below shows my sight of view. It would take a forty foot berm to block my view, and there is no berm high enough to block the dust and smoke from a screening/crushing plant or an asphalt plant. Is it necessary to state both of these are hazards to our health?

WE ARE OPPOSED TO THE BOROUGH GRANTING THIS PERMIT

I thought we paid taxes to the borough to be protected and to be provided services that make our ownership more enjoyable and comfortable? If you grant this extraction permit, you will be failing your duty miserably.



I am a gravel pit owner at mile 6.2 Aleknagik Lake Road in Dillingham, Alaska. Over a million yards of gravel have been mined from my pit. I know the hazards of open pit mines, noise, dust, and smoke.

I have a set of truck sales at my pit. In the latest undated Planning Department notice letter, back page map does not designate a scale area. That leads me to the question, how over weight will the gravel trucks be? This should be of concern to the borough? As stated above, our taxes are used to protect and maintain our roads. Being good stewards, one would also assume your concern over the paved Beach Road? I understand this road base still has logs from original cord a roy type road. Lots of improvements to this road over the years still yields a pour road. Repeated legal loads would demolish this road, but over weight unregulated loads will push what road base we have into the swamp it is built on. This road is going to come apart!

Is the borough concerned about the financial strength of Anchor Point? When the beach access road becomes impassable, no tourists, no boat launch, no campers, all results in reduced sales for our whole community. Not to mention all us owners in your chambers towing tantrums, even worse than Emmitt Trimble because we can't get to our property. This is not a place in our community for an open mine pit! This is our tourism market.

I'm invested in Anchor Point. I have two more view lots further up Danver between Parkinson's and High Seas Court, ID# 16925135 & 134. I also have a commercial lot on the Sterling Highway right in Anchor Point ID# 16551005.

Your decision in this matter involves us local owners severely; however, it will impact our whole community in a negative way. The only up side I see for granting this permit is Trimble's will make more money.

Trimble is not a contractor or gravel pit operator. I am very confident once the extraction site is permitted, Trimble will sell this property. That is what he does, sells property. If this permit is allowed, Trimble will make money, at the expense of Anchor Point and the Borough. Our property value is going to decline, if this permit is granted. In a few years, after several land and home sales, the reduced sale values will allow us tax payers to negotiate our assessed values. In the meantime, your road maintenance costs will be rising.

Gary Gordon 907-229-8914
PO Box 876130
Wasilla, AK 99687

March 21, 2019

KPB Planning Commission
Regarding: Parcel 169-010-67
Tract B, McGee Tracts
74185 Anchor Point Road, Anchor Point, Ak
Beachcomber LLC, Emmitt and Mary Trimble

Planning Commission,

We come before you with our plea to understand that the standards expressed for gravel, 21.29.040, number 1 and number 2 cannot be met by anyone wanting to remove gravel where Beachcomber, LLC proposes to open a pit.

The neighborhood surrounding this parcel is over 100feet higher than the proposed site and there are no berms or setbacks that can conceal the work being done in the said pit. The area that I am talking about is in a semicircle and covers the east and south sides opposite of the proposed pit. None of these homeowners will be able to be shielded from the operations going on 24hrs/day all summer. Our group has used very specific devices to calculate the angle of the line of visiondevices that the borough own, and have proven that it is not possible to hide the excavation site. Why is it that the planning department does not use it's own equipment to show, honestly, that 6ft berms won't work. If that was done upon inspection of the site we wouldn't be here today with questions about the validity of granting that permit.

Alaskans wait anxiously for spring and summer to arrive so we can be outside and garden, fish, walk, BBQ and generally enjoy the land we own and be refreshed in the sun and warm weather that the season brings. Our neighborhood now dreads the concept that our summers will be ruined with 24hr/day mining operation noises. In the amphitheater – type of topography that we have near the proposed mining site the noise will be lifted to each neighbor for the entire day. If we can hear chickens, goats, dogs and people speaking already what will heavy equipment bring to our ears. How did we earn this reward? If there are 200 parcels surrounding this proposed site why would his expectations be met before the 200 land owners surrounding his site? Please consider that some proposed sites are absolutely not appropriate to create a mining site.

Some in our neighborhood have health problems that will be exacerbated by more dust being created. If anyone thought they could endure a road trip where there would be some dust is one thing, but to imagine it is being brought near your home, and it will be there 24 hours a day, all spring, summer and fall. If it is life and death situation with their health, that person may have to consider moving. Is that fair to anyone to have to move from their home because a gravel pit choses to move into a neighborhood? This is real life in our neighborhood not a possible example. After living in the state of Alaska and on their property for years.....they may have to choose to leave to accommodate their new

neighbor. Who is protecting the average citizens? I will definitely say that it isn't our borough.

Please consider that the applicant has almost the lowest assessed value on his property and has owned it for about four years. The surrounding property is assessed at nearly \$8 million.....who have been the greater supporter of the borough with their tax dollars. Why are our voices not being heard?

The other four material site regulations don't fit either and since all of the requirements for the permittee are minimized, it only "appears" that these requirements have been met. The planning department is very impressed with their record of passing any and all request for permits and they truly have nothing to be proud of. Gravel is essential and I am quite sure it can be found on the government land that is available for the state and borough governments to make available to the gravel people. To imagine that neighborhoods should be ruined by gravel mining operations is barbaric. There should be a complete investigation of the planning department that will assure the tax paying citizens that all people are protected and thought of. I would have to think that we aren't seeing the real reasons why all permits are being granted.

Please read our heartfelt complaints and vote on this decision with a concept of home ownership. Our sincerest appreciation of your task at hand,

Vickey Hodnik and George Krier

From: Johnny Mac <john_883@hotmail.com>
Sent: Thursday, March 21, 2019 8:33 PM
To: Wall, Bruce
Subject: KPB Land use concerning gravel pits

Mr. Wall,

I was given your email to send my concerns about the Borough requirements for permitting gravel pits. Below is my statement.

Dear Planning Commission Board,

I am writing about the gravel pit that is up for consideration on Danver Road in Anchor Point. I support development and believe the jobs created by the gravel business are very important. I do not want the planning commission to deny applications that meet the code. Nor do I want to see new regulations that cause the cost of gravel to go up so much that we can not afford to build or maintain our properties. Not to mention pits being closed and families lose income needed to live here.

I believe that a gravel pits provide a necessary commodity to our communities. Gravel pits already have strict regulations. The only activities regulated by the Borough are gravel pits and marijuana operations. There are zero regulations on junk yards, trailer parks ect. that could potentially lower property values.

Gravel pits provide a needed service in the community. The gravel industry is how many make a living in Anchor Point. Creating more regulations will hurt the local community who rely on this industry to feed their families. I ask that the Borough keep the current regulations and work with pit owners to find a balance that works for both parties. Thank you for your time.

Regards,
John McCullough

Get [Outlook for Android](#)

From: Susan Reid <ecapjimsue@gmail.com>
Sent: Thursday, March 21, 2019 11:54 AM
To: Wall, Bruce
Subject: Re: Beachcomber LLC - Proposed material site

Do you realise how confusing your letter is? No matter who reevaluated the decision by the PC, is someone within the KPB going to be responsible for all the damage and impact this will have in the Anchor Pt. area? Especially regarding the issues of property value (that's a big concern), water quality, wildlife preservation, a material site quota and traffic safety. Which you are claiming is not your consideration. Whose consideration is it? What department is overseeing this? So if the PC exceeded the "scope of it's authority", and this permit was denied, under whose authority will it again be denied? Your staff? They are recommending additional buffers. How do they know what size or amount of buffers should be put in place? Are they qualified for that?

It's not just about the noise and dust!!

It seems to us KPB PC has already decided to approve this gravel permit. The PC is choosing to ignore all the input from hundreds of very concerned people within a half mile radius. Not to mention all the residents along the old Sterling hwy. who received no letter (and should have) and who will be inundated with traffic...because that's the route that will be used.

The list we all have falls on deaf ears. Very sad for the PC. I suppose the want of the one for the permit outweighs the wants of the many on all counts.

Has anyone from the PC come out to see said area? And how much will be affected re: the boat launches, who have to use this road, the foot traffic, the campgrounds, both private and state and the local traffic?

We as taxpayers have every right to ask the PC to deny this permit. The timing is perfectly suited for Beachcomber LLC. The parks and boat launch is closed, local traffic is minimal and the summer folks aren't back yet. What about a delay til the summer residents return?

Hoping you will make the right decision. Respectively, James and Susan Reid.

Wall, Bruce

From: Blankenship, Johni
Sent: Thursday, March 21, 2019 12:13 PM
To: Wall, Bruce
Subject: Fwd: <EXTERNAL-SENDER>Re: Case No. 2018-02

Sent from my iPhone

Begin forwarded message:

From: Joseph Sparkman <jay1332@att.net>
Date: March 21, 2019 at 11:42:04 AM EDT
To: Johni Blankenship <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Re: Case No. 2018-02

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

I'm going to make this short, as I believe we're at a point where we're reiterating the same points. I believe we have made it clear that the points of visual impact, noise, and dust can not be minimized (see my previous letter). The position of the applicant seems to be that there is only one resolution listed for these problems and that they will comply with that remedy even though it DOES NOT MINIMIZE the intent of the listed visual, noise, dust application REQUIREMENTS. Words mean things, just because there isn't a listed remedy that would ACTUALLY MINIMIZE doesn't mean that you should let the applicant get away with NOT satisfying the intent of the application rules. This oversight if not dealt with fairly now will create problems in the future. I recently asked the borough appraisal department to lower my appraisal 30% for my property taxes as national statistics show is the average impact of a mine in a residential community. They said, at this time, they didn't have any data at this point to support this but I could have a formal reevaluation. I asked if they had any data on residential neighborhoods and mines. They said the data they had showed no devaluation in property values. I asked which was there first there, the mine or the neighborhood? answer....the mine, they had no data where the neighborhood was there first. After a few houses sell and we can prove this loss we'll be back in civil court with the applicant and others to recoup our 30% loss. In closing, I ask you to EMPATHIZE with us and truly put yourself in our position. You would not want tis in your backyard!! If you would argue this please call me. Sincerely, Joseph and Denise Sparkman

On Nov 13, 2018, at 4:53 PM, Joseph Sparkman <jay1332@att.net> wrote:

Case #2018-02:

From: Loretta Stapel <stapel6@live.com>
Sent: Thursday, March 21, 2019 10:22 PM
To: Wall, Bruce
Subject: Anchor Point Rd pit

This letter is being written to voice opposition to the proposed gravel pit on parcel number [169-010-67](#). Location is [74185 Anchor Point Road, Anchor Point, Alaska](#).

It's important for us to state that our opposition stems from the location of this proposed pit only and is in no way directed against Beachcomber LLC or Mary and Emmitt Trimble. We would oppose this pit no matter who was trying to obtain the permit.

We would also like to state we are not against gravel pits as a whole. We realize they are important, necessary and have value. We have many pits in this area, and many more will continue to be approved and developed. Therefore the Anchor Point Rd pit is not necessary or critical to supply gravel to this area.

We oppose this pit for many reasons. It will have a negative impact on the many homeowners in the immediate area by lowering property value with the noise, dust and the unsightly view they will have to endure. This pit will have a horrific impact on the immediate residences, but will have a far reaching negative impact on the community of Anchor Point. It will effect the visitors from neighboring communities of Homer and Ninilchik. We also have visitors from all around Alaska, from every state in the United States and from around the world. ALL will be negatively impacted. These visitors come to enjoy the beauty of this area. They use the campgrounds and surrounding areas. They help our economy. How does a gravel pit fit into this equation? There is no way the noise of this pit can be controlled. The dust created by this operation cannot be controlled. No berm can be made large enough to block the unsightly view of this gravel pit. The safety of motorists, pedestrians, bicyclists, as gravel trucks travel up and down the narrow beach road is a recipe for disaster. This is a critical habitat area. This pit will adversely effect wildlife, and consideration should be given to protect this important ecosystem. We can not express strongly enough the far reaching negative impact this pit will have to thousands, and thousands of people.

Anchor Point has been our home for over 38 years. We love our community and have much concern about this project. The Anchor River is the heartbeat of Anchor Point and is critical to our community. It is here that we fish, recreate, and often gather to celebrate many of life's meaningful events. For those of us that are fortunate enough to call this area home we have celebrated birthdays, weddings, gathered to mourn deaths, have gone on many school field trips to the Anchor River / Anchor Point beach area. It is here that we have our parades and countless other community activities. The Anchor River is a place to walk and enjoy nature, a place to contemplate, and a place that fills our soul with peace. It is why we live here. It is why we have worldwide visitors. All of this is in jeopardy by putting a gravel pit in this very sensitive, critical area.

This is a very unique area and the far reaching negative implications of this proposed pit need to be considered. You have the power and responsibility to support and represent the thousands of people that use this area. We respectfully ask you to deny this permit.

Thank you for your time and service,
Richard and Loretta Stapel

PO Box 386
Anchor Point, Ak 99556

Sent from my iPad

Wall, Bruce

From: Linda Stevens <grizzlysafety@aol.com>
Sent: Thursday, March 21, 2019 12:12 PM
To: Wall, Bruce
Subject: Gravel Pit Permit/Beachcomber LLC Anchor Point

TO: Kenai Peninsula Borough Planning Commission

RE: Beachcomber LLC, Parcel # 169-010- 67, Tract B, McGee Tracts, 74185 Anchor Point Road, Mary and Emmitt Trimble

I strongly oppose the proposal for and permitting of the gravel pit at the above located address for the following reasons:

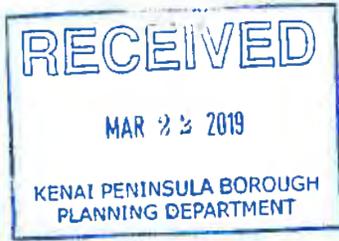
- 1) There are plenty of gravel pits in the Anchor Point area already with better existing locations than this proposed pit - which is the primary recreational area for tourism and residential use. I believe it will deter a major source of income to the area if this pit is allowed to open.
- 2) Anchor Point Road is a residential and recreational use road at present and is barely wide enough for personal size trucks with boat trailers to pass each other. It is NOT in good enough condition to bear the weights and sizes of 18-wheelers carrying heavy loads nor to allow safe passage of on-coming traffic.
- 3) The dust and sound levels will definitely be a detriment to tourism, residents and wildlife.
- 4) Traffic from the pit will definitely pose a danger to people walking along the road to access the river, campgrounds and the beach. We are told that the Planning Commission does NOT take in to consideration public safety. This is incomprehensible to the people of the area! I beg the Commission to re-consider this position before a death or accident occurs. Safety should be a primary consideration by everyone in the borough. You serve US,,not the other way around and NOT special interests!

Respectfully,

Linda Stevens

907-299-1610

P.O. BOX 330
ANCHOR POINT, AK. 99556



Alan & Loretia Ballance
55535 Prevet Ct. #420
Homer, AK 99603

March 19, 2019

Kenai Peninsula Borough Planning Commission
144 N Binkley St.
Soldotna, AK 99669

RE: 15 year Conditional Land Use permit by Beachcomber LLC, Gravel Pit Mine, Emmitt and Mary Trimble of Coastal Realty

Greetings Kenai Peninsula Borough Planning Commission,

Wherever you are when you read this, we're confident that you got there and stand or sit there upon something built upon a layer of gravel. Gravel is an imperative in the world whether for nature's purposes or man's. The quality of the gravel is important, and the distance to deliver is most relevant.

All functions of the Anchor Point Recreation Area depend on gravel, as much as they do to taxation. A well ran gravel pit is not for the lazy, it is effort for everyone's well being, providing much needed product and income through use and recycling of natural resources. Nature used the rock for its purposes and dumped it there, they are just planning on using and rearranging the dump site, modifying the shape of the rocks for use, and dump some of it somewhere else. No big deal.

As long as the shared resources of the access roads are respectfully used and maintained, and general 'good neighbor/good steward' practices are in effect, we whole-heartedly support the gravel mine permit for Beachcomber LLC.

Sincerely,

Alan L. Ballance

Loretia Ballance

Alan & Loretia Ballance

From: Hans Bilben <catchalaska@alaska.net>
Sent: Friday, March 22, 2019 10:03 AM
To: Wall, Bruce
Subject: 3/25 PC Comments
Attachments: Denver property values copy.pages

Comments for Planning Commission 3/25/2019 Concerning Denver Street CLUP Application

1.
The Code speaks to the protection of the **health, safety, and welfare** of the residents of the Borough. From the attachment below I have documented the property values in the area surrounding the proposed gravel mine. The word **welfare** can be defined as “**the health, happiness, and fortunes of a person or group**”. I seriously doubt that anybody reading this can state that a gravel mine in a neighborhood is healthy—dust, noise, water table contamination, road safety, and a multitude of other health issues. The only happy person is the one who makes money from the material, for the rest of the neighborhood the happiness level and the total quality of life will be diminished for the life of the mine—in the case of this application that would be fifteen years. The fortunes of all neighbors are seriously diminished by the loss in dollar value they will all see in what is for most people the largest investment they will ever make—their home!!
2.
The Code in KPB 21.25.050 states that the Planning Commission shall either approve, modify, or disapprove an application, and they must at a minimum ensure that the application meets the requirements of KPB 21.29. This application is nowhere near meeting the mandatory conditions spelled out in KPB 21.29.050 (A)(2)(c and e). The berms and buffers are not constructed in consideration of, and in accordance with existing uses of neighboring properties—that existing use is several properties with houses, many of which are at elevations 40 feet to 100 feet above the proposed mine area. Some of the houses are multi-story which are gladly taxed by KPB Assessors for every square inch of every level. The berms and buffers are not of sufficient height or density to provide visual and noise screening of the proposed use as required in the Code. For example, the line-of-sight from our house is 90 feet above the proposed mine. It would take a 45 foot berm to come close to meeting the conditions of KPB 21.29.050 as opposed to the 6 foot or 12 foot berms in the application. As for the 50 foot vegetated buffer, the application states that around 40% of that space is vegetated—of that 40% the existing vegetation is not of sufficient height and/or density to screen visual or noise impacts. The 60% that is not vegetated is, well, not vegetated!
3.
While there are dozens of legitimate reasons not to have a gravel mine in the very heart of a recreational/residential neighborhood, they should just be considered as supporting evidence for the denial of this application. The Code clearly gives protections to neighboring properties—minimal

they are—but the Planning Commission is mandated by Code to ensure that these protections are granted, and this application needs to be DENIED again based upon the applicants inability to meet the mandatory requirements as written in KPB 21.29.

Hans Bilben
35039 Danver Street
Anchor Point

When is a Gravel Mine Really in the Best Interests of the Borough and Neighboring Properties???

The KPB assessed valuation for **land only** on 45 Properties (59.17 acres) surrounding the Beachcomber property (proposed gravel mine) near Danver Street in Anchor Point is \$1,738,000, which works out to an average value of **\$29,373 per acre**. Some of this land is unimproved—raw land, and much is residential. The 41.72 acres of Beachcomber land—with ocean frontage—is assessed at \$301,400 which means an average value as per KPB assessment of just **\$7,224 per acre!**

Neighbors are assessed at an average of \$29,373 per acre for 45 of their properties versus \$7,224 per acre for the land that they all live next to!

The KPB assessed value (**including improvements**) for our 45 properties is \$7,813,200 and the total assessed value for Beachcomber is \$305,700. If this mine becomes a reality, appraisers have told neighbors we can expect our property values to drop by 30% to 40%. Using the low (30%) number, KPB should expect a drop in assessed valuation of \$2,343,960 for the 45 neighbors, not to mention what we all lose when its time to move on! The Beachcomber mine will remain forever as raw land which is taxed at the lowest level, in this case \$7,224 per acre.

Benefit to the borough if this mine is permitted is a **potential loss** of **\$2,343,960** in taxable property value, **plus** what the Beachcomber property might have generated over time if it were properly developed.

For example: The site is just under 42 acres of prime, desirable real estate in the heart of the Anchor River State Recreation Area.. Using the average KPB assessed value from the rest of the neighborhood at \$29,373 per acre, the land should be assessed today at **\$1,233,666** (not \$301,400 as it is). If it was divided into four high dollar ocean front lots and the remaining 27 acres into nine three acre lots, with improvements to the land (**houses etc.**) which could conservatively be \$250,000 per lot, that equates to another \$3,250,000. Potential assessed value for Beachcomber land and improvements is \$4,483,666.

Potential loss in KPB assessed value in the neighborhood is conservatively \$6,521,926 if this mine is permitted. And the Benefit is???????? Maybe the Borough should add this number to the assessed value of the mine....

From: Phil Brna <fisheyeak@gmail.com>
Sent: Friday, March 22, 2019 9:09 AM
To: Wall, Bruce
Subject: Re: FW: Beachcomber LLC - Proposed material site

Due to various issues related to my health, I will not be able to attend the March 25, 2019 planning commission meeting to testify about the Beachcomber gravel pit proposal which abuts my property. I therefore request a continuance of the March planning commission hearing scheduled for next Monday. I have not previously requested a continuance. I request that the continuance be scheduled for the May 28, 2019 planning commission meeting. This will allow me and other local residents who will be effected by the proposed pit to be present.

Phil Brna

From: Marie Carlton <seaburyroad@live.com>
Sent: Friday, March 22, 2019 12:57 PM
To: Wall, Bruce
Subject: Statement for the March 25, 2019 Planning Commission Meeting

Hello, I am Marie Carlton. I reside in Anchor Point in the affected area of the Beachcomber LLC proposed gravel pit operation site. Issues have changed since the July 16, 2018 Planning Commission Meeting. However, critical concerns remain. These are the issues of long term noise and sustained ,unavoidable negative visual impacts to surrounding and contiguous homes of the Anchor Point area. In Mr. Trimble's appeal statement of 12/06/2019, I was struck by a statement of his documented history of Cook Inlet and surrounding area. A portion of number 18 states," Insulated window blinds that lift from the bottom up could wholly eliminate any negative sight impact from their homes." End quote. That statement, I believe, was disrespectful and does not represent nor does it reflect the totality of our concerns or our efforts to protect a residential, recreational area with five campgrounds, one day use area supported by a failing, narrow, dangerous Anchor River Road which will be, by percentage, the haul route for pit operations. History is interesting, however, the incontrovertible truth remains that situations, populations and settlements change. A focus on our local health, safety and welfare is paramount to children and adults of Anchor Point. No berm will be tall enough to protect against the negative visual impact to established homes which are above the proposed long term gravel operation site. The long term pit operation will produce and deliver continued, sustained particulate matter to contiguous and surrounding homes and campgrounds for an extended period of time. Who would want this exposure? This proposed pit is not in an isolated area but it is in our neighborhood and the local area again will experience another season of increased tourist population, congestion of cars, boats on trailers not appropriate for a long term gravel operation. I would also ask the Planning Commission to allow, in the interest of equality, transparency, proper oversight and honesty to grant a continuance to May 28,2019 so to allow more local citizens the opportunity and ability to attend the hearing, especially due to the refusal from the Borough to allow the Anchor Point Advisory Committee to disseminate information at the local level but a continuance would allow residences who return from a winter break to voice their opinions and concerns. I stand adamantly opposed to the proposed long term gravel pit operation in an effort to protect the health, safety and welfare of our neighborhood and surrounding recreational areas of Anchor Point Thank you for the opportunity to allow me a voice. Marie Carlton seaburyroad@live.com

From: David Gregory <davidgregory0754@gmail.com>
Sent: Friday, March 22, 2019 8:57 AM
To: Wall, Bruce; Best, Max; Pierce, Charlie; Hindman, Julie; Planning Dept,
Subject: Beachcomber LLC gravel pit application
Attachments: Screenshot_20190321-170503.jpg

Kenai Peninsula Borough Planning Commission

144 N Binkley St Soldotna, Ak 99669

March 21,2019

Greetings to the Planning Commission Members,

My name is David Gregory.

My wife and I live on our property on Seaward Ave, close to the proposed gravel pit that Beachcomber LLC is applying for a Conditional Land Use Permit.

There is NO WAY that the noise of a gravel operation in the proposed location can be mitigated!

I can hear the surf of the Beach, which is just beyond the proposed gravel operation,at my house.

How then could the noise of Loaders, Dozers, Excavators, and a Crusher, and all the backup alarms be mitigated?

A berm, even a fairly large one, would only deflect the noise UP..... UP AND OVER, and up the AMPHITHEATER type topography to the South and East of the proposed gravel operation, where my home and so many others are.

It would be TOTALLY IRRESPONSIBLE (codes permitting or not) for the Commission to approve the application of Beachcomber LLC for this gravel operation which is SO CLOSE to the BEACH, the ANCHOR RIVER, and 5 STATE CAMPGROUNDS,

* Coho Campground

* Silverking Campground

* Slidehole Campground

* Steelhead Campground.

* Halibut Campground

the Heart of the ANCHOR RIVER WORLD CLASS RECREATION AREA

David Gregory
P.O. Box 904
Anchor Point, Alaska 99556.

From: Donald Maxon <donaldmaxon@hotmail.com>
Sent: Friday, March 22, 2019 7:27 PM
To: Wall, Bruce
Subject: Gravel Pit

March 21, 2019

Support Letter

To the Planning Commission Chairman,

I grew up in Anchor Point in the '80's and '90's and spent a lot of time on the Anchor River fishing and camping in the camp grounds. It was a great place to grow up and still is. I now live in Homer and take my family there in the summer to play.

There are people that are saying that a gravel pit on Danver will harm the parks and tourism. I don't think that will be the case at all. Even though the park and campgrounds are nice there is much of the summer that no one is camping or fishing because of the river being closed or the fishing is not good. When I was a kid, the old gravel pit across the street from the one the Trimble's are trying to get permitted, was an active permit that was being worked. There was no obvious issue with negative noise or anything concerning that pit then so I don't think there will be problems with the one up before you. Plus I don't believe that campers and fishermen spend money in Anchor Point because they bring supplies from home so even though they enjoy a nice vacation they don't add to the local economy.

Many people jump to the worst place when they are against something and not willing to listen to compromise or reality. They need to realize that a permit comes with laws that need to be followed that help protect the neighborhood. As everyone knows, there is no gravel in Homer so of course I will support a new pit in Anchor Point that might in some way help me or my friends build or improve our property. Also, I support my friends, many that I grew up with, that have good paying jobs because of gravel pits.

Thank you for listening to my point of view. I support the Trimble's gravel permit.

Donald Maxon

From: Linda Feiler <akmoonlit@yahoo.com>
Sent: Friday, March 22, 2019 11:04 AM
To: Wall, Bruce
Subject: Pertaining to the Beachcomber LLC, Parcel #169-010-67 Tract B McBee Tracts, Trimble

It has come to our attention as citizens of this KPB that we are no longer represented. No longer able to live without fear of our government and not yet willing to sit back and have our government destroy the values of our homes, our health, our businesses , or our lives.

What you are proposing to turn Anchor Point into will help to destroy our lives and the life of our river. It will cause our tourists to run from the once peaceful park lands that will be dangerous for children and prohibit walking down the peaceful river road due to gravel trucks and dust (which will also impact the river). The noise alone is a deterrent.

The audacity of the KPB to think that only the people living directly adjacent to the pit are effected. WE live here. WE PAY our taxes. WE vote and we the people of the KPB are effected whenever something happens to OUR area, our neighbors (that you feel you can dictate your ideas to , are not happy about using OUR tax dollars to fight us .

Forty two years ago I moved to this town to avoid the noise and pollution of the cities and to live with the american ideal for Life Liberty and the Pursuit of Happiness. Violating the rights of others to have these simple needs too important to ignore. The planning commission is supposedly there for OUR benefit and not to put money in the hands of the good ol' boys or friends behind closed doors.

I went to a few meetings this last week where scores of my neighbors actually came out to find out how we can direct our government to stop denying our rights as humans in this borough and act for the good of us all. Please understand the very high emotional tension you cause when you threaten to destroy our property values(the only thing you seem to care about yet willing to destroy anyway) (the reasons are known but not discussed) and our quality of life (which is no concern to you at all yet top on OUR list)

Sincerely,

Linda Feiler

PO Box 148

Anchor Point, Alaska 99556

PS. It has not gone unnoticed that the only reason anything gets done is to aid the corporations who are turning the state into TEXAS.

Geovera, LLC

PO Box 3235 • Homer, Alaska 99603 • (907) 399-4345 • scsmith@gci.net

March 22, 2019

Emmitt Trimble
PO Box 193
Anchor Point, AK 99556

Re: McGee Tracts Line of Sight Drawings:

Dear Mr. Trimble,

Please find attached two drawings (plan and profile) that show the line of sight from a point on Lot 3, Parkinson Tracts - Del Mar Addition (85-102 HRD) along two vectors to points within Tract B, McGee Tracts Deed of Record Boundary Survey (80-104 HRD).

The plan drawing shows two vectors originating at the Bilben property (Lot 3). This point is the approximate location of the house on Lot 3 as determined from the Kenai Peninsula Borough fixed wing imagery as shown on their Geocortex Viewer. The plan drawing shows the boundaries of the existing Beachcomber, LLC counter permit gravel extraction area as well as the proposed three phase conditional land use permit material site area that is under consideration by the borough.

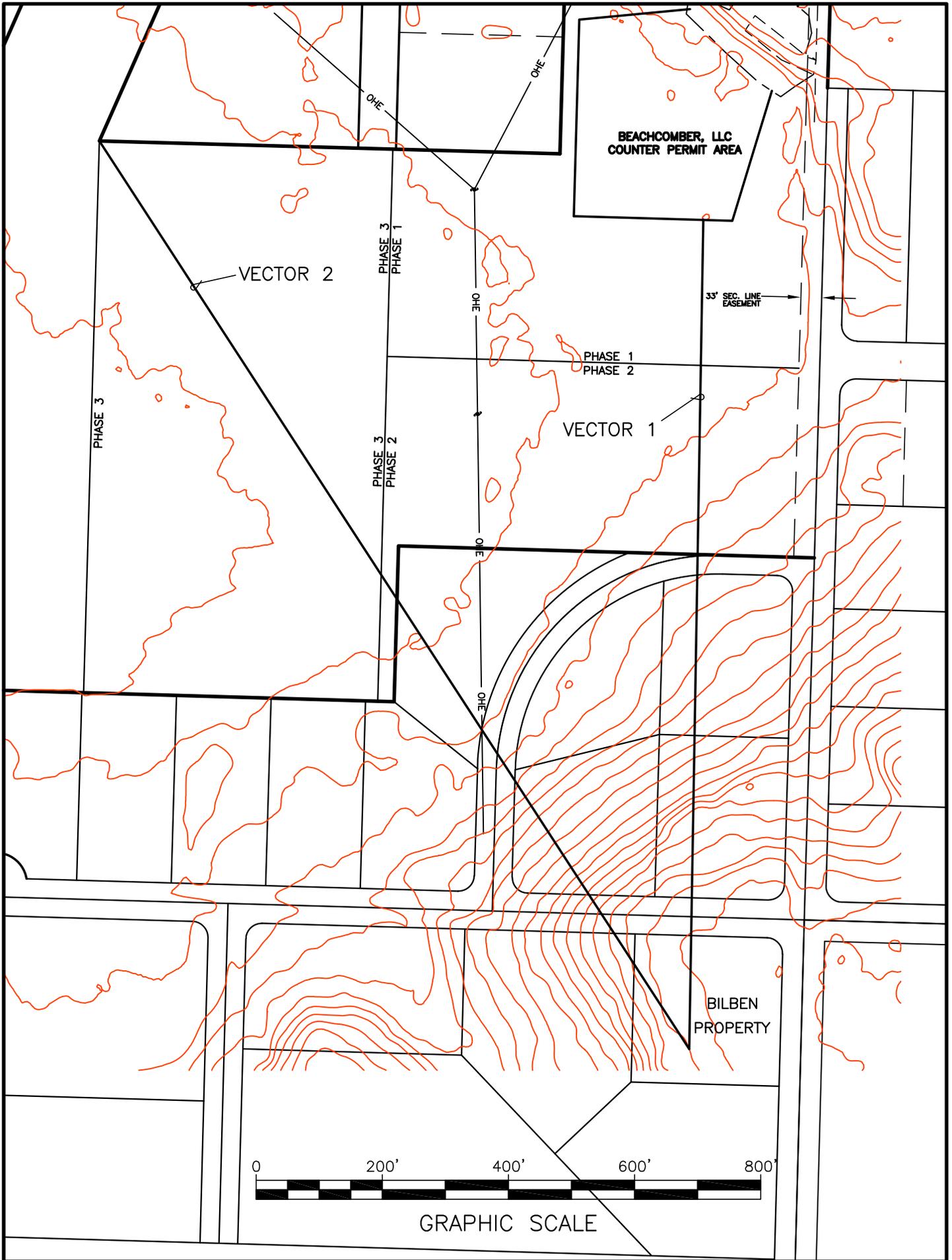
The contours shown are 4 foot interval LiDAR contours downloaded from the Kenai Peninsula Borough Terrain Viewer. The LiDAR data is in the Alaska State Plane Coordinate System (NAD83).

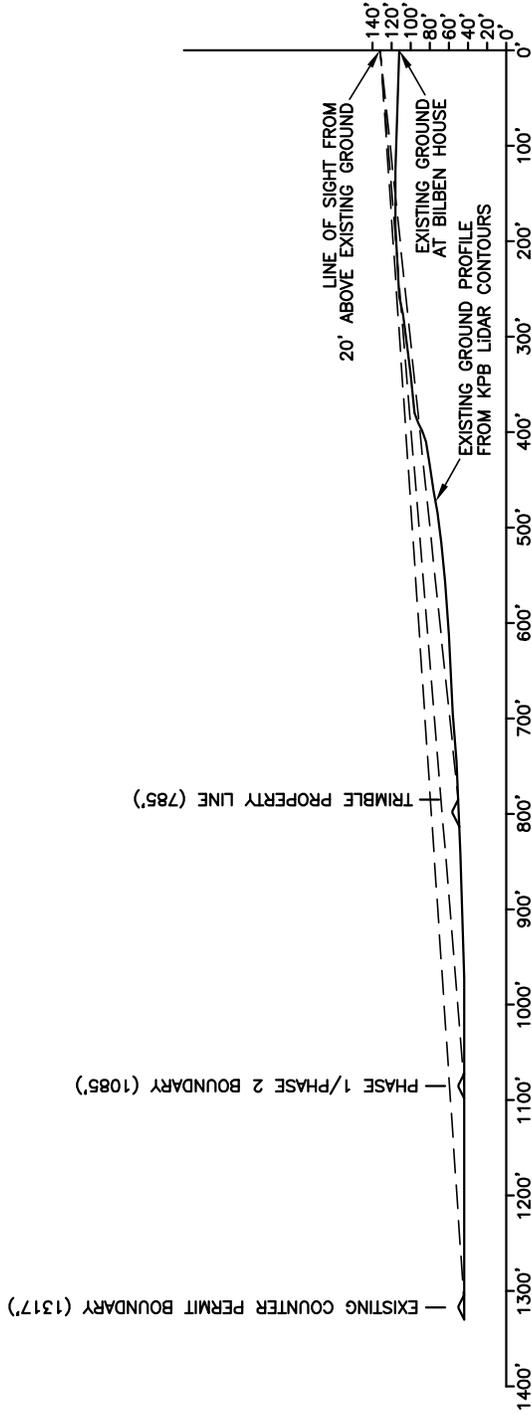
The representation of the property boundaries of Lot 3, Parkinson Tracts - Del Mar Addition and Tract B, McGee Tracts Deed of Record Boundary Survey is from a retracement survey conducted by me in 2017. The retracement survey was done utilizing GPS methodology. The basis of coordinates for the retracement survey was the Alaska State Plane Coordinate System (NAD83) determined from a GPS static observation on a control point that was submitted to OPUS (Online Positioning User Service) for processing.

The profile drawings show line of sight from a point 20 feet above existing ground at the approximate location of the house on Lot 3, to two points within Tract B (Vector 1 and Vector 2). The original ground profile is interpolated from the 4 foot interval LiDAR contours along the two vectors. The horizontal to vertical relationship on the profile drawings is 1 to 1. If you have any questions, please feel free to call me at (907) 399-4345.

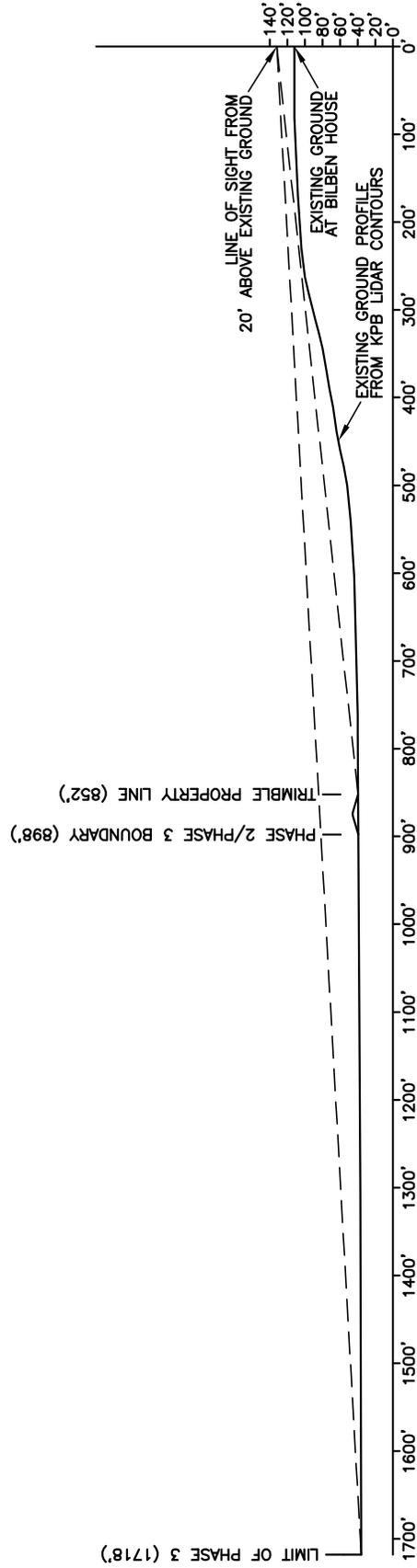
Sincerely,

Stephen C. Smith P.L.S.





VECTOR 1 PROFILE



VECTOR 2 PROFILE



GRAPHIC SCALE

From: Jim Halverson <jrhalver27@gmail.com>
Sent: Friday, March 22, 2019 10:19 AM
To: Wall, Bruce
Subject: Fwd: Gravel Pit Support

As I can't be at the hearing on March 25th I send this e-mail to state my views.

I have known the Trimble family for many years and feel that Emmit would be a responsible owner of the proposed pit. As a person who has built many homes in the past forty seven years in the Anchor Point area I know the importance gravel

plays in all our lives and how important it is to the local community.

If it wasn't for the jobs in the gravel and related industries Anchor Point wouldn't even be a wide spot in the road.

Respectfully Jim Halverson

Bruce Wall, please submit this as my support testimony for the Beachcomber CLUP. It is my response to a facebook post that Willy Dunne made on the topic of gravel pits. Thank you,
Lauren M Isenhour

Willy Dunne I am not an expert and this is just my personal opinion. The only people motivated to engage in this conversation are the ones emotionally charged and immediately affected (mainly the neighbors who don't want the gravel pit). All the thousands of other local residents who aren't directly affected or don't adamantly oppose the pit won't/don't take the time to write letters, drive to Soldotna for the Planning Commission meetings, call Borough Assembly members to say "hey, I'm fine with it," so it feels like a bias representation of the 'community.' I am very familiar with the Danver Rd gravel pit you spoke of, and I was at the planning commission meeting where the permit was presented. There were hundreds of us that received a notice from the Borough of the proposed permit adjacent to our properties and the only people who took the time to drive up to the meeting were those that passionately oppose it, my parents (the applicants), and me. There were countless more neighbors who did not take the time to respond to that Borough notice. I recently received a similar notice from the Borough of a proposed gravel pit adjacent to a lot I own in the Stariski area. I'm fine with it, don't oppose it, and I did not take the time to write a letter or appear at the Planning Commission meeting to say 'I'm fine with it.' In my opinion, of course you are only hearing from the people worried about the negative effects. They are the only ones passionate enough to make that effort. The rest of us who don't passionately oppose don't take away from the other important demands of our lives to say 'I'm fine with it.' I am a community member - I care about my community, its success and longevity. I love my quiet, rural, rustic Alaskan life. I care about the environment and the wildlife. I also care about all my friends and fellow community members who work related to the gravel industry; it is the literal foundation of Anchor Point. I don't believe that caring about the environment and caring about industry and development have to be in opposition. I feel an overwhelming division between the people who work in/with gravel, and the ones who oppose it, which makes no sense to me because we are ALL the community who are the gravel consumers. Terms like 'raping and pillaging the land,' or 'exploiting the land' are commonly used, and those who oppose it often demonstrate a level of contempt or disgust for gravel pit owners/operators as being greedy destroyers. Again, this is just my opinion based on my own experiences. Even your comment 'yes some people don't mind living next to a gravel pit. Many others, though prefer not to have the peace and quiet of their rural residential neighborhoods disturbed by the noise, dust, traffic, etc' implies that every gravel pit creates these problems and it's just that some of us have lower standards of living, so we may not mind those inevitable problems as much as the 'others'. This divisiveness is a serious problem, in my opinion. We ALL need gravel, whether you're a community member who likes maintained roadways and sanded parking lots, or if (like me, working in construction) your industry depends on it. I would argue that the majority of families who live in Anchor Point (that are not retirees or snow birds) work in some fashion related to gravel: equipment operators, truck drivers, construction workers. The pit operators I know go above and beyond the standard Borough regulations to do everything they can to mitigate sound, dust etc to keep their neighbors as happy as possible. They've been willing to work with their neighbors to do things like improve the neighborhood roads, expand privacy berms, discount or gift gravel, in some cases even shorten hours of operation.....maybe some of these examples are reasons these community members

commenting here are saying they don't mind living next to gravel pits? Gravel exists where it is, it can not be created in a more 'ideal' location further from residential locations, and large parcels of land suitable for a pit are not as plentiful as some people must think. The further away a pit is from the residential market that purchase the gravel, the higher the cost due to travel. Gravel pits provide a needed and necessary commodity to the community and are already highly regulated and controlled by the borough. I agree with you that there needs to be more open dialogue. I'm not against fine tuning the regulations, but I believe people often think that more regulations equal more protection for them but neglect to think of the potential negative effects of more regulating and how costly that can be. Gravel prices have to go up as the process to extract it becomes more difficult/involved. It is a misconception that there are currently more than enough gravel sources, and at a certain point it could become too prohibitive for a pit operator to stay in business, and that would negatively effect us all. This article you linked is not relevant to our community. None of us are familiar with the laws or regulations in Canada, but most of what I read about this particular woman's experience in Calgary is already regulated against and would not be the case here in our Borough. If you're motivation here in this forum is really to hear from more of the community than just those individuals who've reached out to you with complaints/concerns, there are better and less biased ways than linking an article like this one. How about simply posing a discussion like 'Hey community members, I've heard a fair amount of concerns about the negative effects with gravel pit development. Is there more to this discussion? Are there any other community members who would like to weigh in on this topic?' I can only speak for myself, but I would have responded a lot more positively to an approach such as that, than I am feeling about the approach you ultimately chose.

From: Pete Kinneen <biocharalaska@gmail.com>
Sent: Friday, March 22, 2019 4:25 PM
To: Wall, Bruce; Hindman, Julie
Cc: Dunne, Willy
Subject: Planning Commission 5/25/19

Regarding the request from applicant Beachcomber, recommended by staff, to postpone decision in this matter I recommend, and ask for this matter to be postponed to May 28, 2019.

This will not in any way prejudice party applicant Beachcomber while helping balance scales of justice with rights to be effectively heard by the literally HUNDREDS of adjacent neighbors.

March 25, 2019 Hearing should be postponed in its entirety and heard entirely and on a more comprehensive manner on the May 28, 2019 meeting.

Thank you for your judicial decision.

Pete Kinneen 435-7183
Biocharalaska@gmail.com

Sent from my iPhone

Wall, Bruce

From: Pete Kinneen <biocharalaska@gmail.com>
Sent: Friday, March 22, 2019 4:46 PM
To: Wall, Bruce; Hindman, Julie
Cc: Dunne, Willy
Subject: What unzoned does NOT mean

Dear KPB Planning Commission Members:

You are being incorrectly told that gravel mining in unzoned portions of the Borough give a right to landowners to open mine gravel and other minerals as an “as-of-right.”

You are also being incorrectly advised that you do not have authority to impose anything more than “berms & buffers” to mitigate impact to adjacent existing homeowners.

Officially zoned or unzoned designations of lands confer special positive traits to specific lands while restricting certain activities on other lands.

A one acre gravel pit is an “as of right” activity on all sites not specifically prohibited through formal zoning.

More than 2.5 acre mining is Prohibited on all lands without special permission through your authority. The Planning Department does not have that authority.

You alone hold that authority over staff and, despite what they would have you believe, may not approve such permit until the applicant has met your approval in meeting the standards as clearly laid out in KPB code.

You rule, the code rules, staff, inc atty, do not!

Pete Kinneen 435-7183

Sent from my iPhone

From: daphane maxon <daphane50@gmail.com>
Sent: Friday, March 22, 2019 2:04 PM
To: Wall, Bruce
Subject: Anchor Point Gravel

Good Afternoon Mr. Wall,

I would like to give you my input on the possible gravel development in Anchor Point.

Gravel as you are aware, is required for such projects as driveways, garages, green houses, or outbuildings, for their base; before building a house, putting down the foundation, landscaping, pathways, dry creek beds, and planter boxes to name a few areas.

I am a resident of Anchor Point; owning three properties there, and have used/required gravel from a local gravel business for numerous projects at both houses, including at one property, widening my parking area and drive to the barn; a new driveway for the other property, and concrete mixing for the new house. Thankfully, the local gravel business we went with had what we needed, yet, they are slammed with business orders in the Spring and Summer, so it took a bit of time to have everything delivered, which slows down projects. Many of the building contractors get their gravel from Anchor Point also. Another gravel pit business in Anchor Point to serve AP, Homer and the surrounding area is needed.

I am fine with responsible gravel development in Anchor Point, Alaska.

If you have any questions, I am happy to discuss.

Thank you,

Daphane Maxon
32977 Heather Glen Ct
Anchor Point, AK 99556

907.205.0135

KPB and Trimble in their Opening Statements both claim that no substantial evidence was submitted by the neighboring property owners to support the Planning Commissions decision. I beg to differ!



The picture is taken from my bedroom window. Grade level for my property is approximately 20 feet above grade level for the mine, and my house is classed as a 1 1/2 story with a basement—this would put the view from my bedroom window at approximately 34 feet above the top of the 6 foot berm! The view from my living room would be approximately 24 feet above the top of the berm. I believe that the Borough must consider my bedroom to be “property” as evidenced by the fact that the assessed valuation of my “property” is based in part on the number of levels in the structure. Bruce Wall (KPB Planner) has been to my property, and he has seen this picture. He obviously does not see any dust, noise, or visual impact that might affect my, or any other neighboring property. My property is located directly east of the proposed gravel mine, across Denver Street (which shows at the bottom of the photo). I am six feet tall +or- an inch, and I am standing fifty feet inside the proposed mine. Planning Staff has concluded that a 50 foot vegetated buffer and a 6 foot berm will sufficiently minimize the dust, noise, and visual impact to my property. **All** trees behind me in the picture are located in the mine area and will be **GONE**—that leaves **one tree in the 50 foot vegetated buffer**, and a six foot berm to protect my property! I am also standing on what would become the primary access road to the mine and the potential 10,000 dump trucks that would travel it annually for the next fifteen years. No noise impact there! 250 feet behind me is the proposed location for the rock crusher. KPB and Trimble apparently don’t consider this to be “Substantial Evidence”! I have to think a **reasonable** mind might conclude differently...

To approve this application in light of this “substantial evidence” would have been a direct contradiction of 21.29.050(2E) which states that: “*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*”, and 21.29.050(2C) which states

that “*The vegetation and fence (or berm) 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*”. As such, the Planning Commission was justified in their denial of this application, and their findings of fact were correct.

The proposed buffering is neither in “consideration of existing use”, or of “sufficient height and density to provide visual and noise screening” as required by Code. One tree does not constitute sufficient density, and sufficient height cannot be obtained to minimize visual or noise impact. Truck traffic alone would generate noise impact that would not be minimized by any type of buffer.

My property is at a substantially lower elevation than all other adjacent properties east of Denver Street, and at a substantially lower elevation than two or more impacted adjacent properties that are west of Denver Street and south of the proposed mine. All properties that are at higher elevation in the neighborhood are even more affected by the visual and noise impact that this mine will inflict because of the fact that berms and buffers of any practical height are well below their line of site and their line of earshot. Standards 21.29.040 (A4) & (A5) which are required by Code **can not** be met, and the Planning Commissions Findings of Fact are correct and appropriate.

March 22, 2019

Re: Written Testimony- Beachcomber LLC Proposed Gravel Pit, Anchor Point, AK

Dear Planning Commission Chairman and Commission Members

We live within 1/2 mile from the Beachcomber LLC proposed gravel pit in Anchor Point, Alaska. Our physical address is 34860 Seabury Court, Anchor Point, Alaska 99556

We are opposed to the proposed gravel pit in our back yard and appeal to your sense of fair play in your deliberations over this sensitive subject. More specifically, we oppose the approval of the gravel pit permit application for the following reasons:

- 1) The Planning Commission's action to deny the original Beachcomber LLC was based on materials facts related to noise and visual impact. The Hearing Officer's attempt to cut the Planning Commission's authority to deny a gravel pit permit is contrary to the Code that specifically states that the Planning Commission has such authority, under 21.15.050.
- 2) Noise Impact - There are no actions that Beachcomber LLC can do to eliminate or reduce the noise from their operations that won't negatively effect adjacent homeowner properties and the public who use the State Slide Hole campground across the Anchor River Road from the proposed gravel pit. In fact, many of the public who camp in it during the summer use tents. Tent fabric will do little to block the noises of loaders, dump trucks, and a proposed rock crusher. The topography surrounding the gravel pit does act like an "amphitheater" in that the gravel pit area is mostly a level area surrounded by upward sloping ground. Any noise created by the gravel pit operations is amplified by this physical phenomena, with noise rising to all the homeowner properties surrounding it. Last fall, when the Beachcomber LLC was working their gravel pit we could hear their loader dumping gravel into the gravel trucks, and we are well above the pit with trees and foliage between our home and the pit. Additional buffers at the pit site will not reduce or eliminate the noise disturbance their equipment produces.
- 3) Visual Impact - Our home is located back from a surrounding hill (approximately 100' elevation within 1/2 mile of the gravel pit) that overlooks the proposed gravel pit site, thus, we can't see into the gravel pit since we are a secondary lot. However, our three next door neighbor's homes are closer to the edge of the hill and look directly down into the gravel pit. At a 100' elevation no proposed buffers and/or berms will screen off the gravel pit from disturbing their view.
- 4) Dust - In the work of such a large commercial gravel pit operation, it will be impossible to reduce dust from the operation to a level acceptable to adjacent homeowners, the nearby Slide Hole Alaska Public Camp Ground, other R/V parks, and including our home which has an "air system" which can't handle that fine dust. This factor is because as a large front end loader empties its load into the dump trucks, dust and particulate matter will be blown by the wind. No matter which direction the wind is blowing there are homes or public locations that will be negatively affected. While dust suppression methods are available, it is impossible to treat the ground where the front end loader is digging from. Gravel trucks moving sand, gravel, and other material from the proposed gravel pit along the haul route, i.e., Danver Street and the Anchor River Road, will be subject to blowing dust and matter all along the haul route. It will be almost impossible to water down the trucks enough to stop the dust from escaping the trucks. Two to four times a year, we have really strong wind storms. You can see how storm has affected the parking lot at the boat launch. The wind sweeps up the river and more dust will fall on homes from the pit.
- 5) Physical Damage to Other Properties -The owner has stated he plans to use Danver Street as his haul route, while in fact, he will also be using the Anchor River Road (ARR) to access

other higher class roads to move materials to their final destination. The Anchor River Road, a State road, is already deteriorated to the point vehicle traffic dodges swells, holes, and serious cracks on the roadway to navigate it. Long stretches of the ARR have significant cracking along the road edges with the very edges breaking off. Due to their width, heavily loaded tandem axle gravel trucks will have to travel over an already damaged roadway, thus increasing the road's deterioration. Experts in highway construction familiar with the ARR have told us that up to 50 fully loaded gravel trucks per day will soon make the ARR almost impassable (the Beachcomber LLC Permit Application states he plans to move up to 50,000 cubic yards of gravel each year for 15 years. This translates into moving 5,000 cubic yards per day with approximately 100 work days in the season, thus 5,000 cubic yards hauled by a 10 cubic yard dump truck equals 50 loads per day plus return trips equals 100 trucks over the ARR per day). The ARR simply can't withstand that much heavy trucking traffic in its present condition.

- 6) Protecting Damage to Other Properties, Safety - While the code is ambiguous about public safety, we believe the Planning Commission is accountable to implementing the code to protect the public from harm. The Code states under 21.25.020. - Purpose. This part of the code states, in part, "...impose...standards for certain land uses which may be potentially damaging to the public health, safety, and welfare, in a manner that recognizes private property rights." We believe that the Planning Commission must look at the proposed gravel pit operation in terms of the public's health, safety, and welfare even though code 21.29.040 may be vague. Most cases of unclarity would move to the basis of what a "prudent person" would do or have done. In this case, the purpose of the Code would guide the Planning Commission if the code is so narrow that some would deem it non applicable. Therefore, the Planning Commission is obligated to look at the safety of the public along the haul route where the gravel pit owner's trucks will travel and that is the Anchor River Road (ARR). During the summer, the ARR gets significant pedestrian and bicycle traffic throughout its length. The road shoulders, if they exist at all, are very narrow. Large vehicles will force pedestrians and bicycles to jump into the ditches some of which are very deep and often filled with water. As you know, many kids on bicycles believe themselves to be invincible; thereby, setting up a deathly situation with so much heavy dump truck traffic on the ARR. In addition, the ARR is used extensively by the Commercial Charter Boat fleet that traverse the ARR with "over width" boat/trailers. It is likely impossible for one of the gravel pit dump trucks, and one of the "over width" boat/trailers to pass on the narrow width ARR. Any pedestrian and, or bicycle traffic, will be at extreme danger of injury or even death in such circumstances. Since there are no other haul routes available for the gravel pit owner to move his gravel, the answer for the Planning Commission is to deny this gravel pit application. We hope you will apply the concept of "prudent persons" doctrine making the right decision.
- 7) Property Values - The code 21.25.020.-Purpose. States in part, "It is the purpose of this chapter...(to)...impose minimum standards for certain land uses which may be potentially damaging to the public...welfare...". The meaning of welfare is, "the provision of economic benefits." We maintain that the proposed Beachcomber LLC gravel pit will cause us irreparable economic harm. A public meeting at the VFW, in Anchor Point on July 11, 2018, was held to discuss the Beachcomber LLC's proposed gravel pit. Approximately 50 Anchor Point residents were at the meeting. Emmitt Trimble of Coastal Reality and owner of Beachcomber LLC attended the meeting and answered questions about the pit. I personally asked him, "Based on you being a long time Anchor Point Realtor, if you put a commercial gravel pit next to our homes will our property values go down?". Mr. Trimble stated, "Well absolutely. I don't know how much but they'll go down." At a Material Site Work Group meeting on February 27, 2019, the subject of how gravel pits adjacent to homes effect home values was discussed. Testimony was heard that home values would be devalued by 30% or more. Mr. Emmitt Trimble testified and stated, "This is being blown completely out of proportion. There won't be any negative effect to home values if a gravel pit is put in next to (existing) homes". His testimony at the February 27th Material Work

Group meeting was completely opposite from the statement he made in the public meeting he spoke at on July 11, 2019. Which is it? Do home values go up or down when a gravel pit is created next to existing homes? Mr. Trimble can't have it both ways. It is obvious Mr. Trimble will testify and say anything that will further his own personal agenda. This shows that he can't be trusted to state the truth if his testimony will further his own personal economic interest. In their written testimony dated March 17, 2019 to the KPB Planning Commission, Linda and Mike Patrick whose home overlooks the Beachcomber LLC's proposed gravel pit stated, "Two real estate representatives have told us that (if a gravel pit goes in adjacent to our property) our property will be devalued." "I had a property evaluation done by Kachemak Realty on our house and two lots. The agent estimated a 30% reduction in value...compounded by it being in direct line with the spectacular view. Estimated damage to our properties \$140,000." In our own case, at a 30% reduction in value we estimate at least a \$180,000 loss in our homes value. It is unconscionable, that Mr. Trimble can enjoy the monetary benefits of his proposed gravel pit while his neighbors lose 30% or more of their home values.

We wish to thank you for considering our written testimony. We hope you will again rule against the Beachcomber LLC's gravel pit application. We appreciate the difficult task you have, but we believe the Code will support your decision and explanation to deny the permit again.

Sincerely,

Gary and Eileen Sheridan
PO Box 661,
Anchor Point, Alaska 99556

Tel: 907-235-5542

Email: twoshar@acsalaska.net

cc: Mayor Charlie Pierce
Representative Sarah Vance
Senator Gary Stevens
Anchor Point Advisory Committee

TO: Bruce Wall

From: Dan Syme

Date: March 22, 2019

Subject: Danver Gravel Mine

I am writing to express my feelings on the Proposed Danver Gravel Pit mine in Anchor Point.

If this mine is approved it will become one of the largest travesties towards The Public's Safety and Wellbeing.

It seems that even though guide lines have not been met there is a conspiracy by Kenai board officials to grant the permit regardless of noncompliance by Beach comer.

It would be interesting to know if any board members have associations with the mining industry, such as gravel pits in general.

I live with in a ½ mile of the proposed pit and wonder if commonsense has be thrown out the window.

Does anyone believe that there is no potential of health concerns from dust, water run off our being hit by large trucks and equipment on a road that can hardly accommodate passenger vehicle's as it is.

Or listening to crushers and back up alarms all hours of the day.

It is true that large trucks use this road way now but on a limited basis.

This area is a pristine area and only a few feet from Start Parks land, Parks and recreation activities.

Do you not think that when folks quit using the recreational activities in this area because of noise, air Pollution and safety of there children that it will not adversely affect the economy for Anchor Point, Homer, Soldotna and elsewhere. Which one of you want to see a child injured or Killed because of a road that has no clear pedestrian right of way to get to the boat launch or other activities.

It seems to me that some of us that are responsible for the public's wellbeing is not playing with a full Deck.

I am sure when it comes time to make the conclusion on this matter that those responsible will make the correct discussion. Our faith is in you who represent us.

Sincerely

Dan Syme

Anchor Point Resident

73530 Seabury Rd.

From: David Drake <cope_10@yahoo.com>
Sent: Saturday, March 23, 2019 8:50 PM
To: Wall, Bruce
Subject: Support letter for beachcomber CLUP

Dear Planning Commission Board,

I am a resident of Anchor Point, and I support responsible development for our small community to maintain our existence. I believe the infrastructure of our community is greatly tied to the natural resources we possess, gravel being a very important one. There is not a booming economy in Anchor Point, but there are many families who live here and are able to support their family and raise their children here because of the work related to gravel and the modest construction industry. If we eliminate those jobs, it drastically hurts our tiny community.

I believe there is an attainable balance between protecting the environment and surrounding property owners, while still allowing for the development that keeps our community viable. I do not believe it should be one side versus the other, but a respectful cooperation between the entire community is what is needed to ensure that we REMAIN a community. That is what the borough's permitting and regulation process is all about. Gravel pits are highly regulated. Hindering the development of gravel pits will hurt this community tremendously. There are many members of our community who are retirees or snowbirds who are worried that 'development' will ruin the quiet little town they enjoy recreating in, and are not concerned if jobs dry up, or if Chapman School closes, or if local businesses fail because they are only concerned with the peace and privacy of their own property. But there is also a large population of us that are trying to make a living in the Anchor Point area, raise children here, and depend on the jobs created by that 'development.' Like our retiree counterparts, we ALSO enjoy the peace and privacy of our properties and enjoy recreating in this wonderful environment. But we also care about the viability and longevity of Anchor Point for our future generations, and that requires a balance between development/job creation while still keeping Anchor Point a quaint recreational destination. We do not want to see our friends, families, neighbors forced to leave because our community become unsustainable. The presence of gravel is one of the few advantages Anchor Point has over surrounding communities. If you hinder/stop the responsible and regulated development of gravel, you make it really hard for our families to support our children here.

I appreciate the current regulations being implemented on the gravel industry, because they do protect our community and our residents. Thank you.

Dave Drake

Dear Planning Commission Board,

I am writing about the gravel pit being considered on Danver Road in Anchor Point. I support development and believe the jobs created by the gravel business are very important to our whole Peninsula. I want the roads to continue to be sanded and maintained and I want gravel available to me and my family and friends when we want to build. I do not want the planning commission to deny applications that meet the code or new regulations that cause the cost of gravel to go up so much that we can not afford to built or maintain our properties or our public amenities the way we want and need them to be.

I believe that a gravel pit provides a necessary commodity to our communities. Gravel pits already have strict regulations and laws to control what they can and can not do. The only business ventures in our borough that are regulated are gravel pits and marijuana operations. There are zero regulations for junk yards, dog lots, trailer parks or any other business or personal property usages that some neighbors argue could lower their property values.

The borough does not have zoning. Personally, I do not want to be zoned, but putting stiffer regulations on a gravel pit and allowing the rest of the borough to have junky yards and do whatever they please with their property and be totally unregulated is not fair.

Gravel pits actually provide a needed service to all of us, so personally I am willing to work with the pit owners and the current regulations to make sure that needed service stays available!

Thank you,

Danica High
Danica High

From: jake wise <jakerwise@icloud.com>
Sent: Saturday, March 23, 2019 10:50 PM
To: Wall, Bruce

Dear Planning Commission Board,

I am a resident of the Kenai Peninsula Borough and have lived here my whole life. I live in a house with a foundation built from gravel products, I have a septic system and driveway because of purchased gravel, I live on a maintained road built with gravel products, I benefit daily from our state and borough maintained roadways (both gravel and paved), our public buildings and parking areas, that are all built and maintained by gravel and gravel products (such as sand, rock, peat, top soil). I understand the need for such materials to maintain all of our everyday lives, let alone to allow for new growth and development. I know that the gravel industry provides a lot of jobs in our communities on the peninsula, and THOSE jobs help support the other local businesses such as stores and restaurants. I do, of course, expect gravel pit owners to follow the law and adhere to the regulations set in place by the borough, and I do appreciate the borough enforcing those regulations.

I understand the need for gravel pits and I am fine with the development of responsible gravel pits in the Anchor Point area.

Thank you,

Jake Wise

From: nick finley <nicfin23@hotmail.com>
Sent: Sunday, March 24, 2019 9:30 PM
To: Wall, Bruce; Wall, Bruce
Subject: Support for Danver Gravel Permit

Planning Commission Chairman and Members,

I have heard a lot of negative comments about the proposed gravel pit on Danver Rd. Anchor Point is an unzoned area and not a city. If people want to have a controlled neighborhood then they should move into Homer city limits or move somewhere else. I believe if you own property and there are no covenants or zoning then you have the right to do whatever you want that is legal on your land. I live in a rural area so I do not want people to tell me what to do on my land and I don't tell my neighbors what to do on their property either.

People living in unzoned areas are subject to their neighbors using their property in any number of objectionable uses such as dog lots, junk yards, motor cross racing or any industrial use. Seems to me gravel pits are regulated and all those other 'objectionable' uses are not. Gravel pits provide a completely necessary resource to the entire community, AND they are regulated to protect the neighboring people. If a pit owner doesn't follow the regulations, they can loose their permit or be fined heavily.

I support the development of the pit on Danver Rd, as I would any other legal project that follows the regulations. If you let negativity over rule reason and law then we are all in big trouble. Decisions should not be made on emotional claims but on the codes and on the law.

Thank you for the opportunity to express my opinion,

Nick Finley

Dear Planning Commission Board,

I am a resident of the Kenai Peninsula Borough and have lived here many years and plan to raise my children here. I live in a house with a foundation built from gravel products, I have a septic system and driveway because of purchased gravel, I live on a maintained road built with gravel products, I benefit daily from our state and borough maintained roadways (both gravel and paved), our public buildings and parking areas, that are all built and maintained by gravel and gravel products (such as sand, rock, peat, top soil). I understand the need for such materials to maintain all of our everyday lives, let alone to allow for new growth and development. I know that the gravel industry provides a lot of jobs in our communities on the peninsula, and THOSE jobs help support the other local businesses such as stores and restaurants. I do, of course, expect gravel pit owners to follow the law and adhere to the regulations set in place by the borough, and I do appreciate the borough enforcing those regulations.

I understand the need for gravel pits and I am fine with the development of responsible gravel pits in the Anchor Point area.

A handwritten signature in black ink, appearing to read "Steve Hump". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thank you

From: Tony Hoza <tonyhoza@gmail.com>
Sent: Sunday, March 24, 2019 2:06 PM
To: Wall, Bruce
Subject: proposed Beachcomber LLC gravel permit

Mr. Chairman,

For the record, I live within the effected area of this proposed permit on 73614 Twin Peaks Loop, Anchor Point, Alaska

Please add my family to the list of property owners in the effected area of the proposed Beachcomber LLC gravel pit, to your list of "opposed".

This particular proposed pit is in the totally wrong location for a huge pit such as it is proposed.

Many good gravel operators such as Dibble Creek and East Road Services and Johnson and Sons have planned their pits to be in areas that are beneficial to both them and the residents around their pits.

But this proposed gravel pit is completely surrounded by homes that were built and purchased knowing that the small yet significant area was in a peaceful residential area that is only yards from a State Park and a famous halibut boat launch and the world famous Anchor River fishing environment that people from Soldotna on the Kenai River to the people in Homer based around the Homer Spit enjoy! You would never allow this to happen next to he spit, would you?

As you well know, there are dozens of local gravel pits, with none I believe that were ever denied. Just because there are no "Restrictions of Record" if I worded that correctly, that the applicant cannot meet, I believe the rights of the many taxpaying landowners that are adjacent to it should have a high consideration in this special area.

If the adjacent property owners do not have any implied rights of record, and do not have a say in this proposal, then the Board should say this outright! If we do have an actual right of say in this matter, then it would be very hard for a reasonable person to find that this proposed gravel pit is in the wrong location having a disastrous effect on both the effected property owners lives and property values.

This is literally a total residential & tourist service based area, no less than the Homer Spit!

We all need and want the services of gravel, but not when they approach with the destruction that this proposed pit could do to its adjacent residences and their families!

This is not a situation where people move next to a gravel pit then try to shut it down. This is the opposite.

Thank you for your consideration in this matter

Tony Hoza

From: Mike Jones <anchorriver500@yahoo.com>
Sent: Sunday, March 24, 2019 11:37 AM
To: Wall, Bruce
Subject: 74185 Anchor Point Road - sand/gravel/peat extraction permit application

Dear Mr. Chairman -

I would like to weigh in on this proposed gravel mine application. While my house is on the north side of the river and it would seem that I don't necessarily have a dog in this fight, I frequently travel along the Anchor River Road and I was also looking at one time at purchasing a residential lot nearby to the proposed gravel mine. This gravel mine seems very incompatible with the predominant use of residential lots in the area. Between the noise, dust, likely impact to groundwater used for drinking water, and almost certain negative impact to adjoining property values, I cannot see how the project benefits outweigh the adverse impacts to surrounding property owners. Tall berms around the pit may mute some of the noise and visual impact but it will not address the considerable heavy truck traffic around residential property owners. With a gravel mine at the location, there is certainly no way I would ever consider purchasing one of the lots there to build on. On top of that, the Anchor River Road is in poor shape and heavy trucks will only worsen the condition of the road.

I am by no means against gravel mining as this is a needed commodity by all of us however this location, given the existing development around it, seems completely inappropriate for this proposed use.

Thank you for your time and consideration of my comments on this matter.

Mike A. Jones
34179 HMS Resolution Road
Anchor Point, AK

Sent from my iPad

3-25-19 Hearing

To the Planning Commission

Beachcomber LLC Permit

Mary Trimble, member Beachcomber LLC PO Box 193 AP

When we first started this permit application process we talked to the Mayor about it and he said simply "follow the rules". He did not tell us it was a contest to see who could generate the most testimony for or against. We have been following the rules. We hired an engineering firm to do the surveys, drawings and work with us and the staff to make sure our application was complete. Based on that, the staff recommended our permit for approval. Once again we have worked with the staff and are now clearly stating that our berms will be where they are most effective – between the vegetative buffer and the extraction site as we have intended to do all along. The staff is again recommending approval. The planning director, Bruce and the borough attorney have all visited the site and saw no issues with our plan. The borough attorney has, in her briefs, interpreted the code and stated case law to back up her position that the permit should be granted. These are professional, educated people who represent the borough interests and who interpret and enforce the code.

Emmitt and I became AP residents in 1976 and owned a tackle shop on the Anchor River. Even though our campgrounds and state park are a valuable resource that we all enjoy they contribute very little to our town's economy. The gravel industry is the economic driver that helps many year round businesses thrive. The trickle-down effect is huge. We could not have developed 150 residential homesites in the area without an affordable source of gravel close by. Currently, we own 32 residential and 9 commercial parcels, 9 homes and a commercial building for a significant combined tax assessed value. We also own a construction

company with our daughter and are building spec homes in town. Preserving property values is very important to us.

With this permit we will only be a "Mom and Pop" business and are not intending, able or willing to compete with the large operations. It just isn't practical. We don't have equipment so we will hire the local contractors that we know do a good job. The permitted 27.7 acres minus the buffers is actually less than 20 acres, planned in 3 phases and will be reclaimed when progress is made. Our prime use for the gravel will be to improve our other properties and sell to the limited local area market.

The contour of the surrounding area has been mentioned many times and erroneously described as an amphitheater or bathtub. I submitted a colored contour map showing the true situation. The area higher than our property runs in a straight NE SW direction.

We believe in "Rights with Responsibilities" and this is a situation where we are agreeing to take on responsibility in exchange for the right to excavate gravel on our property. The "opposition" wants the right to protect their property but are unwilling to accept the fact that they have a responsibility to do what they can to minimize visual and noise, if it is bothersome, by building a fence or berm on their property and/or installing blinds that raise up from the bottom so they still have their Inlet view. They do not have rights to our land, so we should not bear all the responsibility for mitigating their perceived discomfort for how we use it.

In fact, our land is not a wildlife refuge, a bird sanctuary or a state park. It is our private property and we have the right to put it to its highest and best use which is defined as the likely use, selected from a number of available choices, to which an area of land may be put, based on what is physically possible, in compliance with zoning and building regulations and which produces the most profitable present value of the land.

As has been said before – this is an amazing legacy property for our family. We desire to build a home there to be near our grandchildren.

Finally, KPB 21.29 attempts to balance a variety of public needs, including residential area protection, a private party's right and ability to use their land to its highest and best use, and the public's need for gravel. Whether one agrees or not with KPB 21.29, it is the law and standards that control what the Planning Commission can or can't do.

Planning Commissioners have a fiduciary obligation to thoroughly read and listen to what is presented, dismiss any irrelevant information, and make an informed decision based solely on the code and substantiated facts.

This is about ensuring there is a fair process that abides by the existing code. If this governmental body acts in violation of the code, the rule of law is undermined and that is harmful to the overall democratic process.

Respectfully,

Mary E. Trumble

To the Planning Commission

Beachcomber LLC Permit

Mary Trimble, member Beachcomber LLC PO Box 193 AP

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Borough Opening Statement Appeal Discussion

1. This material site is located in the rural district of the borough. The rural district is unzoned. KPB 21.04.01 0. As such this is not a case where a conditional use is being allowed in a residential zone where it would normally be prohibited. Subject to some protections afforded surrounding property owners as set forth in the code, a material site can be placed almost anywhere in the rural district of the borough. Given the wealth of gravel deposits in the Anchor Point area it should not be surprising that this parcel would be utilized for a material site.

2..... some of those property owners will be more protected by their distance from the material site and the proposed buffers. However, there will always be at least some noise and visual impacts to adjacent properties from a material site operation.

3. In the history of the material site ordinance there has not been an interpretation that all surrounding properties must not be able to see or hear the material site at all. Rather, the interpretation over the course of the 96 material site permits that have been issued since 1996 is a reduction in certain negative impacts is the goal of the material site regulations. Full elimination of negative secondary impacts has never been discussed or required, nor is it feasible. Attempting to judge whether a permit should be denied based on how many people claim they are not sufficiently protected ultimately will lead to arbitrary decision making. Rather than relying on evidence this approach relies on surrounding property owners stacking the hall-whether a permit is approved or denied becomes a numbers game. Such "negative community sentiment" is not a valid reason to deny a permit.

4. In the case of the material site code a list of standards is provided and a set of mandatory conditions associated with those standards are imposed along with a sentence that specifically states only the mandatory conditions may be imposed to meet the standards. Little flexibility is given to the planning commission. Denials are possible. However, generally denials are not probable given the language of the code.

5. Given the mandate from the assembly that material sites be subject only to certain mandatory conditions a denial based on a conclusory statement that the buffers are insufficient to protect against noise and visual impacts cuts against the grain of the code. Rather, if the buffers that can be fashioned are entirely useless to protect surrounding uses the answer is a waiver of the buffer requirements under KPB 21.29.050(E), not an unauthorized denial of the permit.

6. Staff did not believe buffering would be useless and recommended enhanced buffers to afford increased protection over and above what the minimum buffers set forth in the code would require.

7. The planning commission's findings are required to be supported by the substantial evidence in the record. The "substantial evidence" in the record required to support the planning commission's findings is not the same as a substantial number of people opposing the material site. Substantial evidence is defined as relevant evidence that a reasonable mind might accept to support a conclusion.

8. One of nine commissioners indicated they read the information. One other commissioner indicated she had read "a bit" of the information and assumed it would be verified by what she heard in the testimony.

9. A superior court decision has upheld the borough assembly's authority to adopt an ordinance that favors material site operations. This order further held that it is the planning commission's responsibility to abide by the legislative standards the assembly has established

10. The assembly has specifically adopted ordinances that are protective of material site operators and rejected proposed ordinances that make it more difficult for the same to receive project approval. In adopting the material site code language, the Borough Task Force rejected language that placed a larger burden on the permit applicant

11. The Assembly could have chosen a policy that favors residential property owners, but instead it chose to adopt a policy that favors material site operators.

12. This is not to say a material site permit cannot be denied, but rather it cannot be denied based on inadequate buffers, when under the code either enhancing the buffers or waiving the buffers are the authorized resolution to a situation where buffers are not feasible. KPB 21.29 .050(1) (e) .

BOROUGH REPLY TO COMPLAINANTS

1. The briefs presented in opposition to the Beachcomber application are very similar in that they discuss the volume of people who attended the hearing who complained primarily about their viewshed being potentially ruined by the material site and also about potential noise, dust, road damage, diminishing property values, water quality and quantity. As discussed in the opening statement of the Kenai Peninsula Borough ("borough") the standards in KPB 21.29 .040 address only water quantity, road damage, physical property damage, dust, noise, visual impacts and reclamation. These are the adopted standards because these are the concerns that are raised about many, if not most of the material site applications. The complaints received about the Beachcomber material site are not unique. Repeating over-and-over again the same complaints about the same material site doesn't change the standards or conditions for material site approval set forth in KPB 21 .29.040-050.

Regardless of the evidence presented the material site code is not designed to support a permit denial based on the buffers not being feasible given the topography of the location. Where buffers are not feasible, a waiver of those buffers is in order under KPB 21.29.050(A)(2)(e). Staff, however, does not agree that the buffers are useless or not feasible but rather believes that they reduce the negative impacts of the material site. The borough further contends that it would be unrealistic to expect buffers to fully eliminate the negative impacts of noise and unsightliness which appears to be the position of the planning commission. Although the planning commission did not clearly articulate this interpretation of the code it is inferred from their findings that a denial was appropriate because the buffers would not minimize noise and visual impacts.

Reference is made to 200 pages of documents submitted. (Bilben brief, page 2.) However, documents that don't address the standards are not persuasive. Minimal questions were asked of the applicant and

testifiers regarding the standards applicable to the proposed material site. Evidence and fear are not synonymous. Much of what is referred to as evidence is actually voicing fear of what may happen if the material site is operated on the Beachcomber parcel. The borough inevitably hears complaints that wells will run dry and roads will be ruined by a material site. Yet there has never been a substantiated case of these deleterious results occurring after 96 permitted material sites. Fears and concerns, even though they may be real, are not evidence. There was no real discussion of these 200 pages of documents. This wasn't a thorough well-reasoned decision; it was a hasty reactionary decision made to accommodate the fears and concerns of the crowd.

The Girton brief references the peace, tranquility, natural beauty of the open meadows and the viewshed that will be destroyed by the material site. (Girton letter, page 1.) However, that open meadow is not a state or national park-that open meadow is a privately owned parcel in an unzoned area of the borough.

The RO Baker II Revocable Trust brief cites the *Wasilla v. Luperl* case and *South Anchorage Concerned Coalition v. Coffey*² case as supporting the denial of a conditional use permit. However, in both cases the applicant was attempting to conduct a use in a residential zone where the activity would generally be prohibited. The borough has not adopted the geographical zoning scheme authorized by AS 29.40.040(a)(1) but rather has adopted an ordinance to minimize unfavorable effects of material sites as authorized by AS 29.40.040(a)(3) consistent with the KPB comprehensive plan.³ A permit is required to operate a material site in the unzoned borough, but that permit requirement does not rely on the premise that material sites are in conflict or are generally prohibited in residential areas-a permit is required in the borough whether the nearest residence is across the street or across Kachemak Bay.⁴

The Bilben brief asserts there is substantial evidence in the record to support the planning commission's decision, but then goes on to argue that if there isn't substantial evidence the hearing officer should remand to the planning commission. Obviously, Bilben does not have confidence in the position that the substantial evidence in the record supports denial of the permit or he would not be suggesting a remand as an alternative.

The arbitrariness of the planning commission's decision is underscored by the fact that another material site in Anchor Point was heard by the same commission on the same night. The Blauvelt pit is 27.5 acres, while the Beachcomber pit is 27.7 acres. The testimony regarding Walt Blauvelt's material site was remarkably similar to the testimony regarding the Beachcomber material site. However, three people testified about the negative impacts of the Blauvelt material site, while approximately 30 testified regarding Beachcomber. The extreme difference between the two decisions the planning commission reached cannot be rationally explained. While some commissioners may not like the standards and conditions in the material site code it is not the planning commission's job to second guess the standards established by the assembly or ignore that the only conditions that may be placed on a material site are those set forth in KPB 21.29.050. KPB 21.29.040. The planning commission must work within the legislative standards established by the assembly.

Staff does not believe there is legal support for upholding the planning commission's findings of fact or conclusions of law. Indeed, the planning commission gave no explanation for its diversion from the legal requirements of KPB 21.29. The planning commission's findings were conclusory and inadequate to support abandoning the well-established approval process for material site CLUPs.

CONCLUSION

The denial of the material site based on perceived inadequate buffers is inconsistent with the many decisions issued by the planning commission where similar complaints have been raised. In those cases, the planning commission enhanced the buffers to the extent allowed by the code. The planning commission may change course as its expertise and experience suggests or requires, but when they do so they must provide a reasoned analysis indicating that prior standards and policies are being deliberately changed not casually ignored. The planning commission made no analysis of why it would deny this material site as opposed to other material sites with the same attributes, even a remarkably similar material site heard at the very same meeting. It was arbitrary and unreasonable for the planning commission to deny this material site permit. Rather than relying on its expertise and experience in administering KPB 21.29 it ignored that expertise and experience -- as such the hearing officer should not give consideration to the planning commission's interpretation of KPB 21.29 in this case. In fact, it would be difficult to give much consideration to the

planning commission's interpretation because they didn't discuss the ordinance, question staff or the witnesses in any meaningful way, or attempt to fashion more appropriate buffers.

Evidence the Beachcomber has met the CLUP Permit Conditions with Record Cites

KPB Codified Permit Standards	Permit Condition	Record Cite
<p><i>Parcel boundaries.</i> All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place at time of application.</p>		See below
<p>"A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:</p>		See below
<p>1. <i>Parcel boundaries.</i> All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place at time of application.</p>	Condition met.	March 2019 Staff Report, Finding of Fact 13; R5-R10; R13 Permit Conditions 1; 5; R22 Permit Condition 1; 5
<p>2. <i>Buffer zone.</i> 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.</p>	Condition met.	March 2019 Staff Report, Finding of Fact 14; R5-R10; R13 Permit Condition 2; R22 Permit Condition 2
<p>a. The buffer zone shall provide and retain a basic buffer of:</p>		See below
<p>i. 50 feet of undisturbed natural vegetation, or</p>	Condition met.	March 2019 Staff Report, Finding of Fact 14; R5-R10; R12-13 Findings of Facts 13-14; R21, Finding of Fact 11-12; R22 Permit Condition 2

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<p>ii. A minimum six-foot earthen berm with at least a 2:1 slope</p>		<p>March 2019 Staff Report, Finding of Fact 14; R5-R10; R12-13 Findings of Facts 13-14; R21, Finding of Fact 11-12; R22 Permit Condition 3</p>
<p>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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 14; R5-R10; R13 Permit Condition 3; R22 Permit Condition 3</p>
<p>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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 14; R1-R10; R11-15; R19-R27; R219-R225; T2-T3; T22-T24; T27-T28</p>
<p>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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 14; R1-R10; R11-15; R19-R27; R219-R225; T2-T3; T22-T24; T27-T28; Permit Condition 4.</p>

<p>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.</p>	<p>no waiver; Permit Condition met</p>	<p>March 2019 Staff Report, Finding of Fact 14; R11-R15; R19-R27; Permit Conditions 1-4.</p>
<p>3. <i>Processing.</i> In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time.”</p>	<p>no waiver; Permit Condition met</p>	<p>March 2019 Staff Report, Finding of Fact 15; R12-R13; Finding of Fact 7-9; R20, Finding of Fact 7; R21 Finding of Fact 11(B); Permit Condition 5.</p>
<p>4. <i>Water source separation.</i></p>		
<p>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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 16; R5-R10; R13 Permit Condition 6; R22 Permit Condition 6.</p>
<p>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.</p>	<p>n/a</p>	<p>n/a</p>
<p>c. All CLUPS shall be issued with a condition which requires a two-foot vertical separation from the seasonal high water table be maintained.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 16; R5-R10; R13 Permit Condition 7; R22 Permit Condition 7.</p>

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<p>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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 16; R5-R6; R13 Permit Condition 8; R22 Permit Condition 8.</p>
<p>5. <i>Excavation in the water table.</i> 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:</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 17; R5-R10; R13 Permit Condition 9; R22 Permit Condition 9.</p>
<p>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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 17; R5-R6; R13 No. 12; R22 No. 12.</p>
<p>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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 17; R5-R6</p>
<p>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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 17; R5-R6</p>

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<p>d. Operations shall not breach an aquifer-confining layer.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 16-17; R5-R6</p>
<p>6. <i>Waterbodies.</i></p>		
<p>a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 18; R5-R10; R13 Permit Condition 9; R22 Permit Condition 9.</p>
<p>b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.</p>	<p>n/a</p>	<p>n/a</p>
<p>7. <i>Fuel storage.</i> 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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 19; R13 Permit Condition 10; R22 Permit Condition 10;</p>
<p>8. <i>Roads.</i> 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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 20; R14 Permit Condition 11; R23 Permit Condition 11;</p>

<p>9. <i>Subdivision.</i> 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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 21; R14 Permit Condition 12; R23 Permit Condition 12;</p>
<p>10. <i>Dust control.</i> Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 22; R14 Permit Condition 13; R23 Permit Condition 13;</p>
<p>11. <i>Hours of operation.</i> Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 23; R14 Permit Condition 14; R23 Permit Condition 14;</p>
<p>12. <i>Reclamation.</i></p> <p>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.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 24; R 5-10; R14 Permit Condition 15; R23 Permit Condition 15.</p>
<p>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.</p>	<p>n/a</p>	<p>March 2019 Staff Report, Finding of Fact 24(D); n/a</p>

<p>13. <i>Other</i> permits. Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.</p>	<p>Condition met.</p>	<p>March 2019 Staff Report, Finding of Fact 25; Permit Condition 16; R23 Permit Condition 16.</p>
<p>14. Voluntary permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. Voluntary permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in voluntary permit conditions may be proposed for permit renewal or amendment.</p>	<p>Applicant is open to discussion</p>	<p>Applicant is open to discussion</p>

R484

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.

Condition met.

March 2019 Staff Report, Finding of Fact 17; R23 Permit Condition 17.

Jeffrey Hunt
P.O. Box 208
Anchor Pt., AK

This letter is pertaining to the proposed Denver gravel pit.

My name is Jeffrey Hunt, a forty year resident of Anchor Point.

I would like to express my feelings about the Denver pit, I believe the pit will be a good thing for surrounding areas, it brings employment in all aspects to the A. P. area. It is a good location to service that area, especially with the condition of the Anchor River Bridge and not being able to cross with heavy loads. As far as the road being damaged, The roads in question were built by gravel trucks and built to withstand gravel trucks.

Anchor Point is a main supplier of gravel for all surrounding areas, and employs a great deal of the community in one way or another.

I also strongly believe that an individual should be able to do what he/she pleases with their land, as long as no laws are being broken.

I also believe that having a pit in that area could possibly help the community with road and path improvements which would be near impossible without a nearby source of gravel.

R486



Anchor River Fly Fishing
Southern property line 86 feet
from proposed gravel pit barrier

1 southern property line
photo, 86' from Pit barrier



Beachcomber LLC
NW corner survey marker

Anchor River Fly Fishing
SE corner survey marker

6 feet to dirt
stockpile



Beachcomber LLC
Proposed access road

Distance from access road

Anchor River Fly Fishing
Utility Building



Beachcomber LLC, proposed extraction site

Anchor River Fly Fishing
Utility Building



Beachcomber LLC, NW corner 86 feet from
AK DEC approved Commercial Well
(public use)

Anchor River Fly Fishing
Utility Building



Anchor River Fly Fishing

Proposed Gravel pit

Fresh Water Spring/Parkings

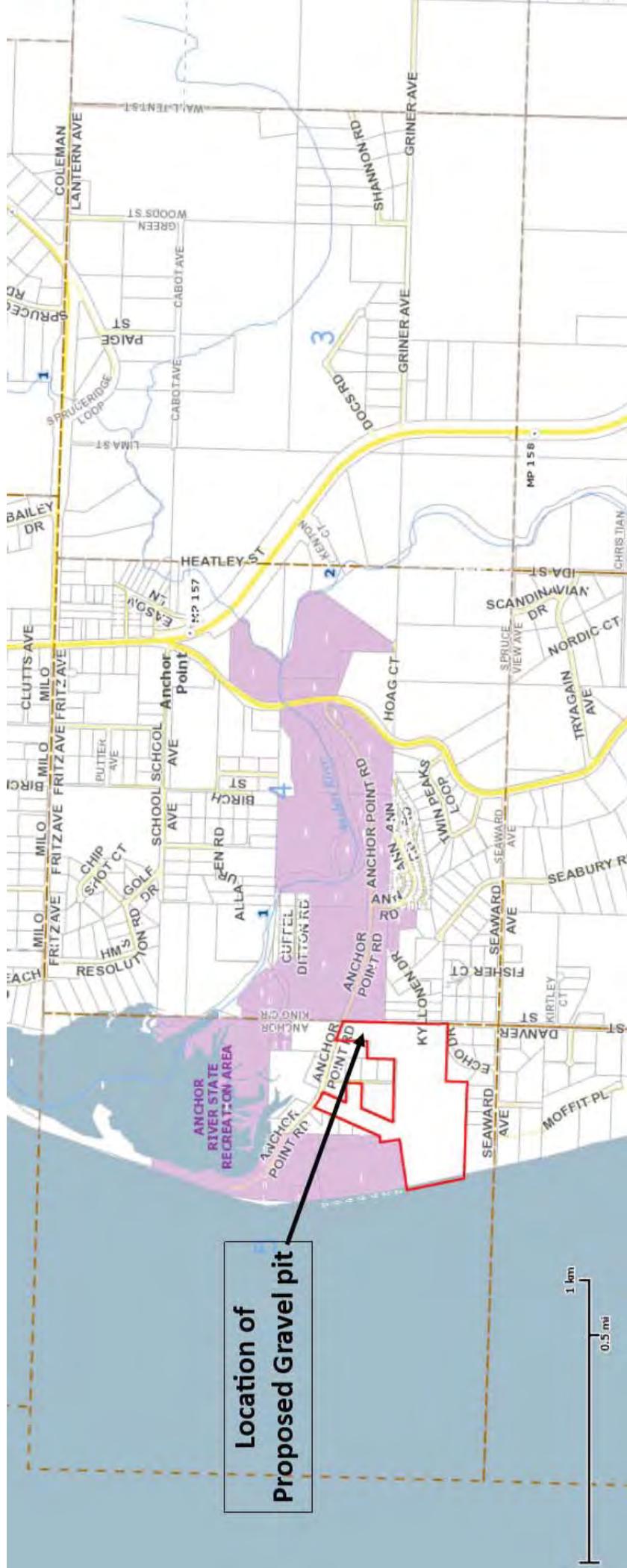
Kyllonen's RV Park

Anchor River State Recreation Area

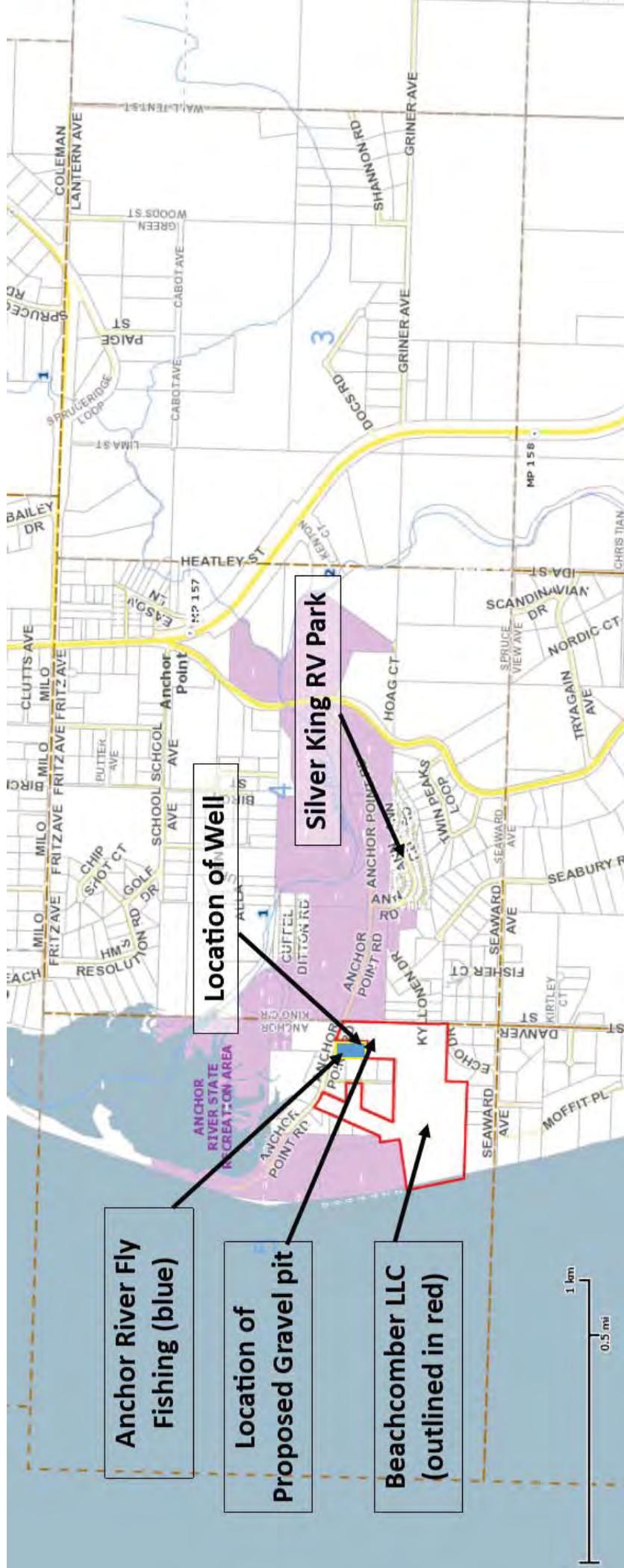
Alaska Gulf Coast Expeditions

Hailbut Campground

Google



**Location of
Proposed Gravel pit**



Anchor River Fly Fishing (blue)

Location of Proposed Gravel pit

Beachcomber LLC (outlined in red)

Location of Well

Silver King RV Park



Anchor River Fly Fishing (blue)

Location of Proposed Gravel pit

Beachcomber LLC (outlined in red)

Location of Well

Silver King RV Park

PLANNING COMMISSION

MINUTES

MARCH 25, 2019



Planning Commission

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

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

**March 25, 2019
7:30 P.M.**

APPROVED MINUTES

CALL TO ORDER

Chair Pro Tem Foster called the meeting to order at 7:30 p.m.

ROLL CALL

Commissioners Present

- Syverine Abrahamson-Bentz, Anchor Point / Ninilchik
- Jeremy Brantley, Sterling
- Paulette Bokenko-Carluccio, City of Seldovia
- Cindy Ecklund, City of Seward
- Robert Ernst, Northwest Borough
- Diane Fikes, City of Kenai
- Dr. Rick Foster, Southwest Borough
- Virginia Morgan, East Peninsula
- Franco Venuti, City of Homer
- Paul Whitney, City of Soldotna

With 10 members of a 13-member Commission in attendance, a quorum was present.

Staff Present

- Max Best, Planning Director
- Marcus Mueller, Land Management Officer
- Julie Hindman, Administrative Assistant
- Jordan Reif, Platting Technician
- Brue Wall, Planner
- Karyn DeCino, Resource Planner
- Scott Huff, Platting Manager
- Holly Montague, Deputy Borough Attorney
- Tom Dearlove, River Center Manager

Others Present

- Douglas Clegg

APPROVAL OF REGULAR AGENDA AND ADOPTION OF THE CONSENT AGENDA

AGENDA ITEM C CONSENT AGENDA

- *3. Plats Granted Administrative Approval
 - a. Cramer Subdivision, KPB File 2018-152
 - b. FBO Subdivision 2018 Replat, KPB File 2018-131
 - c. Grande View Heights Phase 1 Longfellow Replat, KPB File 2018-142
 - d. Hostetter 2018 Replat, KPB File 2018-128
 - e. Windhaven Estates Phase 3, KPB File 2015-071

****Approved by the Adoption of the Consent Agenda***

land sale.

Parcel 055-074-01

This is 160 acres on K-Beach in the Murwood area. The Planning Commission recommended it be removed from the sale list. The substitute ordinance reduces the proposed sale area to 120 acres. The 40 acres being removed from the 160 acres is near an Alaska Department of Environmental Conservation registered contamination site. The sale ordinance will require a residential deed restriction that will be superseded by the adoption of a residential local option zone district. The local option zone was heard by the Planning Commission at the March 11, 2019 meeting and the recommendation has been forwarded to the Assembly. The price was also adjusted based on the acreage to \$400,000.

Parcel 059-302-07

This is 20 acres in Soldotna. The Planning Commission recommendation on February 4, 2019 was to remove the parcel from the sale list. The substitute ordinance removes the parcel from the sale list.

Parcel 131-170-04

This is 40 acres near Tote Road. The Planning Commission recommended on February 4, 2019 to remove the parcel from the sale list. The ordinance substitute provides for the sale subject to a preservation deed restriction on the east half.

Parcel 055-0540-22

This is .46-acre lot in the Ciechanski area. This was part of group of three lots in the original ordinance. The substitute ordinance removes this lot from the sale to allow for a negotiated sale to the owner of adjacent Lot 5, Ravenwood Subdivision, which has a septic tank encroachment onto this parcel. The remaining two lots of the three lot group will be combine to .92 acres with a price adjusted to \$15,000.

END OF STAFF REPORT

Chair Pro Tem Foster opened the meeting for public comment. Seeing and hearing no one wishing to speak, the public hearing was closed and discussion was opened among the commission.

MOTION: Commissioner Bentz moved, seconded by Commissioner Carluccio to approve Ordinance 2019-03; An Ordinance Substitute authorizing the sale of certain parcels of Borough land by sealed bid followed by an over-the-counter sale.

MOTION PASSED: Seeing and hearing no discussion or objection the motion passed by unanimous consent.

AGENDA ITEM G. PUBLIC HEARING

4. Conditional Land Use Permit for a Material Site; Anchor Point Area

Commissioner Brantley informed the Commission that he would be recusing himself from this item on the appearance of a conflict of interest. Chair Pro Temp Foster addressed that it appears that Commissioner Brantley may have a conflict of interest and asked if anyone on the Commission had issue with Commissioner Brantley recusing himself. Seeing and hearing no comments or discussion Commissioner Brantley was recused.

Commissioner Venuti addressed the memo and the letter that were included in the desk packet. The letter suggests that Commissioner Venuti has a conflict of interest on this issue. Commissioner Venuti stated that the letter accused him of unethical behavior. He does not feel like he has a conflict of interest and that he can make a fair decision on this item. Chair Pro Tem Foster asked the Commission if anyone had any issue or concern with Commissioner Venuti may have the appearance of a conflict of interest. Seeing and hearing no comments or discussion the Commission allowed Commissioner Venuti to remain and was deemed to not have a conflict of interest.

Staff Report given by Bruce Wall

PC MEETING: March 25, 2019

Applicant: Beachcomber LLC

Landowner: Beachcomber LLC

Parcel Number: 169-010-67

Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Location: 74185 Anchor Point Road

BACKGROUND INFORMATION: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

On July 16, 2018, the Planning Commission denied the approval of this Conditional Land Use Permit application based upon the following findings:

1. The noise will not be sufficiently reduced with any buffer or berm that could be added.
2. The visual impact to the neighboring properties will not be reduced sufficiently.

The Planning Commission's decision was appealed to a hearing officer in accordance with KPB 21.20. The hearing office has remanded the decision to the Planning Commission with the following instructions:

The Commission shall reevaluate the application with respect to the mandatory conditions listed in KPB 21.29.050, as well as any voluntary conditions that Beachcomber may agree to. The Commission shall conduct a second public hearing at which it shall issue findings of fact, pertaining to the mandatory conditions listed in KPB 21.29.050, and shall reference specific evidence in the record in support of those findings. In issuing its findings, the Commission must comply with both local and common law requirements, which require the Commission to both issue findings supported by substantial evidence and to "articulate the reasons for their decisions."

Following are excerpts from the hearing officer's decision regarding the Planning Commission's discretion:

While the Code requires applicants to submit significant documentation in order to obtain the permit, the Code does not provide the Commission discretion to deny such a permit when the application has been properly submitted. Instead, the Code preserves the unrestricted nature of the rural zoning district and limits the Borough to the imposition of certain conditions to extraction. (Hearing Officer Decision, p.10.)

A CLUP actually imposes greater rather than fewer restrictions upon the permitted parcels. While the rural zoning district is primarily unregulated and unrestricted, an applicant's parcels are subject to specific and express conditions that are not automatically imposed on other parcels in the same district. Thus, the government must ensure that the application of greater restrictions upon the applicant are in fact justified and imposed in a fair and objective way. The Code preserves this fairness by granting the Borough staff, the Commission, and a hearing officer very limited discretion in denying and even conditioning CLUPs. (Hearing Officer Decision, p.12.)

While the Commission's concerns may be valid, the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code. Instead, the Assembly, in adopting the Code, only granted the Commission authority to impose these conditions and ensure that any application complied with the application requirements. In other words, under the law as it currently stands, the Commission may only apply conditions under KPB 21.29.050 when issuing a material site conditional use permit. It may not impose additional conditions despite the positive impact such conditions may have in the rural zoning district or the community at large. To the extent the parties disagree with these limitations, it is the Borough Assembly, through the local legislative process, and not this hearing officer, that holds the power to change the permit approval process. (Hearing Officer Decision, p.13.)

The complete decision of the hearing officer is included with this staff report.

The submitted site plan indicates that the material site haul route will be Danver Street, which is a Borough

maintained road. The site plan and application proposes the following buffers:

- North: 6-foot high berm except along the east 400 feet where a 50-foot vegetated buffer is proposed.
- South: 6-foot high berm.
- East: 6-foot high berm.
- West: Greater than 50-foot vegetated buffer.

The application indicates that the depth to groundwater is 20 feet and that the depth of the proposed excavation is 18 feet. The groundwater depth was determined by a test hole on the property and exposed surface water to the north. The site plan indicates that the processing area is 300 feet from the south and east property lines. It is greater than 300 feet from the west property line. A waiver is being requested from the north property line. The site plan indicates that the proposed processing area is located 200 feet south of Parcel 169-022-08, which is undeveloped. Parcel 169-022-04 is developed and located within 300 feet of the proposed processing area; this parcel is owned by the applicant's daughter. There is adequate room elsewhere on the parcel to accommodate processing while complying with the 300-foot setback. Staff does not recommend approval of the processing distance waiver request.

The site plan indicates that there are several wells located within 300 feet of the parcel boundaries but none within 100 feet of the proposed excavation area. The site plan indicates a 104-foot setback from the wetlands area located in the northeast corner of the property and that this setback will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, Best Management Practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska, will be utilized as a guideline to reduce potential impacts to water quality.

The application states that reclamation will be completed annually before the growing season ends (September) and that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust. The applicant estimates a life span of 15 years for the site with an approximate annual quantity of less than 50,000 cubic yards.

Following is a summary of the buffers proposed by staff:

- North: 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm between the vegetated buffer and the extraction area; a six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain; and a 12-foot high berm along the rest of the northern boundary.
- South: 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm between the vegetated buffer and the extraction area.
- East: 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 12-foot high berm between the vegetated buffer and the extraction area.
- West: Greater than 50-foot vegetated buffer along the western most parcel boundary.

PUBLIC NOTICE: Public notice of the application was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their Post Office. Public notice of the application was published in the March 14, 2019 & March 21, 2019 issues of the Homer News.

ATTACHMENTS

- Planning Commission packet from July 16, 2018
- Public comments submitted at the July 16, 2018 meeting
- Excerpt from the minutes of the July 16, 2018 meeting
- Hearing Officer's decision dated December 26, 2018
- Hearing Officer's reconsideration decision dated February 4, 2019
- Staff recommended buffers map

FINDINGS OF FACT

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.

2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On June 4, 2018, the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. Land use in the rural district is unrestricted except as otherwise provided in KPB Title 21.
5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres and provides regulations for material extraction.
6. The proposed disturbed area is approximately 27.7 acres.
7. Consistent with KPB 21.25.050(A) on June 21, 2018, the applicant submitted a revised site plan and application to the Planning Department that addressed issues raised by staff with the initial review of the application.
8. The submitted application with its associated documents was reviewed by staff for compliance with the application requirements of KPB 21.29.030. Staff determined that the application was complete and scheduled the application for a public hearing.
9. A public hearing of the Planning Commission was held on July 16, 2018. Public notice of the hearing was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the July 5, 2018 & July 12, 2018 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
10. Testimony was filed and heard regarding issues that are not addressed by the KPB 21.29.040 standards or 21.29.050 conditions. Staff and the Planning Commission in reviewing the application are not authorized by the code to consider those issues such as property values, water quality, wildlife preservation, a material site quota, and traffic safety.
11. A public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
12. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
13. *Parcel* boundaries. All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. The submitted site plan indicates the location of each of the parcel boundary stakes.
 - B. Planning staff has visited the site several times and has observed that the boundary stakes are in place.
14. *Buffer zone*. A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
 - B. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
 - C. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.
 - D. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same

- elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.
- E. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
 - F. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
 - G. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
 - H. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that can provide visual and noise screening of the material site for some of the adjacent uses.
 - I. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent properties.
 - J. A 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - K. The total buffer width, as recommended by staff, along the southern and eastern property boundaries is 98-feet.
 - L. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
 - M. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
 - N. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - O. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
 - P. There has been testimony that the material site will mar the view of Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.
 - Q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.
15. Processing. Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
- A. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the north property line.
 - B. The applicant proposed the following justifications for waiving the processing setback: "Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant's daughter &

- 169-022-08 is not developed.”
- C. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
 - D. The portion of the proposed processing area greater than 300 feet from the property line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.
 - E. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.
16. *Water source separation.* All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.
- A. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
 - C. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.
17. *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.
- A. This permit approval does not allow excavation in the water table.
18. *Waterbodies.* An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
- A. The Cook Inlet lies about 600 feet west of the proposed material extraction.
 - B. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
 - C. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast corner of the property.
 - D. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.
 - E. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - F. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the floodplain is an existing stripped area.
 - G. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.
 - H. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska

- DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
- I. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
19. *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.
- A. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.20.050(A)(7).
20. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads.
- A. The submitted site plan indicates that the material site haul route will be Denver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - B. There was a significant number of public comments concerning the condition of Anchor Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
 - C. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
21. *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.
- A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
22. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
- A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
23. *Hours of operation.* Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - B. This condition reduces off-site noise impacts of the material site.
24. *Reclamation.* Reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
- A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.
 - C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB

21.29.060(C)(3) and as approved by the planning commission

- D. The application states that less than 50,000 cubic yards will be mined annually therefore the material site qualifies for a small quantity exception from bonding.
25. *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.
- A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
26. *Voluntary permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
- A. No additional conditions have been volunteered by the applicant.
27. *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.
- A. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance

STAFF RECOMMENDATION

The Planning Commission should review the application, site plan, staff report, and comments received and determine if the mandatory conditions contained in KPB 21.29.050 will be met. The Planning Department recommends that the Planning Commission deny the processing distance waiver request, approve the conditional land use permit with listed conditions, and adopt the findings of fact subject to the following:

1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicant will provide the recording fee for the resolution to the Planning Department.
4. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit.
5. The 100-foot buffer adjacent to the riparian wetland and floodplain shall be restored to a vegetative state prior to the issuance of the permit.

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm between the vegetated buffer and the extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm between the vegetated buffer and the extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 12-foot high berm between the vegetated buffer and the extraction area.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts

- adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
 8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
 9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
 10. The permittee shall ensure that fuel storage 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.
 11. The permittee shall conduct operations 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.
 12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
 13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
 14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
 15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.
 16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
 17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
 18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
 19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
 20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in

accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A “party of record” is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the filing fee and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT

Mr. Wall added that a waiver is being requested for the 300-foot processing distance requirement from the property line. Staff does not recommend approval of the processing distance waiver request. There is room elsewhere on the property for processing that meets the 300-foot setback requirement.

Due to the size of the packet Mr. Wall helped the commission by giving a breakdown of where items could be found in Volume 2 of the packet. Pages 42 through 115 contain the comments received for this hearing. Pages 116 through 303 contain the commission packet from the July meeting. This included the applications, site plan and public comments. Pages 304 through 331 are the minutes from the July meeting. An additional 53 comments were received since the packet was prepared and are part of the desk packet.

Mr. Wall also let the commission know that they each had a copy of a letter from the applicant’s representative requesting a continuance of the hearing due to unforeseen issues. Staff recommends that the public hearing be opened as advertised and then continue the hearing at the April 22, 2019 meeting.

Chair Pro Tem Foster opened the meeting for public comment and read the rules by which public comment may be taken.

1. Keri-Ann Baker, 59545 E. End Road, Homer

Ms. Baker is there on behalf of the applicant. She apologized because the request for continuance was due to a conflict that she thought would prevent her from being present. As a courtesy to this group as well as everyone present she did want to be there and they were prepared to continue forward but understand the recommendation for continuance. Some of the public may not be present due to the request. They would respect the decision of the Planning Commission.

2. Emmitt Trimble, PO Box 193, Anchor Point

Mr. Trimble read the following prepared statement that was taken from the opening statement for the appeal prepared by a Borough Attorney and Borough Staff.

“Borough Opening Statement Appeal Discussion

1. This material site is located in the rural district of the borough. The rural district is unzoned. KPB 21.04.01 0. As such this is not a case where a conditional use is being allowed in a residential zone where it would normally be prohibited. Subject to some protections afforded surrounding property owners as set forth in the code, a material site can be placed almost anywhere in the rural district of the borough. Given the wealth of gravel deposits in the Anchor Point area it should not be surprising that this parcel would be utilized for a material site.

2.some of those property owners will be more protected by their distance from the material site and the proposed buffers. However, there will always be at least some noise and visual impacts to adjacent properties from a material site operation.

3. In the history of the material site ordinance there has not been an interpretation that all surrounding properties must not be able to see or hear the material site at all. Rather, the interpretation over the course of the 96 material site permits that have been issued since 1996

is a reduction in certain negative impacts is the goal of the material site regulations. Full elimination of negative secondary impacts has never been discussed or required, nor is it feasible. Attempting to judge whether a permit should be denied based on how many people claim they are not sufficiently protected ultimately will lead to arbitrary decision making. Rather than relying on evidence this approach relies on surrounding property owners stacking the hall-whether a permit is approved or denied becomes a numbers game. Such "negative community sentiment" is not a valid reason to deny a permit.

5. Given the mandate from the assembly that material sites be subject only to certain mandatory conditions a denial based on a conclusory statement that the buffers are insufficient to protect against noise and visual impacts cuts against the grain of the code. Rather, if the buffers that can be fashioned are entirely useless to protect surrounding uses the answer is a waiver of the buffer requirements under KPB 21.29.050(E), not an unauthorized denial of the permit.

6. Staff did not believe buffering would be useless and recommended enhanced buffers to afford increased protection over and above what the minimum buffers set forth in the code would require.

7. The planning commission's findings are required to be supported by the substantial evidence in the record. The "substantial evidence" in the record required to support the planning commission's findings is not the same as a substantial number of people opposing the material site. Substantial evidence is defined as relevant evidence that a reasonable mind might accept to support a conclusion.

8. One of nine commissioners indicated they read the information. One other commissioner indicated she had read "a bit" of the information and assumed it would be verified by what she heard in the testimony.

9. A superior court decision has upheld the borough assembly's authority to adopt an ordinance that favors material site operations. This order further held that it is the planning commission's responsibility to abide by the legislative standards the assembly has established

10. The assembly has specifically adopted ordinances that are protective of material site operators and rejected proposed ordinances that make it more difficult for the same to receive project approval. In adopting the material site code language, the Borough Task Force rejected language that placed a larger burden on the permit applicant

11. The Assembly could have chosen a policy that favors residential property owners, but instead it chose to adopt a policy that favors material site operators.

12. This is not to say a material site permit cannot be denied, but rather it cannot be denied based on inadequate buffers, when under the code either enhancing the buffers or waiving the buffers are the authorized resolution to a situation where buffers are not feasible. KPB 21.29 .050(1) (e)

BOROUGH REPLY TO COMPLAINANTS

1. The briefs presented in opposition to the Beachcomber application are very similar in that they discuss the volume of people who attended the hearing who complained primarily about their viewshed being potentially ruined by the material site and also about potential noise, dust, road damage, diminishing property values, water quality and quantity, As discussed in the opening statement of the Kenai Peninsula Borough ("borough") the standards in KPB 21.29 .040 address only water quantity, road damage, physical property damage, dust, noise, visual impacts and reclamation. These are the adopted standards because these are the concerns that are raised about many, if not most of the material site applications. The complaints

received about the Beachcomber material site are not unique. Repeating over-and-over again the same complaints about the same material site doesn't change the standards or conditions for material site approval set forth in KPB 21 .29.040-050.

Regardless of the evidence presented the material site code is not designed to support a permit denial based on the buffers not being feasible given the topography of the location. Where buffers are not feasible, a waiver of those buffers is in order under KPB 21.29.050(A)(2)(e). Staff, however, does not agree that the buffers are useless or not feasible but rather believes that they reduce the negative impacts of the material site. The borough further contends that it would be unrealistic to expect buffers to fully eliminate the negative impacts of noise and unsightliness which appears to be the position of the planning commission. Although the planning commission did not clearly articulate this interpretation of the code it is inferred from their findings that a denial was appropriate because the buffers would not minimize noise and visual impacts.

Reference is made to 200 pages of documents submitted. (Bilben brief, page 2.) However, documents that don't address the standards are not persuasive. Minimal questions were asked of the applicant and testifiers regarding the standards applicable to the proposed material site. Evidence and fear are not synonymous. Much of what is referred to as evidence is actually voicing fear of what may happen if the material site is operated on the Beachcomber parcel. The borough inevitably hears complaints that wells will run dry and roads will be ruined by a material site. Yet there has never been a substantiated case of these deleterious results occurring after 96 permitted material sites. Fears and concerns, even though they may be real, are not evidence. There was no real discussion of these 200 pages of documents. This wasn't a thorough well reasoned decision; it was a hasty reactionary decision made to accommodate the fears and concerns of the crowd.

The Girton brief references the peace, tranquility, natural beauty of the open meadows and the viewshed that will be destroyed by the material site. (Girton letter, page 1.) However, that open meadow is not a state or national park-that open meadow is a privately owned parcel in an unzoned area of the borough.

The RO Baker II Revocable Trust brief cites the Wasilla v. Luperl case and South Anchorage Concerned Coalition v. Coffey2 case as supporting the denial of a conditional use permit. However, in both cases the applicant was attempting to conduct a use in a residential zone where the activity would generally be prohibited. The borough has not adopted the geographical zoning scheme authorized by AS 29 .40.040(a) (1) but rather has adopted an ordinance to minimize unfavorable effects of material sites as authorized by AS 29.40.040(a)(3) consistent with the KPB comprehensive plan.3 A permit is required to operate a material site in the unzoned borough, but that permit requirement does not rely on the premise that material sites are in conflict or are generally prohibited in residential areas-a permit is required in the borough whether the nearest residence is across the street or across Kachemak Bay.4

The Bilben brief asserts there is substantial evidence in the record to support the planning commission's decision, but then goes on to argue that if there isn't substantial evidence the hearing officer should remand to the planning commission. Obviously, Bilben does not have confidence in the position that the substantial evidence in the record supports denial of the permit or he would not be suggesting a remand as an alternative.

The arbitrariness of the planning commission's decision is underscored by the fact that another material site in Anchor Point was heard by the same commission on the same night. The Blauvelt pit is 27.5 acres, while the Beachcomber pit is 27.7 acres. The testimony regarding Walt Blauvelt's material site was remarkably similar to the testimony regarding the Beachcomber material site. However, three people testified about the negative impacts of the Blauvelt material site, while approximately 30 testified regarding Beachcomber. The extreme difference between the two decisions the planning commission reached cannot be rationally

explained. While some commissioners may not like the standards and conditions in the material site code it is not the planning commission 's job to second guess the standards established by the assembly or ignore that the only conditions that may be placed on a material site are those set forth in KPB 21.29.050. KPB 21.29.040. The planning commission must work within the legislative standards established by the assembly.

Staff does not believe there is legal support for upholding the planning commission's findings of fact or conclusions of law. Indeed, the planning commission gave no explanation for its diversion from the legal requirements of KPB 21 .29. The planning commission's findings were conclusory and inadequate to support abandoning the well-established approval process for material site CLUPs.

CONCLUSION

The denial of the material site based on perceived inadequate buffers is inconsistent with the many decisions issued by the planning commission where similar complaints have been raised. In those cases, the planning commission enhanced the buffers to the extent allowed by the code. The planning commission may change course as its expertise and experience suggests or requires, but when they do so they must provide a reasoned analysis indicating that prior standards and policies are being deliberately changed not casually ignored. The planning commission made no analysis of why it would deny this material site as opposed to other material sites with the same attributes, even a remarkably similar material site heard at the very same meeting. It was arbitrary and unreasonable for the planning commission to deny this material site permit. Rather than relying on its expertise and experience in administering KPB 21.29 it ignored that expertise and experience -- as such the hearing officer should not give consideration to the planning commission's interpretation of KPB 21.29 in this case. In fact, it would be difficult to give much consideration to the planning commission's interpretation because they didn't discuss the ordinance, question staff or the witnesses in any meaningful way, or attempt to fashion more appropriate buffers."

Mr. Trimble stated that a drawing and cover letter were submitted that provides a grid and profile to respond to the drawing submitted by the opposition. They feel the drawing, done by a licensed registered surveyor, is a more accurate representation. As long as the berm is placed close to the excavation site, as recommended by staff, it would have to be 24 feet tall at Echo Street. That is hundreds of feet away from where the berm is proposed which is right at the excavation site. It will last for 3-5 years without any movement since it is not a large scale operation.

Commissioner Carluccio wanted to know the location in the packet of the drawing Mr. Trimble mentioned. Mr. Wall stated that Mr. Trimble was referencing a letter from his surveyor that started on page 41.69 of the desk packet and goes through page 41.71.

Commissioner Ecklund noted that he did a large amount of reading and wanted to know if it was all from the borough staff and attorney presented during the hearing. Mr. Trimble said it was all from the borough staff and attorney. It was the opening statement for the appeal and the reply to the opponent's opening statement.

Commissioner Carluccio wanted to know if the berm he was referencing would be a moving berm that would move with the excavation and if it would be 12 feet or higher. Mr. Trimble stated it would be the recommended 12-foot berm. There is a currently a 14-foot berm that runs east to west with an area of about a half-acre that has been stripped. He is proposing to put a substantial berm, 14 foot if necessary, towards the back of the Phase 1 area. The area to the east has dense timber in a portion of that area and it was discussed with staff that a berm may not be needed there. The berm would be moved as necessary, keeping it close to the excavation. Commissioner Carluccio asked if the area that is vegetated would have the vegetation left there or if it will be taken down as the gravel pit moves. Mr. Trimble stated he has spent a lot of money making the vegetation look the way it does now. He does not

anticipate having a big operation so the berm will be close to the excavation site and the pastures and trees will remain just like they are now for an extended period of time. It will depend on the market for gravel. His primary use of the gravel is for his own projects.

Commissioner Venuti wanted to know the condition of the Anchor River bridge. Mr. Trimble stated that gravel trucks are not to be using it but others have been using it. He believes it has a 10,000 or 11,000-pound limit. It is proposed to be replaced but that may take 2 or 3 years. Commissioner Venuti wanted to know if Mr. Trimble will use the Old Sterling Highway to move his product. Mr. Trimble said yes.

3. Mary Trimble, PO Box 193, Anchor Point

Ms. Trimble read from a prepared document.

"When we first started this permit application process we talked to the Mayor about it and he said simply "follow the rules" and we have been following the rules. We hired an engineering firm to do the surveys, drawings and work with us and the staff to make sure our application was complete. Based on that, the staff recommended our permit for approval. Once again, we have worked with the staff and are now clearly stating in the permit that our berms will be where they are most effective - between the vegetative buffer and the extraction site as we have intended to do all along. The staff is again recommending approval. The planning director, Bruce and the borough attorney have all visited the site and saw no issues with our plan. The borough attorney has, in her briefs, interpreted the code and stated case law to back up her position that the permit should be granted. These are professional, educated people who represent the borough interests and who interpret and enforce the code.

Emmitt and I became AP residents in 1976 and owned a tackle shop on the Anchor River for 3 years so have firsthand experience in a tourist business there. Even though our campgrounds and state park are a valuable resource that we all enjoy they contribute very little to our town's economy. The gravel industry is the economic driver that helps many year round businesses thrive. The trickle-down effect is huge. We could not have developed 150 residential homesites in the area without an affordable source of gravel close by. Currently, we own 42 parcels, 8 homes and a commercial building for a significant combined tax assessed value. We also own a construction company with our daughter and are building new homes in town. Preserving property values is very important to us.

With this permit we will only be a "Mom and Pop" business and are not intending, able or willing to compete with the large operations. It just isn't practical. We don't have equipment so we will hire local contractors that we know do a good job. The permitted 27.7 acres minus the buffers is actually less than 20 acres, planned in 3 phases and will be reclaimed as required by the permit. Our prime use for the gravel will be to improve our other properties and sell to the limited local area market.

The contour of the surrounding area has been mentioned many times and erroneously described as an amphitheater or bathtub. I submitted a colored contour map, page 348 in your packet, showing the true situation. The area higher than our property runs in a straight NE SW line.

Emmitt and I believe in "Rights with Responsibilities" and this is a situation where we are agreeing to take on responsibilities in exchange for the right to excavate gravel on our property. The "opposition" has the right to protect their property but are unwilling to accept the fact that they have a responsibility to do what they can to minimize visual and noise, if it is bothersome, by building a fence or berm on their property and/or installing blinds that raise up from the bottom so they still have their Inlet view. They do not have rights to our land, so we should not bear all the responsibility for mitigating their perceived discomfort.

In fact, our land is not a wildlife refuge, a bird sanctuary or a state park. It is our private property

and we have the right to put it to its highest and best use which is defined as: the likely use, selected from a number of available choices, to which an area of land may be put, based on what is physically possible, in compliance with zoning and building regulations and which produces the most profitable present value of the land.

As we have said before - this is an amazing legacy property for our family. We desire to build a home there to be near our grandchildren.

Finally, KPB 21.29 attempts to balance a variety of public needs, including residential area protection, a private party's right and ability to use their land to its highest and best use, and the public's need for gravel. Whether one agrees or not with KPB 21.29, it is the law and standards that control what the Planning Commission can or can't do.

Planning Commissioners have a fiduciary obligation to the taxpayers to thoroughly read and listen to what is presented, dismiss any irrelevant information, and make an informed decision based solely on the code and substantiated facts.

This is about ensuring there is a fair process that abides by the existing code. If this governmental body acts in violation of the code, the rule of law is undermined and that is harmful to the overall democratic process."

4. Keri-Ann Baker, 59545 E. End Road, Homer

Ms. Baker wanted to speak on behalf of the applicant. She noted that the packet was very lengthy and it contains the application for the conditional land use permit with supporting documents. After the hearing they went back through the application materials and took a look at the permit conditions contained in 21.29.050. They reviewed the mandatory conditions that are set out in 21.29.050 as compared to her client's application together with their supporting documentation. When the personal attacks that have been made against her clients and the Commissioners is taken out, it all has to do with the standards that are contained in 21.29.050. Her client's position is that they have met the conditions in the code. They have met the buffer requirements, the water source separation, and the monitoring of wells. She had a document where she analyzed all the conditions in 21.29.050 and compared it to the materials submitted by her clients and to the staff reports that have been prepared by borough staff. The document will show exactly what pages in the record, she apologized as she used the hearing record, where the information is located that shows that her client has met the mandatory conditions in 21.29.050. If all the personal attacks and animosity is taken out of this case it comes down to if her client meets the mandatory conditions in 21.29.050 or not. They believe the record clearly shows substantial evidence that they do. They urge that at either this hearing or at the April 22, 2019, if it is continued, that the commissioner's take a look at the record. The commission should take out everything else and look at the conditions, her client's application and support materials, the staff report, and the staff permit conditions and it will be clear that her client has satisfied the mandatory conditions and under the law they have the right to receive this permit. The engineer, Gina DeBardelaben, is present to answer any technical questions.

5. Hans Bilben, PO Box 1176, Anchor Point

Mr. Bilben wanted to clarify that Mr. Wall advised them of the request for a continuance and stated that people that wish to speak tonight would be allowed to speak again at the next hearing. Chair Pro Tem Foster said yes they would.

Mr. Bilben stated that a mom and pop operation does not take out 50,000 cubic yards per year for 15 years. If it was a mom and pop operation they could probably deal with it but not 50,000 cubic yards a year. That is what the permit stipulates and it is a 15-year permit.

The applicant talks about buying and selling houses. A lot of the people that are upset are people that bought property through the Trimble's and will now, after investing their money, have a gravel pit in their front yard. That is not acceptable.

Mr. Bilben is a member of the Anchor Point Advisory Planning Commission. The chairman of the commission and himself have asked the Planning Department repeatedly to allow the group in Anchor Point to hear this application. They wanted the community to weigh in, make a recommendation to the Planning Commission and the request has been denied.

He had asked the borough planner how it was possible for the applicant, without any legitimate justification, to ask for a continuance and could dictate the date he feels up to defending his application. He said that he was told the applicant had special rights and paid the \$300 application fee. For \$300 the applicant has rights over and above the rights of 60+ neighbors that have asked for a continuance for this hearing on a couple of occasions and have been denied for the reason of it being a recreational residential area. There are a lot of residents of the area that are snowbirds. He requested that if there is a continuance that it would not be until May 28. That way the residents that are affected by this application will be able to speak in person. He feels that for \$300 the applicant lays claim to the planning department, the borough attorney, and unlimited financial backing. It boils down to the applicant having special rights but the neighbors don't, so there is something wrong with the system.

At the July hearing there was findings of fact from the Planning Commission, and he thanked the commission for making a good decision and it was a correct one, but there were some problems. The findings of fact said that the noise will not be sufficiently reduced with any buffer or berm that could be added, which is true. The visual impact to neighboring properties will not be reduced sufficiently, which is also true. The stated intent of these findings is very clear, the application does not meet the minimum requirements of the code. The exact wording and contents of the findings of fact were disputed by the hearing officer and probably rightfully so. The main reason she wanted a remand was to have these findings of fact linked to specific conditions from 21.29.050. and she wanted to see substantial evidence go along with it. He believes the deputy borough attorney was present and involved with the wording of those stated findings and she should be knowledgeable enough to advise the commission on correct contents. The Planning Commissioners handbook actually goes through what findings of fact should state and that was lacking.

This time they will propose adequate finding of fact for the commission to adopt along with the substantial evidence that was submitted from the findings in the previous hearing. The hearing officer further stated that the code does not afford the commission discretion to judge the effectiveness of the conditions identified in the code. He agrees with this. As Planning Commission members they cannot say that berms don't work. Berms work and everyone knows that. That is why they are a standard in the industry and that is why buffers and berms are used. What the Planning Commissioners need to determine from 21.29.050 if the berms are of sufficient density and height to screen neighbors from the proposed use. The answer in this case is absolutely not. There will be some drawings that will be submitted at the continuance of this hearing. Those drawings will show that from some of the houses the line of sight from the upper levels is 53 feet above the floor of the site. A 12-foot berm is not going to protect somebody 53 feet above the floor of the pit. The fact that in the initial application there were 6 foot berms to protect people is ludicrous. The Commissioners did the right thing and hopefully they will do it again.

The Commissioners are required to make their decision based on the law. In this case the law is the code that is written in plain English and adopted by the Borough Assembly. The hearing officer is certainly entitled to her opinion but it is just an opinion. She cannot change the law as adopted by the assembly. The code unfortunately favors material site applicants but there are a few protections in place for neighboring property owners. Those few protections need to be fiercely protected by the Planning Commission. There are not many things that the commission

can say that can help the residents in this neighborhood. It is stated in the code in 21.29.050 that berms and buffers have to be sufficient height and density. It will be seen through the evidence that is not the case. With all the supporting evidence presented in the past plus what will be seen and heard tonight the commission will see that this application is ill conceived and can't possibly comply with the mandatory conditions and standards set forth in the code and is just wrong for the Anchor Point community. If there was ever an application that should be justifiable denied because of the way the code is written, the way the application is written, and based upon the protections afforded neighboring property owners this application should be denied again by the Planning Commission.

Commissioner Carluccio noticed that he mentioned that he would be providing some findings of fact and documents that would substantiate the claim for not having this gravel pit and he was going to present it at the next meeting. She asked him to provide it to staff so that the commission would have time prior to the meeting to review the information. Mr. Bilben stated that they will have it at the next hearing and it will be only six pages. She stated it would be best to have it prior to the meeting.

6. Mark Claypool, Kenai

Mr. Claypool was present to represent Silver King RV Village in Anchor Point on Anchor Point River Road. He is the President of the Association there and has received a lot of calls from people that oppose this from inside the park. He also received calls from people that did not get their letters in time to get their email submitted by the 22nd. He would appreciate a continuance on their behalf. They will be back in the summer. They come back to enjoy a peaceful and quiet summer and now there will be dump trucks coming through the area.

It does not make sense to have this type of activity on a road that is already fractured and in poor shape. As a boat and RV owner he takes his boats and RV down to the beach and he has to drive slow because of the condition of the road. The dump trucks will not run 25 mph. They will be pushing hard and they run by the load and they will not be concerned about the noise. He read in the packet that there will be a bond put down in case the dust rises and Beachcomber will be held liable if the dust comes up and they are not watering the roads or if the noise is bad. He cannot hold hope that the state will contact him or come out if he calls them with concerns.

There are people that walk with their animals down to the beach. There is no place to get off the side of the road. He does not know what these people will do. The dump trucks are not going to be careful.

There are businesses on this road. A couple of businesses that are trying to make it. Now there is a business of a big guy that is going to knock the little guys out. It is not fair to these people, to the people that live on this road or for those from Denver to New Sterling. Yet they want this to happen and he doesn't see any reason for it and would like to ask for a continuation on this so that people can voice their own opinions when they come back.

Chair Pro Tem Foster asked if he was wanting the continuance to the April 22, 2019 meeting. Mr. Claypool said he would like to see it continued into May or possibly June. A lot of people do not return until June.

7. Dan Syme, PO Box 1457, Anchor Point

Mr. Syme voiced his concern that the commission needs to be looking out for the safety of the constituents that they represent. He has not heard very much about dust control. 12 foot berms will not hold the dust in. The road way was just mentioned. He wanted to know about the safety for all of the State parks that are along the road way and will be across the street from this gravel pit. There are kids out there all the time and he has not heard anything about the safety of the kids. He hopes that the commission really looks at this permit. It is time for a change. There has to be some give and takes on both sides. This is a pristine area, with boat

launches, state parks, residential area, people walking their dogs. To him special attention needs to be given to this. Public safety means something and he would like to see that happen with this council.

8. Richard Carlton, 73500 Seabury Road, Anchor Point

Mr. Carlton wanted to echo the safety issues. The Commission can approve an extraction facility following certain rules and guidelines that have to be met for people to make their application and for the commission to even look at the application. What is not on those applications is there are no shoulders on this primary haul road that gets them to the Old Sterling Hwy., which is already in pretty bad shape after HilCorp had their trucks running up and down it. This little stretch is about a half mile and no sides on it at all. He had to stop last summer because Mr. Trimble's daughter was pushing her baby in a stroller and he had to wait for the cars and boats to go by before he could go around her. It is just the fact of what makes sense and that doesn't seem to be applying to this particular event. A gravel pit amongst the state parks, RV parks, and business and all these people that wait all year long to come to this place to vacation. He realizes that there is no zoning but it is not right. Anybody can say that it is but they are just not looking. They are not going for a walk in this area.

9. Katie Elsner, 215 Fidalgo Ave., Suite 201, Kenai

Ms. Elsner is a local attorney that has been helping the people that have been impacted or will be impacted by this proposed site. She wanted to take some time to discuss a little bit of the law. She will be presenting proposed findings to the commission in advance of the next hearing and explain those findings at that point in time.

There has been some notion that the commission's authority is somewhat constrained. What the code does make clear is that the commission is the body that is both vested with the authority and the responsibility to determine what sight and noise impacts can be reduced sufficiently and whether or not those reductions are in fact sufficient. That is actually contained within the conditions which can be found in 21.29.050, which requires the commission, as the body that applies the facts to the law, to determine what vegetation and fencing will be of sufficient height and density to provide visual and noise screening of the proposed uses. The code requires that the commission determine the buffer and berming proposal is both sufficient and appropriate to screen the nearby landowners and nearby properties. In order to approve an application, the commission must find that these conditions allow the standards to be met. The standards that are being talked about are 21.29.040(A) 4 and 5, which requires that these conditions are sufficient and appropriate to minimize these noise and visual impacts. As far as the commission's ability to deny an application that authority is specifically being granted to the commission under 21.25.050(B) which states that before granting a permit the commission must find at a minimum that the proposed activity complies with the code. The commission must find that these minimum standards are clearly met. The conditions require that the berming and screening be both sufficient and appropriate. If the commission disagrees with the notion that they are not allowed to deny a permit when they cannot find that these conditions have been met or cannot find that these standards are met, they are allowed to break away from prior precedent. If the Commission believes that prior precedent is clearly erroneous the law does allow them to break away from prior precedent and prior interpretations of the code. She would ask the Commission not do that because an application that does not provide sufficient screening, sufficient noise screening, sufficient visual impact screening is actually just an incomplete application. In the event that the Commission finds the applicant's submission, that the conditions that the applicant is proposing in an effort to screen nearby neighbors and other properties that already exist is not sufficient and not appropriate then they can deny that application as it is an incomplete application because it does not meet the buffer requirements under the code. She will propose findings of fact for the commission's consideration in advance of the next hearing and will be available if there are any questions in support of those findings of fact.

10. Pete Kinneen, 34969 Danver St., Anchor Point

Mr. Kinneen stated that there is a major disconnect in this whole situation. Not just in this particular application but in what the commission is doing. It is a head on collision and this is the time to get it straightened out. The Commission is being told they are nothing but a rubber stamp. That they cannot deny the application because the Assembly has dictated that gravel pits get priority over everything else. They have queried most of the Assembly and they deny it. Nobody on the Assembly will admit to that. This is not a gravel pit. Gravel pits are typically a little backyard operation. This is a mine. This is a full blown processing mine with a proposed asphalt plant. That is what they have heard from the applicant in previous presentations. This is a really big deal. All that we are asking is that the Commission follows the law.

He has made a presentation before and it is in the packet under his name. The attorney just said in plain language that the code says that the Commission does have the authority to deny despite what they are hearing. This starts with the legislative intent from the Assembly. It is right in the code it says intent. Intent is to protect the preexisting properties. They are there mostly because they got buffaloed by the Trimble's. They have protective covenants and protective volunteered zoning and they were told by the Trimble's that this last little flat area at the bottom of the hill would be a high end subdivision and certainly not be motivated for gravel. They hear incessantly about rights. That this is unzoned and that the assembly is telling the Commission that unzoned means the wild west, that is not true.

When it comes to gravel there are three levels of gravel extraction. The first is one acre can be disturbed almost anywhere unless zoned out. The second is for an area up to 2 ½ acres with administrative approval. It very clearly says that more than 2 ½ acres cannot be disturbed without Commission approval. That is proactive approval and the code is incredible clear that the Commission cannot mandate something more than berms and buffers. It is the only mandatory thing the Commission can do but please go back and look at this and it says minimum 6 foot berms. They will have excellent evidence using the borough's own data that will show in this particular circumstance, because of the unique topography, that there are no berms and buffers that will met the code and therefore it cannot meet the code and it is the Commission's duty to deny.

11. Rick Oliver, 34880 Danver St., Anchor Point

Mr. Oliver stated that the Borough and the Trimble's in their opening statements claimed that no substantial evidence was submitted to support the Planning Commission's decision. He begs to differ. In the packet is a picture taken from his bedroom window. His house is classified as a 1 ½ story with a basement. This will be the view from his bedroom window at approximately 34 feet above the top of a 6-foot berm. He feels it is important that the commission understands what they will be looking at if the application is approved. The view from his living room is approximately 24 foot from the top of the berm. His property is located directly east of the proposed gravel mine, across Danver Street which shows through the bottom of the picture. He is short of six feet tall but is carrying a ten-foot board which will give a practical application of what his view will be if the permit is approved. Planning staff has concluded that a 50-foot vegetation buffer and a 6-foot berm will sufficiently minimize the dust, noise and visual impact to his property. He is incensed yet again that Mr. Trimble has the audacity to state that they should buy heavy curtains to eliminate this obscenity. All trees behind him in the picture are located in the mine area and will be gone. That leaves 1 tree within the 50-foot vegetative buffer and a 6-foot berm to protect his property. He is also standing on what would become the primary access road to the mine and the potential 5000 ten-yard dump trucks in and out that would travel annually for the next 15 years. 250 feet behind him is the proposed location for the rock crusher which will be about 300 feet from his front door. The borough and Mr. Trimble apparently do not consider this to be substantial evidence. He has a reasonable mind to conclude differently. To approve this application in light of the substantial evidence will be a direct contradiction of 21.29.050(2E) which states that buffer requirements shall be made in consideration of and in accordance with existing use of adjacent property and the time of the approval of the permit and 21.29.050(2C) which states the vegetation and fence or berm shall be of sufficient height and density to provide visual, noise and screening of the

proposed used as deemed appropriate by the Planning Commission or the Planning Director. As such the planning commission was justified in their denial of this application and the findings of fact were correct. The proposed buffering is neither in consideration of existing use or sufficient height or density to provide visual and noise screening as required by the code. One tree does not constitute sufficient density. Sufficient height cannot be obtained. He is not the highest property that is affected by this application. All properties that are at higher elevations in the neighborhood are even more affected by the visual and noise impact than his. The fact is the berms and buffers of any practical height are well below the line of sight which will be proven with more evidence that will be provided prior to the next meeting. Standards 21.29.040(A4) and (A5), which are required by the code, cannot be met and the Planning Commission's finding are correct and appropriate.

12. Michael Brantley, 74057 Anchor Point Road, Anchor Point

Mr. Brantley is the owner of a recently opened business called the Anchor River Fly Fishing. It is an RV park and cabins for fly fishing. He wanted to know if he could ask a question and if he could get a response. Chair Pro Tem Foster explained he could ask the question but the answer would have to wait until the Commission discusses the permit. Mr. Brantley wanted to know how many of the Commissioners have taken the initiative to drive down to the Anchor Point community and see what is occurring in the community besides the gravel pit. Actually look at the homes of all the people that have written the Commission asking them to deny this permit. There are very obvious reasons more than what he can come up with.

He asked if he could allow a previous speaker to use the remainder of his time. Chair Pro Tem Foster stated they want to allow others who have not spoken the opportunity to speak first.

Mr. Brantley continued that in all the records he has read there is a certain line that stands out. That has to be the health, safety and welfare of the community. That is what they are talking about, not just all the rules and regulations. He has contacted other departments regarding this issue. His opinion is that they need to be rewritten and these issues need to be applied. He had a fax sheet from OSHA of a new standard that has come out in marine industry for silica. He read the definition of silica. "Crystalline silica is a known carcinogen found in sand, stone and artificial stone. Exposure to silica dust can trigger sarcoidosis, a chronic disease that involves scarring of the lungs. OSHA estimates that 2.3 million workers are exposed to crystalline silica dust, about 2 million in the construction industry." This new standard went into effect sometime in February of 2018. His business is on the border of the northern property line. At the last meeting he had a thumb drive presentation. He has drafted and made it better with wording the Commission could understand. He left the drive with staff. These carcinogens and the noise will be present.

He is staying in the cabins now prepping them for summer and he can hear traffic going up and down Danver road. He thinks the cabins are well insulated. He has pictures to present at the next meeting that shows people with baby carriages, kids, and/or dogs walking up and down the road and traffic has to go around them. As described before that road is in horrendous condition. If they got permitted tomorrow and started tomorrow, he predicts that by the middle of July the road be closed due to heavy traffic. The carcinogens will be spread through the air. That embankment is a 2:1 slope. It is like a jet engine and when the wind hits it the dust will go up and will still travel. It is going to go up to the higher elevations and settle on his property and across the road which is the bird estuary. Those waters will become contaminated with the carcinogen dust and therefore it will flow over into the Anchor River and their sparsely reoccurring salmon return each year might get worse.

He wanted to make it perfectly clear that the commission stated that after he makes his testimony today that at the continuation he will be able to make another statement at that time. Chair Pro Tem Foster said he would be allowed another opportunity to speak. Mr. Brantley stated that his opinion was that the continuation should be into the latter part of May or first part of June so that everyone can prepare themselves. As stated before so all those coming back

to the RV village can attend. He heard a statement earlier in the back of the room that those people don't live here. They do live here. They bought here. They bring in taxes for the property they own here. Don't discourage their word. The Commission has to listen to the people. The Commission needs to come down and see this community and talk to the community.

13. Todd Bareman, PO Box 1462, Anchor Point

Mr. Bareman lives about a mile from the proposed pit but has a business within a half mile. He has the boat launch at the end of Anchor Point Road which will be the haul road and it makes him concerned. The only reason that road has not fallen apart more is that it is so bad that the motorhomes and boat traffic have to go very slow down the road. Everyone knows how fast and heavy gravel trucks are and that is a big concern. This is his eighth summer at the boat launch. They have been fighting to get the road fixed since before he started. There are no plans to fix the road. As far as he knows whoever hauls the gravel out is not liable if that road becomes destroyed. If the road cannot be safely traveled on with motorhomes or boat traffic during the summer, it will impact a lot of businesses.

He would like to ask for a continuation to the May 28th meeting. He does not feel that April is sufficient time. His peak time starts the end of May. That is when he knows the residents are back because he is launching their boats. That is why he would like to ask for a continuance. The Commission can hear from the people that are there for four months during the summer. They own property in the area.

He also questioned why they are not hearing from state parks. He is trying to get a comment from them. Vacation time is pretty important to working families and everybody else. There are 5 state campground that are really nice and 3 RV parks. They are all busy during the summer. If visitors wake up to a gravel crusher, an asphalt plant, dump trucks running up and down the road just ask yourself if you would come back to any of those campgrounds again. They are worried about it. This is not a 1 or 2-year permit. It is a long permit. Their economy is fishing, boat launch, the state parks and the RV parks. This is a big deal for them during the summer.

14. Linda Feiler, 73230 Tryagain Ave., Anchor Point

Ms. Feiler has lived in Anchor Point for the past 42 years or more. Anchor Point is a quiet town and most of them moved there because of the river and that river is their jewel. Hundreds of people come down from Anchorage and up from Homer to walk the beaches, fish the river, walk along the river and walk the river road. She personally goes to the beach very often with her dogs or with friends. They go for exercise and they walk along the road because it is quiet, deserted, and lovely. That is why a lot of them moved there.

HilCorp moved in next door and they are going to make a lot of noise and was not required to put in a berm. When they make noise it vibrates right through their bodies. They have had other gravel pits and they could hear them all the way from the Sterling Highway. The beeping noises every time something backups goes for 24 hours in the summertime. There is a rumor that HilCorp wants the gravel to put their berms around all the oil rigs that are being put in. They live in this town. It may be just a town to people or some kind of backwards area but a lot of the residents are very well educated. They moved there in order to not be within the city limits, in order to not have dog ordinances and everything else. It used to be if the neighbor's dog barked or someone was shooting off guns she could call the police and they would come and tell them to stop. Now she doesn't know if they have anything that protects them and keeps their home values and families safe. It scares her when she hears the rumors about what the commission says when discussing Anchor Point. When she moved to Anchor Point there were 200 people and now there is a lot more. They are walking on that road and use that road as their park, their exercise tract. They do not walk along the river because it is too muddy but do walk in the road because there is no traffic, because it is lovely. She thinks from now on when something happens in Anchor Point that the Commission take into consideration not the people that live 25 feet or 50 feet from the proposed item but how it is going to affect the town. They are a

town. They care about each other and many of them take care of each other. Many of them use the river and the river road.

She is also worried about the bridge. It was resurfaced but when those trucks come down hill I with a full load of gravel that bridge is a danger. It is not double wide. She hopes they take it all into consideration and remembers that they are part of their community.

Commissioner Carluccio wanted to know exactly what rumors have been heard about what the Planning Commission says about Anchor Point. Ms. Feiler said that little backwoods area, the little pain in the neck down there. Commissioner Carluccio said she wanted to know who on the Planning Commission would say something like that. Ms. Feiler said they only hear what filters down and they hear things at meetings and it is worrisome. They are not informed when something happens in their area. She went out to take care of her family and came back to HilCorp being there. They did not have to put up a berm. A six-foot berm would not help because she sleeps upstairs in her bedroom. The vibration goes through her chest and her neighbors are panicked about it. They were not notified or asked how they felt about it. Noise is a big issue. They can hear the highway noise. They stopped Jake brakes. She hears when the river breaks up and waves crashing and she is a good distance away. She is on Tryagain on the Old Sterling and she can hear the ocean, and hear the river. Commissioner Carluccio returned to the question of the rumors. Ms. Feiler said if she heard them again she would find out where it is coming from and let the Commission know.

15. Ed Martin III, 72200 Thomas, Sterling

Mr. Martin wanted to let the Commission know some things from previous testimony. The aforementioned boat launch was built with gravel from this site. He hears a lot about safety. He is the owner of Alaska Driving Academy which is a school that trains people to obtain their CDL and become good truckers. A lot of these people are talking about safety and the width of the road and that they don't have the room to walk up and down it with their various baby strollers. One thing to keep in mind is that the typical boat trailer is wider than a dump truck and is wider than a semi-truck. A boat trailer takes up more of the road and therefore is less safe if sharing that 12-foot lane on either side of this road. Wider is worse. Second, another thing is that they are concerned with safety but he keeps hearing that they got Jake brakes banned. Jake brakes are a safety device on a truck. Obviously they are willing to trade safety for noise degradation. As long as it sounds good they don't mind being as safe.

He is the elected President for the Kenai Peninsula Aggregate and Contractors Association that is in the process of being formed. He represents over 40 contractors and material site operators. He urges the Commission to approve Beachcomber's application based on the reasons of denial were invalid. The Commission's findings that noise and visual impact would not be sufficiently reduced are not a valid reason for denial. He would like to remind the Commission that their power of judgement lies within the code. They may impose conditions outlined in the code but cannot judge their effectiveness or impose conditions outside of the code. Therefore, the Commission must approve a permit that has met the standards set forth in the application. He urges the Commission to vote in favor of issuing a CLUP immediately. He believes further public comment will comprise no new findings as the public has had ample time to testify in past meetings. The Commission has already deliberated on this once. The construction and development season is short and delaying another month can be detrimental to a material site operator.

Commissioner Venuti asked what Mr. Martin knew about white noise back up alarms, what his opinion was on them, and if it is a good solution for the noise at this site. Mr. Martin stated that white noise alarms are a give and take. He has researched them thoroughly and there are several studies done on them. It is kind of another one of those avenues where you give up a little bit of safety for a little bit of noise degradation. So basically what he has found out about them is that they are only effective in certain areas behind whatever vehicle they are put on. They are only effective if the surrounding noise is one or two machines in a pit. As soon as a

screening plant or a crusher is put in that causes ambient noise levels to go up dramatically their effectiveness goes way down. Extremely down versus a multi tonal alarm or the old beep tone alarms. Those are the most effective and there have been studies in laboratories and in the field of their effectiveness. Mr. Venuti followed up wanting to know if Mr. Martin would recommend this as something an operator could use and what would be the typical cost. Mr. Martin said a typical cost to install a system like that ranges between \$400 and \$600 for a typical setup. It is more expensive on the newer machinery because they are computerized and the electrical system cannot be hacked into like it can with older machines. It depends on the operation, if it was just a gravel extraction operation where there is just one loader in a pit filling up dump trucks it would be an effective alarm. If there is a screening operation or a crushing operation, then it is not an effective alarm.

16. Larry Smith, 320 Artifact Street, Soldotna

Mr. Smith hoped to come up and testify and give the Commission the benefit of his knowledge of gravel pits. As a background he has been in the construction business in Alaska for 30-40 years. He and his brother own a construction company. They have built roads, streets and bridges throughout Alaska. They are currently under contract with the Kenai Peninsula Borough to build the Kenai Spur Highway extension. That project has approximately 200,000 tons of gravel which is about 100,000 yards.

He wanted to testify on behalf of the Trimble's and to ask the Planning Commission to approve their permit. He has bought gravel throughout the state from a number of different entities. He and his brother currently own three gravel pits. One in Ninilchik, one in Soldotna and one in Nikiski. He has heard a lot of testimony, read a lot of the letters and emails in opposition, and the hearing officer's decision. This is all about facts. He has heard a lot of testimony. Long on testimony, short on facts. Long on emotions, short of facts. The facts in his mind is that Mr. and Mrs. Trimble have met the requirements of the Kenai Peninsula Borough Ordinances as evidence by the staff's recommendation on not one but two occasions that the Commission approve this permit.

In reading through this packet he found something he wanted to read from page 72 and it has to do with the study of the value of homes. "Odd are that underneath your feet is a construction material made of sand, crushed stone and gravel." He said that under this building there is gravel and under the carpet is concrete which consists of gravel and other ingredients. "These construction materials are an essential ingredient into nearly every construction project, from residential housing, office buildings, retail outlets, entertainment structures to the roads that connect them. Sand, rock and gravel are literally the foundation of economic development, but their extraction process can generate dust, noise, vibration and truck traffic. While modern technologies and methods have greatly reduced quarries' impacts, the environmental and economic consequences of quarry operations received considerable attention, often in the form of "not in my backyard" (or NIMBY) campaigns of opposing quarry expansions or new sites. Choosing a quarry site is a delicate task. While a quarry may be best located from residential density on NIMBY concerns, it also needs to be near the final point of demand due to its high transportation costs. Quarries" or gravel pits "must balance the need to be both near and far." He imagines in a very perfect world the Trimble's would love to have their gravel pit somewhere else where it wouldn't impact on the view of their neighbors. What needs to keep in mind is that the neighbor's view is not their right. They do not own the view of the Trimble's land. It was talked tonight about putting some fencing up on their property. He believes when it comes to some of these conditions other conditions should be considered. However, that is not what the code allows. The code allows certain things and the Trimble's have met those requirements and he requests that the Commission approve the permit.

17. Lynn Whitmore, PO Box 358, Anchor Point

Mr. Whitmore is a next door neighbor to the proposed gravel pit. He brought an overhead presentation to make but for sake of expediency, he decided to wait to present it. He would like to repeat something that was heard several times. When this got remanded back to the

Planning Commission they asked the Planning Department to continue this until some of the affected neighbors were back. A lot of people are outside this time of year. It is fair to give them the chance to speak their concerns. They will try to get them to speak on findings of fact and not get too far from what is actually needing to be addressed. He hopes that it can be continued until May 28th to allow a chance to get everyone together.

18. Josh Elmaleh, 34885 Seabury Court, Anchor Point

Mr. Elmaleh is not far from the proposed gravel extraction site. There are a few things he would like to point out. The Commission made an excellent decision last time to deny Beachcomber LLC the right to extract gravel. The reasons for that were visual and noise impacts. He cannot see the property from his house but anytime they have a tractor or a bobcat running he can hear it at his house. This is over the hill, through trees, behind other neighbors' houses. Normally he cannot hear anything from his house in that distance but he can hear it clearly. Whenever a dump truck dumps or goes down the road the clang of the bed can be heard. This is going to happen whether or not it is on their property, it is a product of their excavation. There is a high wind in that area and it will kick up the dust that they will expose. That is going to create another visual impact. People will be driving by and a cloud of dust will hinder their vision. There is an impact on the road. This affects him, his family, his wife, his kids, his dogs and he tries to keep the dogs at the house but they are magicians and find a way out. They will find a way to that pit and somebody is going to run them over and he will not have control over that even if he tries his best. A lot of people might be better with their animals but he grew up with them and has always learned to do his best, teach them, and love them as best you can.

In previous testimony, many visual impacts that are going to happen were mentioned. When driving up or down the road what the Trimble's are doing will be seen. This is their property and they should have a lot of rights of what they do to but the Commission has six criteria that they have to meet. He agrees with the Commission's initial findings that visual and sound impacts will not be met no matter what they do. They are in a bowl and they all have a perched view so there is a lot of people that will be affected. Not just the neighbors but the tourist. The people that are close by, the people coming through. He said that Mr. Trimble has brought the community together, not in his favor but to resist the health and noise impact that his proposed mine will bring about. A lady mentioned vibrations. Anytime a truck goes by especially, in this type of neighborhood, there will be vibration through a person. It is a physical impact. Please stand to your initial finding.

19. Lauren Isenhour, 34737 Beachcomber St., Anchor Point

Ms. Isenhour read a prepared statement. "I believe that Anchor Point is a wonderful place to live for all the same reasons as these people here. I like having privacy and acreage. I like having control over what I can do on my own property. I love being able to walk to the beach and river with my kids and not be surrounded by lots of people. The success and longevity of Anchor Point is extremely important to me and my family, we actually depend on it. Maintaining a successful town structure, meaning keeping businesses open, keeping Chapman School open, keeping Anchor Point a recreational destination, keeping property values high. These things are very important to my family and to our livelihoods. I believe there is an attainable balance between keeping Anchor Point the quaint little town we all love while still allowing for the development that keeps our community viable. I see the word development used with a negative connotation a lot and I truly don't understand that. We all live in houses and drive on roads and that is development. Anchor Point due to its size and economy can only support a certain amount of development and I like that. With our construction company I could hire a crew and build ten houses a year only there is just not the population to buy them. In 2018 there were 30 home sales in Anchor Point. That is a really small market. Currently, I am building one to two houses a year and that size of development is a perfect fit for me and my family. I am proud of what I am accomplishing and for what I can help contribute to my town. I don't want to build in Homer or anywhere else. I want to live and work in Anchor Point. At my last build I benefited from contributions from at least 20 local Anchor Pointers employed through

local contractors that work year round and support their families with the income they make right here in our tiny town. Those laborers are the backbone of our town. Without their year round work and their year round contributions back to our community our town would dry up. I believe my parents are the perfect people to own this property for my neighborhood. They bought it because they love it and want to keep it fully intact and want to be able to keep it in the Trimble family for generations. They did not buy this property with plans to develop it. They bought it to keep it but it is expensive. I would rather see a controlled small scale gravel pit that provides needed gravel and jobs to local people and is then reclaimed to the highest standards and be able to stay one large vacant parcel maintained by the Trimble family for generations then I would to see it subdivided. I don't want 27 new neighbors with no regulations to control what they build or do on their new properties. Ironically my family and the neighborhood who oppose the permit both want the same thing. Which is for this beautiful parcel to remain vacant and remain one large piece of land. Once a parcel is subdivided and homes are built it will be that way forever. My parents are very interested in keeping property values high. It benefits their real estate business as a whole and benefits their own property investments. I have heard a number of comments that this permit will lower the surrounding property values. I don't agree with that. There are no regulations on anyone else's properties protecting us from our neighbors potentially having junk yards, tarped roofs or the like that we see. Gravel pits are strictly regulated and monitored and are required to be reclaimed. All over Anchor Point are properties that my parents have developed and sold and without a shadow of a doubt each one has been radically improved at their hand. This parcel is no exception prior to my parents purchasing it the field behind my house was so littered with stones and slash that you could hardly walk through it. My parents spent over \$60,000 to clean it up to the beautiful state it is currently in. That does not lend to the picture their opposition tries to paint of them as greedy destroyers of the land. They have been successful in land development for 40 years because they are exceptional excellent at it. They are meticulous and deliberate in their stewardship of the land. I have all the trust and confidence in the world not because they are my parents but because of their proven track record that whatever areas of this permitted land they do extract gravel from it will be reclaimed to the highest degree. The engineer who designed this permit application testified that for a large pit in this type of rural area 10,000 cubic yards is a more realistic amount of gravel to move a year. As I stated before Anchor Point is a small community that can only support a small amount of development. There just isn't the populous to purchase my potential 10 houses a year and there just isn't the populous to purchase 50,000 cubic yards of gravel a year. That is the number the maximum the permit would allow. That's not a realistic extraction amount in our community. I'd also like to address the safety and condition of the beach access road as stated I do walk the road with my kids and during the summer months there is a lot of traffic and boats and RV's, bikes and walkers and constant vehicle traffic. Wide load boats drive very slowly. RV's drive very slowly and with such a constant flow of vehicles traffic just moves slowly. Gravel trucks also drive that road all the time delivering gravel to the residents and I believe as a community we all work really well together to keep everyone safe on our road. So yeah when I am walking with my kids we step off into the ditch. Drivers do drive very slowly around us and we all wave at each other as we do this. We've worked together to keep everyone safe. Gravel trucks drive no differently than wide load boats or RV's. Just to be clear I support the presence of RV's and boats as well as gravel trucks. I believe there is an attainable balance between all of us in the community to keep Anchor Point, the quaint town we love, yet also keep the responsible amount development that keeps jobs in our community."

20. Gina DeBardelaben, McLane Consulting, PO Box 468, Soldotna

Ms. DeBardelaben works for the firm that was hired by Beachcomber LLC to survey the property and prepare the CLUP permit documents and exhibits. Field work for the permit was completed in May 2018 and the CLUP application was submitted in June 2018. This site has a driveway, a small gravel pad, and some berms established. The proposed material site parcel has a lot of relief to it and it would require some excavation and leveling for access, residential or commercial construction, all of which could have impacts similar to a material site. Just something to keep in mind that with an unlevelled site, there will always be larger impacts than a level site.

There were a few things brought up before in all the written comments and public testimony that she wanted to speak to. Some of these things are things that she regularly says at Planning Commission meetings for CLUP's but she thinks it's important for the commission and the public in attendance to hear it. One is noise concerns. It is unrealistic to think that buffers would or should fully eliminate impacts of noise and visual impacts. The code and the proposed buffers would minimize visual impacts and noise. That is the requirement. The code provides tools that are supposed to be used for buffers or barriers and that is what an applicant has to choose from at this point. That is how the code is written. An applicant does their best to pick from those tools provided. There is additional information provided by Geovera.

Noises can be deceiving. ANSI, MSHW and OSHA all have charts, comparable data and studies on noise. She cited some information on noise abatement from a US Bureau of Mines report regarding noise abatement for construction sites. A front end loader, which is the most common piece of equipment in a material site, emits between 85 and 91 decibels depending on the age of the equipment and the materials it is moving. It averages about 88 decibels from where the operator sits. As a comparison a gas lawnmower operates at a 100 decibels, a hairdryer at 85 decibels, and an uninsulated home dishwasher operates at 70 decibels. Separation distancing and locating noisy equipment behind a barrier are the two top recommendations for noise abatement. A noise barrier such as spoils berm drops the noise level at a curvilinear rate relative to the distance of the noise to the barrier. Separation of distance from a noise drops the impacts in a linear fashion. For every 10 feet of distance the noise drops approximately 6 decibels. Between the curvilinear and the linear analysis, a berm in combination with approximately 20 feet of separation drops the decibel levels of a front end loader to that of a dishwasher.

Another thing that has been brought up is the haul routes. The Anchor River Road and the Old Sterling are state maintained and meet the requirements of a state road. The Anchor River bridge has a GVW listed for it and is listed very low because the bridge is near being condemned. It is damaged and is slated for replacement in 2020. All users of these roads need to abide by DOT requirements for GVW, speed, proper use of lanes, shouldering, etc. The health of the Anchor Road is not applicable to the borough permitting process. DOT's letter regarding line of sight, landing lengths, sweeping, and traffic control permits are all standard to borough road to DOT access points and industrial traffic use. All borough material sites are required to maintain their borough haul routes, which would be a borough gravel road, and dust abatement for gravel haul routes.

Quantity of extraction is another item that is often brought up. Gravel extraction per year is based on an unknown quantity of material sales. This CLUP application lists 50,000 yards maximum, when in reality an extraction from a site like this is not likely to exceed 10,000 yards per year. For perspective a large borough road capital improvement project which is a typical 4,000-foot-long gravel road to be improved would not exceed 4,000 cubic yards for the project. Mr. Smith cited a very large project and cited 130,000 cubic yards for the project. That is for over 8 miles of new road construction. That is a huge project for our borough. It is not relative to a site like this. The 50,000 cubic yard maximum is utilized because that is DNR's threshold to determine how material sites are required to report to the state for extraction and for state bonding for reclamation. If above 50,000 yards there are different requirements. It is a cap to say that it will not be a huge extraction mining site.

The proposed extraction area is greater than 100 feet from all residential wells, surface wetlands, flood boundaries as per the borough code. There is no extraction proposed below the water table as part of this permit. Extraction will remain 2 feet above the ground water elevation as per the requirements. If the owner decides he wants to try to extract below ground water, there is another set of requirements that must be met and another meeting.

Mr. Kinneen has stated multiple times about an email correspondence between Mr. Wall and herself. Mr. Wall asked about proposing a higher berm. Her response was simply that some areas had sparse vegetation while other areas had more and that a higher berm could be proposed but she was not sure that it made sense. Interpretation of what she said was not the intent of the comment.

Commissioner Whitney wanted to know about the comments made regarding an asphalt plant being put in. Ms. DeBardelaben stated that as far as she was aware there is no planned sale of gravel from this site at this point.

Commissioner Ecklund wanted to know if Ms. DeBardelaben, or her firm, drafted the map on page 41.70 of the desk packet. Ms. DeBardelaben stated that it was prepared by Geovera. Commissioner Ecklund wanted to know if she knew how many miles the proposed site was from the Sterling Highway. Ms. DeBardelaben said she was not sure of that distance and it would depend because there are two routes.

Commissioner Fikes said that the applicant's proposal is roughly estimated at 10,000 cubic yards. Ms. DeBardelaben said the permit states less than 50,000 yards. In reality excavation is based on gravel sales. 10,000 yards is much more appropriate and likely in this area. Commissioner Fikes wanted to know what realistic hours of operations for this site would be. Ms. DeBardelaben was not sure but 10,000 yards is two or three projects most likely. A project would be four to six weeks depending on the size. It would also depend on the delivery schedule.

21. Eldon Overson, PO Box 1318, Anchor Point

Mr. Overson owns the property on the corner of Danver and Seaward. He thanked the Commission for their July decision. The piece of property that he bought he just started recently framing up a little cabin to use in the summer. He halted immediately once he found out this gravel pit was being planned. He halted his intended use of the property that he purchased.

He would like to address some of the misinformation that has been received from the opposition. First they say that they are a mom and pop business and are only going to take out a few yards here and there. When they were stopped from doing their additional 2 ½ acre permit they had a contract with HilCorp to extract 12,000 yards. That same 12,000 yards, when they were stopped, was given to another gravel company. They did that hauling of 12,000 yards to HilCorp in about 9 days. He feels the opposition is trying to paint this as a low impact.

His property sits at the top of hill and is 50 feet above the material site where there is almost no vegetation. A 50-foot vegetation buffer and a berm will do nothing for him. He will have a complete line of sight of the crusher location and most of the excavation area even with Beachcomber's proposal to move the berms as they go. He did submit a picture and a site plan from the deck of his cabin and it shows where the gravel pit will be. A 12-foot berm with no trees in line of sight from the gravel pit will provide a complete line of sight. The testimony that the berm will knock down the sound, it will not because he will have a direct line of sight. The visual and noise will not be stopped at his property. He hopes they will consider denying the permit.

22. Gregg Nieser, Seabury Rd., Anchor Point

Mr. Nieser has two properties on Seabury Road. He just recently moved to Alaska after visiting for 25 years. He visited all over the state but always came back to Homer and Anchor Point. One of the things that attracted him to the area was the people, the community, the adventurous opportunities and the nature. He finally fulfilled his dream and this past October he purchased his two properties which are 7/10 of a mile from the proposed gravel site. He was not included in any notification because the distance is ½ mile. It was a big surprise that his first week here that HilCorp with their loud noises and bright lights and that disturbance finally stopped. He is closer to this proposed site on Danver which will be even more noisy with trucks. After listening

to everyone he is now concerned with crushing. That sounds more impactful than just trucks going up and down the only recreational area in that part of the Kenai Peninsula. There are 5 campgrounds, a river with salmon, and ends at a beach where there are thousands of tourists that visit. He went to Homer and didn't see the eagles. He asked what happened and when he was told he found out the place to see them was in Anchor Point at low tide. They went and fell in love with the area. He moved to not have the light pollution, the sound and traffic and enjoy clean air and walk to the beach while not worrying about getting run over. He thought it was strange to sand the roads instead of salt. He was told it was to protect the vegetation and the wildlife and it doesn't eat the roads up. He sees the value of having a gravel pit. To have the sand and the ingredients as one testifier stated. The location itself is not in the best interest of the community for those that have invested. When he bought his property he didn't think when questioning his development options that one would be to not. First, it was HilCorp but then it stopped. Then, it is if the Chapman School will remain and now this. This is all within a mile and half of his new home. He is hesitant in investing in his property and hesitant to start a business in Anchor Point. He thanked the Commission for their consideration. He agrees that a lot of people may not have received notice or are out of the area so postponing would be in the community's best interest.

Mr. Elmaleh wanted to answer a question posed earlier regarding the distance to the Sterling Highway. Commissioner Ecklund was curious about the distance if turning onto Anchor Point Road to go to the material site. He stated that it would be about $\frac{3}{4}$ of a mile. Taking the Old Sterling it would be about 10 miles. Using the bridge is about a mile. Going back to Anchor Point it is between 15 and 18 miles.

Seeing and hearing no one else wishing to speak, the public hearing was closed and discussion was opened among the commission.

MOTION: Commissioner Carluccio moved, seconded by Commissioner Bentz to **continue** the hearing on the conditional land use permit application on a parcel in Anchor Point until brought back by staff.

Commissioner Whitney wanted to clarify if it should be brought back date certain or brought back by staff. Chair Pro Tem Foster stated it was to be brought back by staff. Commissioner Whitney stated that he would like to see it date certain and set it for May 28, 2019. Mr. Best confirmed that May 28, 2019 would be a Planning Commission meeting date but noted that it would be on a Tuesday.

AMENDMENT MOTION: Commissioner Whitney moved, seconded by Commissioner Venuti to amend the motion to May 28, 2019.

Commissioner Fikes asked if it was being postponed until May. Chair Pro Tem Foster stated it was not a postponement it would be a continuance of the public hearing.

Mr. Wall stated that he had a concern regarding the May 28, 2019 meeting. He is planned to be out of town the four weeks leading up to the May 28, 2019 meeting but could be present for the meeting. He is concerned with the continuity of processing the application if it is to be held on May 28, 2019. Chair Pro Tem Foster asked if Mr. Wall had a recommendation for the continuation. Mr. Wall stated that the April 22, 2019 would be his recommendation. Commissioner Ecklund felt that based on the applicant's representative they were ready to go forward. She believes that all of the application materials are prepared and she knows there will be more that come in but most of the work is already done. So she felt that his time off should not interfere with continuing on the May 28, 2019 meeting.

Explaining was done on the need to vote on the question before the motions could be voted on.

VOTE ON THE QUESTION PASSED: Roll call vote on the question, passed by unanimous vote.

AMENDMENT MOTION PASSED BY MAJORITY VOTE: 7 Yes, 2 No, 1 Recused, 2 Absent

Yes:	Bentz, Carluccio, Ecklund, Ernst, Morgan, Venuti, Whitney
No:	Fikes, Foster
Recused:	Brantley

Absent: Martin, Ruffner

Chair Pro Tem Foster addressed that the it will be continued at the May 28, 2019 meeting. At that time the public hearing will remain open and anyone wishing may come back. He asked that if anyone had anything to submit for the meeting to please submit it early.

SUBDIVISION PLAT PUBLIC HEARINGS

1. Commissioner Carluccio reported that the Plat Committee reviewed 6 preliminary plats. 5 were approved and 1 was postponed.

OTHER/NEW BUSINESS

1. New Plat Committee (April, May, June 2019)
Members – Brantley, Carluccio, Ecklund, Venuti, Whitney
Alternates - Fikes

ASSEMBLY COMMENTS

LEGAL REPRESENTATIVE COMMENTS

DIRECTOR'S COMMENTS

Mr. Best stated that a decision was received from the Hearing Officer for the approval for Diamond Willow Estates Subdivision. The Planning Commission's decision to approve was upheld by the Hearing Officer. The appeal time is still going and a copy of that decision will be available in the next meeting packet.

COMMISSIONER'S COMMENTS

Commissioner Venuti wanted to discuss the letter that accuses him of unethical behavior. He understands that people do not like change and folks in that community have his sympathy. He doesn't know how he would feel if he had a gravel pit moving next door to him. But to try to assassinate his character in a public manner is a lame stunt and wondered if they considered the liability issue they have put before him. The potential for a problem and he is uncomfortable about this. Obviously, these people do not know anything about him and he has been working at his profession in the Homer area for 40 years and nobody has ever said anything about unethical behavior. He refutes the claims entirely.

Commissioner Ecklund stated that due to the size of the packet she had issues with determining where items were located and where they began and ended. She wanted to clarify if the applicant's submission began on page 70 and ended on page 115. Mr. Best would review and let her know. Discussion was had on trying to arrange and note divisions in the packet better for the next meeting.

Commissioner Bentz noted that she would be absent for April 22, 2019. She also wanted to know if there was a date for the Comprehensive Plan. Mr. Best stated that there is not a date yet but it is getting closer.

ADJOURNMENT

MOTION: Commissioner Carluccio moved to adjourn the meeting at 10:36 p.m.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

Julie Hindman
Administrative Assistant

PLANNING COMMISSION

MINUTES

APRIL 8, 2019



Planning Commission

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

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

**April 8, 2019
7:30 P.M.**

APPROVED MINUTES

CALL TO ORDER

Chairman Martin called the meeting to order at 7:46 p.m.

ROLL CALL

Commissioners Present

Syverine Abrahamson-Bentz, Anchor Point / Ninilchik
Jeremy Brantley, Sterling
Paulette Bokenko-Carluccio, City of Seldovia
Cindy Ecklund, City of Seward
Robert F. Ernst, Northwest Borough
Diane Fikes, City of Kenai
Dr. Rick Foster, Southwest Borough
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof / Clam Gulch
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna

With 12 members of a 13-member Commission in attendance, a quorum was present.

Staff Present

Max Best, Planning Director
Julie Hindman, Administrative Assistant
Scott Huff, Platting Manager
Bruce Wall, Planner
Holly Montague, Deputy Borough Attorney

Others Present

APPROVAL OF REGULAR AGENDA AND ADOPTION OF THE CONSENT AGENDA

CONSENT AGENDA

AGENDA ITEM C. CONSENT AGENDA

- *5. Plat Amendment Request
 - a. Crestview Estates Subdivision
KPB File 2004-146A1 [Imhoff / Switzer]
Recording No. HM 2005-33
Location: On Kia Lane and Cozy Cove Drive, on Skyline Drive

STAFF REPORT

PC MEETING 4/8/19

After Crestview Estates Subdivision was recorded, an error was discovered. The surveyor requested permission to withdraw the original mylar for amending.

A distance label on the west lot line of Lot 8 is in error. The proposed amendment to this plat is:

1. Correct the distance label on the west lot line of Lot 8 from 365.46' to 368.46'.

Staff recommends the requested amendment be accomplished by striking through the incorrect label and adding the correct label.

STAFF RECOMMENDATIONS: Grant permission to surveyor to withdraw the original mylar to amend as requested, subject to the following:

1. Written approval by the State Recorder.
2. Refile the plat along with a surveyor's affidavit per State requirements.

NOTE: An appeal of a decision of the Planning Commission may be filed to the hearing officer, in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the borough clerk within 15 days of date of the notice of the decision; using the proper forms; and, be accompanied by the \$300 filing and records preparation fee.

END OF STAFF REPORT

****Approved with the adoption of the consent agenda.***

AGENDA ITEM C. CONSENT AGENDA

- *7. Commissioner Excused Absences
 - a. Vacant, Ridgeway

MOTION: Commissioner Carluccio moved, seconded by Commissioner Bentz to approve the consent and regular agendas.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

PUBLIC COMMENT / PRESENTATIONS / COMMISSIONERS

Chairman Martin opened the meeting for public comment.

1. Emmitt Trimble, PO Box 193, Anchor Point

Mr. Trimble wanted to make a request. At the last Planning Commission meeting procedures had been discussed and the possibility of a continuation. The date that was discussed was April 22, 2019 and that date worked for them. At that meeting there was a motion to continue to May 28, 2019 because several of their opponents stated they wanted to give time to the snowbirds to come back and be able to testify. The motion passed unanimously without any question if they would be available. They will not be in the country during that time and are not available for the continuation on May 28, 2019. They are available on April 22, 2019, which was their agreement with staff, or May 13, 2019. They are respectfully requesting that the issue be addressed and try to change the date of the meeting. They are not changing the date of their family vacation.

Commissioner Fikes wanted to point out that the motion did not pass unanimously.

Mr. Trimble also wanted to speak out about the vicious attack of a Commissioner in a written testimony from opponents. Commissioner Brantley recused himself and it was requested that Commissioner Venuti also recuse himself because they are real estate brokers and Commissioner

Venuti is an inspector. He wanted to apologize for the majority of Anchor Point for the suggestion that Commissioner Venuti was unethical and nefarious. He was offended.

Seeing and hearing no one else wishing to speak, Chairman Martin continued the meeting.

Chairman Martin told the commission they could address the request.

Commissioner Ecklund stated that the process to change a date that was set at a meeting is that the Commission has to make a motion to amend after adoption and the discussion of the change would take place at the next meeting. Commissioner Ecklund clarified that they cannot change the date at this meeting but make a motion to amend after adoption and then the item will be on the next meeting agenda for public notice.

MOTION: Commissioner Ecklund moved, seconded by Fikes to amend after adoption the date set for the Anchor Point - Trimble material extraction site to be publicly noticed for discussion at the next meeting.

Commissioner Brantley recused himself from this item.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

PUBLIC HEARINGS

AGENDA ITEM F. PUBLIC HEARINGS

1. Vacate the 30' wide public access easement adjoining the north boundary of Tract A, A. A. Mattox 1958 Addition, Plat HM 3746, as granted on the public access easement recorded at Serial Number 2018-003011-0, Homer Recording District. The public access easement being vacated is unconstructed and located within the NW1/4 SE1/4 SE1/4 of Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2019-026V.

Staff Report given by Scott Huff

PC Meeting: 4/8/19

Purpose as stated in petition: The easement is no longer necessary because Lot 8 and Tract A are being replatted into one lot.

Petitioner: Echo Trading Company LLC of Homer, AK.

Notification: Public notice appeared in the March 28, 2019 issue of the Homer News as a separate ad. The public hearing notice was published in the April 4th issue of the Homer News as part of the Commission's tentative agenda.

Fourteen certified mailings were sent to owners of property within 300 feet of the proposed vacation. Ten receipts have been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 34 owners within 600 feet of the proposed vacation.

Twenty public hearing notices were emailed to agencies and interested parties.

Nine public hearing notices were emailed or made available to KPB staff/Departments via a shared database.

Notices were mailed to the Homer Post Office and Homer Community Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing

MEETING PACKET

&

DESK / LAY DOWN PACKET

APRIL 22, 2019

(Please note that some information has been dispersed throughout the record so that there was not duplicate information.)

AGENDA ITEM I. PUBLIC HEARING

2. Amend a Hearing Date After Adoption for a Conditional Land Use Permit for a Material Site

STAFF REPORT

PC MEETING: April 22, 2019

Applicant: Beachcomber LLC
Landowner: Beachcomber LLC
Parcel Number: 169-010-67
Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.
Location: 74185 Anchor Point Road

BACKGROUND INFORMATION: The applicants wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

A public hearing was advertised and scheduled for March 25, 2019 for this application following a remand from the hearing officer. Prior to the hearing, the applicants' representative requested a continuance of the hearing due to unforeseen issues. Following public comments at the hearing, the Planning Commission voted to continue the hearing to May 28, 2019.

At the regular April 8, 2019 hearing of the Planning Commission, the applicants requested that the Planning Commission reconsider the decision concerning the date of the continuance. The applicants indicated that they will be out of the country on May 28, 2019 and will not be available on that date. They suggested April 22, 2019 or May 13, 2019 as alternate dates.

The Planning Commission, by unanimous consent, agreed to amend after adoption the meeting date with the date to be decided at the April 22, 2019 meeting.

April 22, 2019	Is not an option because public notice needs to be provided.
May 13, 2019	There is sufficient time to meet the public notice requirements for this meeting. However, Max Best, Planning Director and Bruce Wall, Planner will both be unable to attend this meeting.
May 28, 2019	The applicants have indicated that they will not be available on this date.
June 10, 2019	Max Best, Planning Director will be unable to attend this meeting.
June 24, 2019	Bruce Wall, Planner will be unable to attend this meeting.

PUBLIC NOTICE: Public notice of this meeting was mailed on April 10, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel.

ATTACHMENTS

- Meeting minutes excerpt from April 8, 2019

END OF STAFF REPORT

From: Mike Brantley <zz49er@outlook.com>
Sent: Wednesday, April 17, 2019 3:39 PM
To: Wall, Bruce
Subject: Motion of Reconsideration

I, Mike Brantley, hereby request that you Open the April 22, 2019 meeting to the Public, for input in the Motion of Reconsideration portion of the matter of rescheduling, yet again the currently scheduled May 28, 2019 Public Hearing in the Beachcomber LLC and Trimble matter.

Mike Brantley
74057 Anchor Point Rd.
Anchor Point, Alaska 99556
zz49er@outlook.com
907-360-9467

To: KPB Planning Commission
From: William and Linda Patrick, parties of interest in Beachcomber LLC Gravel Pit Action.
Subject: Changing the May 28, 2019 set date for this issue.
Date: April 18, 2019

Honorable Members of the Planning Commission,

Issuing a permit for an unwanted gravel pit in a residential/recreational location like this is a very serious matter. The population density of this area during the summer would be more inline with the towns of the Kenai Peninsula. No reasonable person would put a gravel pit here.

That being said, my wife and I object to moving this set date to an earlier date. We also object to the appearance that Mr. Trimble is trying to deceive and confuse the parties of interest as to the timelines set by the Planning Commission. First it was a request, without reason, to delay the March 25 meeting. By the way, Mr. Trimble showed up at that meeting with his family and legal counsel. The Commission then reset the date to May 28, 2019. Now, Mr. Trimble is going to be "Out of the Country."

We thought the May 28th date was set to allow more of the persons of interest to be there. To move the date to early May appears to be counter productive to the positive decision you made about the May 28th date. Taking this into consideration, I would suggest that if the meeting agenda absolutely needs to be changed at Mr. Trimble's request, it be changed to a later date. I see there are proposed conflicts in June with the Planning Department, so perhaps it should be moved to July. It is my opinion that moving it to an earlier date would not be in the interest of the public to which this Commission serves. The gravel isn't going anywhere.

On a personal note, my wife and I cannot attend the May 13th meeting as I am undergoing cancer treatment in Arizona and will be out of state on that date. So, we request that the May 28th date be maintained or moved to a later date. I am willing to provide the Commission with documentation to verify my request, if necessary.

Respectfully Submitted,

William and Linda Patrick

From: Hans <catchalaska@alaska.net>
Sent: Thursday, April 18, 2019 8:57 AM
To: Wall, Bruce
Subject: Beachcomber reschedule

Please forward this to the Planning Commission for inclusion in the 4/22/2019 Packet.

Planning Commission members,

Once again the applicants for a proposed gravel mine in the heart of Anchor Point are attempting to manipulate the permitting process through deception and misleading statements. At the eleventh hour before the scheduled March 25th Hearing date applicants, through their attorney, requested and received a continuance. Reason given—“unforeseen circumstances”. Probable reason—two of three commissioners who voted in favor of applicant at original July 16, 2018 hearing had excused absence from March 25 meeting! No great surprise when the applicants, their entourage of out of town gravel operators, and their attorney all showed up ready to proceed, after those opposing the permit had been told by KPB Planning Department that there was no need to be present that evening.

At the request of several neighboring property owners the Commission voted to continue the hearing until May 28th. This was a legitimate and justifiable request which would allow affected property owners who winter in warmer climates to attend and give in-person testimony. Most of those summer residents have arranged their travel schedule to be here for the May 28th date. Any date prior to that will not allow many affected landowners the right to testify in person before the Commission. Additionally, the May 13th date does not work because both the Planning Director, and the KPB Planner will be absent and procedural questions will have no one qualified to answer.

If the applicants are genuine in their desire to move the process along they need to adjust their plans, or accept a date later than the scheduled May 28 hearing that was voted on by the Commission. Applicants have previously requested and received a continuance through very questionable circumstances, and now are attempting to again manipulate the process showing no regard for property owners who would be adversely affected for what is likely the rest of their lives.

Hans and Jeanne Bilben

35039 Denver Street
Anchor Point

From: L Rick Oliver <roliverb747@me.com>
Sent: Thursday, April 18, 2019 9:20 AM
To: Wall, Bruce
Cc: Hans Bilben
Subject: Re: Beachcomber LLC vs. All the good people of Anchor Point

Hey Bruce,

I understand our favorite Realtor is attempting to move the date of the next meeting once again. Are the “unforeseen circumstances” that motivated him to ask for a continuance of the March meeting raising their ugly heads once again ?? OR, if he’s truly going to be “out of the country”, would a request of a copy of his “international itinerary” be out of line ??

Please put me down for a very negative vote as to moving the meeting unless we make it even later in the summer when all the snow dodgers have returned and Mr. Trimble has had a chance to recover from his travels.

Best Regards,

Lawrence “Rick” Oliver
34880 Danver St.
Anchor Point, AK 99556

From: Phil Brna <fisheyeak@gmail.com>
Sent: Thursday, April 18, 2019 10:20 AM
To: Wall, Bruce
Subject: Trimble request to change the next Beachcomber hearing date.

It is my understanding that Mr. Trimble has requested another change to the next planning commission meeting.

Trimble attended the April 8th Planning Commission meeting to convince them to move the date ahead for the hearing that was set for May 28th. The May 28 date was selected after Trimble previously requested a continuance from the March 25 meeting. Many of us had planned to attend that meeting. Numerous local citizens requested the May 28 meeting because many of us would not be available for an earlier meeting. I request that the planning commission stick with the May 28th meeting or move the hearing into June or later. I believe that the planning commission understands that they work for the general public and not for any individual developer. Therefore, they should attempt to accommodate the needs of the broadest range of citizens. It is not right or acceptable for the commission to respond to an individual without regard to the greater public need.

In my view, Trimble has not been honest in his dealings with potentially impacted neighbors or the commission. His latest request is just another attempt at manipulating the system to meet his needs with no consideration given to neighboring property owners whose quality of life is of no value to him. This is the same applicant who has stated on several occasions that neighbors who don't like what he wants to do should invest in insulated window shades, hearing protection, and build fences to block our view from his mine.

Trimble has already asked for, and received one continuance which inconvenienced the rest of us. I find this to be unacceptable. He should not be granted a second opportunity to reschedule the meeting to the detriment of adjacent property owners and other concerned citizens.

Phil Brna
Adjacent property owner

Sent from my iPad

From: Marie Drinkhouse <mariedrinkhouse@yahoo.com>
Sent: Thursday, April 18, 2019 12:29 PM
To: Wall, Bruce
Subject: Denver Road gravel mining permit

Mr. Wall,

My property is touching this proposed gravel site on two sides and I would like to attend the meeting and would like that date clarified. I thought May 28th was set but hear that it might change again. A later date would work but definitely not earlier. I so hope this sad little town of Anchor Point won't have a gravel pit next to it's only public attraction and state park.

Thank you,

Marie Drinkhouse

I own the place with the blue roof. 907-3540847

Hindman, Julie

From: Planning Dept,
Sent: Thursday, April 18, 2019 4:53 PM
To: Wall, Bruce
Cc: Hindman, Julie
Subject: FW: April 22, 2019 Planning Commission Meeting

From: Marie Carlton [mailto:seaburyroad@live.com]
Sent: Thursday, April 18, 2019 4:07 PM
To: Planning Dept, <planning@kpb.us>
Subject: April 22, 2019 Planning Commission Meeting

Honorable Planning Commission members. I am Marie Carlton. I reside at 73500 Seabury Road, Anchor Point.

Initially Mr. Trimble asked for a continuance to April 22, 2019. However, previous to the March 25, 2019 Planning Commission Meeting, Mr. Bruce Wall (in a conversation with Hans Bilben) stated that Hans did not need to attend the March 25, 2019 meeting because it was possible neither Mr. Trimble or his counsel would be attending the 3/25 meeting. As I arrived to the said meeting Mr. Trimble, his wife and daughter, and their counsel were in attendance and appeared very prepared. I was troubled by Mr.Wall's suggestion to not appear, only to observe the opposite. We were not notified of this change. A brief e/mail would have been appropriate and respectful. There can be no surrogate for professional, transparent and honest communication. On April 12, 2019 I received the letter from the Borough for an April 22, 2019 meeting to consider rescheduling the approved by vote, May 28, 2019 continuance. This second request for continuance is troubling. In the interest of fairness and honesty please reschedule the continuance to June. That way the majority of locals will be here. With regards to the magnitude of Mr. Trimble's out of country request(for continuance for May 13, 2019), it would seem Mr. Trimble could have notified the commission well in advance of his plans, thereby avoiding further issues. "Out of country " plans are not typically short term or spur of the moment decisions. If Mr. Bruce Wall receives this letter first, please ensure the commission has time to consider my thoughts. Thank you for the privilege of your time. Marie Carlton

Hindman, Julie

From: Planning Dept,
Sent: Friday, April 19, 2019 8:10 AM
To: Wall, Bruce
Cc: Hindman, Julie
Subject: FW: Continuance of public hearing for Beachcomber LLC Conditional land use permit/
April 22, 2019 meeting
Attachments: pastedGraphic.pdf

From: Teresa Ann [mailto:tajg1234567@gmail.com]
Sent: Thursday, April 18, 2019 5:58 PM
To: Planning Dept, <planning@kpb.us>
Subject: Re: Continuance of public hearing for Beachcomber LLC Conditional land use permit/ April 22, 2019 meeting

Hello Planning Commissioners of Kenai Peninsula Borough,

We received a letter from the Planning Department that the public hearing date will be re-scheduled on April 22, 2019 for the Beachcomber Conditional land use permit which was voted to be on May 28, 2019, since the applicant will be out of Country on that date.

We request that this meeting be scheduled for June 10, 2019 or June 24, 2019 during the regularly scheduled Planning Commission meetings.

I am including the map of the area where this gravel pit will impact the Anchor Point area and I know from the Borough codes you will be able to deny this Conditional land use permit.

2.40.050. Investigation and recommendation authority.

The planning commission may consider and investigate subject matter tending to the development and betterment of the borough and make recommendations as it considers advisable to any department of the borough government and to the assembly. The commission may make or have made surveys, maps or plans.

(Ord . No . 73-34, §§ 1(part) and 2(part), 1973 ; Ord . No . 15, § 1(part), 1966 ; KPC § 20 .10 .005

The Red area is the location of Beachcomber Llc Conditional Land Use permit.

Thank you,
Teresa Ann Jacobson Gregory
David Gregory
PO Box 904 Anchor Point, Ak 99556
Residents

From: Pete Kinneen <biocharalaska@gmail.com>
Sent: Thursday, April 18, 2019 10:33 PM
To: Wall, Bruce
Subject: Motion for Reconsideration at 4/22/19 meeting

Dear Planning Commission:

There is a motion for reconsideration regarding the properly scheduled May 28, 2019 public hearing in the Beachcomber matter.

I hereby request public input be allowed prior to your deliberations and vote. KPB sent out over 200 notices to the adjoining neighbors negatively affected by the proposed open pit mine. There are an additional several hundred neighbors also affected negatively but were just beyond the statutory distance for notice.

After your body accommodated the applicant by changing the date, the applicant wishes to change yet again. Before this matter, which affects literally hundreds and hundreds of adjacent neighbors, is decided justice dictates the rights of affected neighbors be given a moment to defend a denial of rescheduling yet another date change. Please allow a brief time to respond in person preceding your deliberations.

Thank you
Pete Kinneen

Sent from my iPhone

From: Ann Cline <anndotcalm@gmail.com>
Sent: Friday, April 19, 2019 6:11 AM
To: Wall, Bruce; Best, Max; Planning Dept.; Blankenship, Johni
Subject: May 28 hearing - what's going on?

Dear Blair and Kenai Peninsula Commissioners, Max, and Bruce,
After re-scheduling our meetings, commitments, and travel schedules, my husband Richard will be driving up from Washington State to your meeting in Soldotna on May 28th. I must stay back in Washington as I am in charge of a state memorial service June 2nd. We made all our arrangements around your agreed upon May 28th hearing date.

Now it appears that the Trimbles have decided to "not be present" and wish to change the date yet AGAIN! This is preposterous, and I feel rather disgruntled that you are now entertaining the notion of changing the date yet again, particularly since you yourselves have date conflicts! Is this just another ploy to confuse and keep the Anchor Point citizens from coming to a meeting that the Trimbles actually intend to attend as they did on March 25th? I would appreciate your thoughtful consideration of the full import of your decision. Maintain the date of May 28th. We citizens and neighbors of Anchor Point are trusting you to do what is right and honest for our borough. Thank you for your kind assistance.

Very truly,
Ann Cline

--
Ann Cline

"Gratitude is not only the greatest of virtues, but the parent of all others."
— Marcus Tullius Cicero

From: RICHARD CLINE <captrichie@me.com>
Sent: Friday, April 19, 2019 7:18 AM
To: Planning Dept,
Cc: Wall, Bruce; Best, Max; Blankenship, Johni; Hans and Jeanne Bilben; Lynn Whitmore; John and Barb Girton; Thomas Brook; Bob Baker; Jay And Denise Sparkman; Gary & Eileen Sheridan; Lynn Whitmore; Gary and Eileen Sheriden; Pete Kinneen; Gary Culip; Bob Shavelson; Bonnie Tesar; Jerry and Joan Blair; Bill and Leah Scott; Cathy and Dan Millard; Jim and Cindy Gorman; Chuck RVer Sierer; Christy Elmaleh; cullip04@hotmail.com; Don Horton; Marie Drinkhouse; Dan and Chris Syme; David Gregory; Jim and Sue Reid; Eldon Overson; Phil Brna; Fuzz Sierer; Vickey Hodnik; Todd Bareman; Paul Roderick; Teresa Gregory; Joe and Tonda Allred; Josh Christie Elmaleh; Pam And Gary Gordon; Robert Furlan; Gary and Eileen Sheriden; Kristin at GetMyBoat; karelbill@gci.net; Richard Carlton (noregretsrm@live.com); Ricky Oliver; Lee And Mark Yale; Linda Patrick; Mark Yale; Robert O Baker II Trustee via Robert Corbisier Agent; Shirley Gruber; Steve Thompson; xochitl Lopez-Ayala
Subject: Re:previously re-scheduled May 28 hearing

KPB planning Commission officers and planners, When are you going to stop responding to ridiculous and obviously dishonest requests from Beachcomber to constantly demand personal, conflicting consideration over all others with regard to their disgusting permit application? Practically every current negatively affected Anchor Point resident has jumped through a lot of hoops to present our side in this potentially devastating threat.

Beachcomber has tried every dirty trick they can think of to dishonestly present their side, hoping to ram this permit application through regardless of the disastrous impact it will have on an area they couldn't care less about! The single most telling example of the weakness of their argument, and their total disregard of what would normally and obviously be considered as what is right and fair, is their request to simply approve the permit by waiving Borough standards! The Trimbles are intimately aware they have an untenable position, opposed by the actual residents of the impacted area who will be devastated by the noise, the dust, the visible blight, the danger, and the destruction of our neighborhood. So they have engaged in physical threats, illegal trespassing, intimidation, and now even more dishonest re-scheduling attempts to try to circumvent your agreed-upon proceedings. They lied before about "not being able" to attend the March meeting, then showed up in full force, hoping their ploy had kept opposing residents away. When will you require them to comply with a schedule they have had plenty of time to consider? Hold to your May 28 schedule. Everyone involved has made a lot of plans in order to attend. If the Trimbles don't want to comply until they are sure we won't be there, fine. Let's schedule the hearing for the first meeting in June, 2050. They might be able to come up with some plan that is actually in compliance with Borough standards by then. I think we will be available.

Sincerely,
Richard Cline
34926 Danver St
Anchor Point, AK

From: Lynn Whitmore [mailto:lkwhitmore@acsalaska.net]
Sent: Friday, April 19, 2019 7:39 AM
To: Wall, Bruce
Cc: Best, Max
Subject: Trimble Gravel Pit Meeting

Good Morning Bruce

I am writing in regards to another Planning Commission meeting date change. I have scheduled an important business conference during the currently proposed May 13th meeting date. I made this commitment after the Commission set the May 28th date. Furthermore I see that you and Max will be unable to attend the May 13th meeting. Even though you guys don't always agree with our perspective regarding this proposed material site I feel it's important that one or both of you be present to answer questions and be part of the discussion going forward. The outcome of the Commissioners decision may have a substantial effect on how your department deals with similar proposals in the future. It just seems unusual for neither of you to be there considering the importance of all this.

I suggest that we either stick with the May 28th date that was previously agreed to or continue the meeting on a future date in June or July when one of you can be present. Either way please ask the Commission to set a date and hold to it so folks can plan around that. The constantly changing dates makes it very difficult to hold to committed schedules.

Thank you...Lynn Whitmore

From: Gary L. Gordon <garygordon4@gmail.com>
Sent: Friday, April 19, 2019 8:03 AM
To: Wall, Bruce
Cc: Hans
Subject: Trimble Fallacy

Please leave the May 28th date as agreed. If it needs to be moved, please move forward, so out of State tax payers can attend.

I personally don't believe Trimble's. They said they couldn't show up to the Last hearing, but they did, in full force and fully prepared. They even requested an approval vote. Do we really need Emmitt there to read to us? I say we have heard enough from them. They can send their attorney.

Let the impacted people have a presence and a chance to voice their concerns. Why oblige Trimble's Folly over the people? I do believe I pay more tax on my house at 34919 Fisher CT than Trimble's pay for the entire property they are requesting you to approve an extraction permit for. If my house does not cover it, my house and my other two view lots on Denver does.

Please vote to represent us, the people, keep the date or move it forward.

Sent from my iPad

Hindman, Julie

From: Planning Dept,
Sent: Friday, April 19, 2019 11:02 AM
To: Wall, Bruce
Cc: Hindman, Julie
Subject: FW: May 28 meeting

From: johngirton@aol.com [mailto:johngirton@aol.com]
Sent: Friday, April 19, 2019 11:02 AM
To: Planning Dept, <planning@kpb.us>
Subject: May 28 meeting

I have already purchased my airlines tickets so I can attend the May 28 meeting regarding the planned Anchor Point Mine. Please do not change that date unless you reschedule it for anytime in June or July. Respectfully, John Girton

Hindman, Julie

From: Planning Dept,
Sent: Friday, April 19, 2019 11:49 AM
To: Wall, Bruce
Cc: Hindman, Julie
Subject: FW: Trimble request to change the next Beachcomber hearing date

From: dsyme1 [mailto:dsyme1@gmail.com]
Sent: Friday, April 19, 2019 11:46 AM
To: Planning Dept, <planning@kpb.us>
Subject: Re: Trimble request to change the next Beachcomber hearing date

The integrity of this commission is starting to show thru once again. You voted and approved to move the date to May 28, 2019 so more ANCHOR POINT residents may be in attendance. Let's please stick to your decision of Having it on May 28th. Quit being so wishy washy. I know this time you will do the right thing and stick to the plan.

Thank you

Dan Syme

Sent from my Galaxy Tab® S2

From: Planning Dept,
Sent: Friday, April 19, 2019 4:59 PM
To: Wall, Bruce
Cc: Hindman, Julie
Subject: FW: At the May 28, 2019 scheduled Open to the Public

From: Mike Brantley
Sent: Friday, April 19, 2:09 PM
Subject: At the May 28, 2019 scheduled Open to the Public
To: Pete Kinneen and KPB PLANNING

To the KPB Planning Commission,

At the Planning Commission's March 25th, 2019, Open to the Public meeting. I specifically asked, if I will be able to speak again at the next Continuation meeting Open to the Public, the Planning Commission said YES. And the Planning Commission scheduled the Continuation of Open to the Public Hearing to the May 28, 2019 date.

Now, you're saying I cannot at the schedule Hearing on April 22, 2019 to Change again, to what Emmitt Trimble wants not what Anchor Point residents want! When is this Changing Game going to STOP by Emmitt Trimble and the KPB Planning Commision? You have already accommodated Emmitt Trimble's request to change the date once, and you did: May 28, 2019

My questions;

Did Emmitt Trimble asked for the May 13, 2019 date change by telephone or by a formal document with Proof as to why?

I respectfully request, that the rescheduled date approved by you on March 25, 2019, not be changed: May 28, 2019.

If it does get changed, I request it be rescheduled to June, 2019.

Mike Brantley
Anchor River Fly Fishing
zz49er@outlook.com

From: Gary Sheridan <twoshar@acsalaska.net>
Sent: Friday, April 19, 2019 3:02 PM
To: Broyles, Randi
Cc: Wall, Bruce; Pierce, Charlie; hans; Lynn Whitmore; Marie Carlton
Subject: KPB Planning Commission Meeting April 22, Continuance Beachcomber LLC Public Hearing Date

Dear Ms. Broyles, please provide the following letter to the KPB Planning Commission for their Public Hearing on April 22, 2019, regarding a continuance for the date of the KPB Planning Commission's deliberations to disapprove or approve the Beachcomber LLC's gravel pit application.

Dear KPB Planning Commission Members:

We are writing to ask that you to reaffirm your earlier date of May 28, 2019, for your public hearing to discuss the disapproval or approval of the Beachcomber LLC's gravel pit application. Many of our neighbors who are property owners near the proposed gravel pit won't be back from their locations down south if the public hearing is scheduled any earlier. We understand that the principles of Beachcomber LLC is trying to move the public hearing date ahead due to some earlier plans they made. It would seem that if they believe their gravel pit application is of such importance they would find a way to reschedule their plans as we have all had to do to try to reach a conclusion to this serious issue.

Secondly, we understand the April 22, 2019, public hearing is only to determine a continuance date for the Planning Commission's deliberations for disapproval or approval of the Beachcomber LLC's gravel pit application. However, in one of your recent public meetings regarding this subject, we were lead to believe no other subject regarding the gravel pit would be allowed, only to find substantial testimony was indeed given to the Planning Commission by Beachcomber LLC and other gravel pit operators.

Therefore, if, during your April 22, 2019, public meeting, you elect to take up the pros and cons of the proposed gravel pit that may lead you to your disapproval or approval of the Beachcomber LLC gravel pit application, we wish to go on record that we want to testify in this public hearing. We are fearful you may make a final decision regarding the gravel pit application's disapproval or approval during this meeting without our chance to testify.

Thank you for your consideration of this matter.

Sincerely,

Gary and Eileen Sheridan
PO Box 661
Anchor Point, Alaska 99556

907-235-5542

From: shirley gruber <shirleytdx@yahoo.com>
Sent: Friday, April 19, 2019 3:48 PM
To: Best, Max
Cc: Wall, Bruce
Subject: Beachcomber permit meeting change

Gentlemen:

This permit request and process has been an interesting affair to say the least....I have seen the KPB be pro development...which would be good if it was for the good of all not just a few. So far this process has only been good for one...for some reason...that only the borough seems to know ... this process is starting to display a perception of maybe bias for...or at least special treatment for the permit requested.

Now it is understandable that perception may not be reality...but I have to question why the KPB seems to immediately bend to the permitter's request..even after the same permitter made a fool out of planning department...asking for a continuance of a meeting only to show up anyway..unless the planning group already knew that was the plan...if that was the case then I am the fool in responding to Bruce as I did..and this performance is disrespectful to the planning commission themselves. Perhaps I hold all of you to higher standards, that maybe my error alone.

But more, importantly this same permit requester was out of compliance with his current permit (at least on 3/28...per Bruce himself), after all Bruce was going to call him....I wonder if Bruce does it for all the permit requesters...or is Beachcomber just special..most violations result in fines...not special phone call warnings...and then working so hard to issue new permits. This CLUP was for gravel extraction and remittigation...now it lists peat and sand removal too. Perhaps there would be a different planner.. other than Bruce, that could over see this permit. Doing that would show due diligence and impartiality.

Max, as the director of planning, you carry a great responsibility to the community.. and I have been reassured (by a mutual acquaintance) that you are an upstnding man.. a straight shooter. so please step back and look at this whole process and maybe reassure me (us in Anchor Point) that the planning commission actually means something for the community...that they are not just figure heads and will do anything for nothing..

Please leave the date as it stands May 28 afterall, that was already agreed to by everyone..including the surprise attendee Beachcomber. Therefore I respectfully ask you to eep the date and consider what I have written here today as well.

Respectfully

Shirley Gruber.

Hindman, Julie

From: Gary Sheridan <highwaterriver@acsalaska.net>
Sent: Sunday, April 21, 2019 9:29 PM
To: Hindman, Julie
Cc: Pierce, Charlie; Wall, Bruce; joselynbiloon@alaska.gov
Subject: KPB Planning Commission Meeting 4-22-19 Beachcomber LLC Gravel Pit Application
Attachments: KPB PI Com 4-22-19 PDFIL.pdf; DOT Beachcomber Letter PDF.pdf

Dear Ms Hindman:

Please ensure the KPB Planning Commission receives our written testimony (attached letter) and the attached letter from the Department of Transportation dated March 21, 2019 which is referenced in our letter as Attachment I.

Attachment II referenced in our letter to the Planning Commission is a group of photographs which I will send to you in two separate emails so that you can manage file sizes.

This is the letter of testimony we referenced in our April 19, 2019 letter to the Planning Commission for their public meeting on April 22, 2019. In the event the Planning Commission elects to make a final determination with regard to the disapproval or approval of the Beachcomber LLC gravel pit application during the April 22, 2019 public meeting we wish to give verbal testimony as outlined in the attached letter and Attachment I and present the Attachment II photographs that I will email you shortly. If you have trouble with Attachment 1 it is a page from the Planning Commission's Meeting Packet, "Planning Commission, Volume 2, Meeting Packet for March 25, 2019 7:30 pm., Page 41.42 of 332-Volume 2".

Thank you for your help,
Gary and Eileen Sheridan
PO Box 661
Anchor Point, Alaska 99556
907-235-5542

Kenai Peninsula Borough Planning Commission
Kenai Peninsula Borough
144 North Binkley Street
Soldotna, Alaska 99669

April 21, 2019

Re KPB Planning Commission Public Meeting, April 22, 2019, Beachcomber LLC Proposed Gravel Pit

Dear Planning Commission Chairperson and Commission Members:

In addition to our prior submissions, we are submitting the following documentation regarding the Beachcomber LLC's gravel pit application to help in your deliberations to either disapprove or approve their application.

More specifically, one is the "haul route" (or 'haul road') that is subject to the Beachcomber LLC's gravel pit application. The KPB Planning Department states that , "(The applicant's)...site plan indicates that the material site haul route will be Danver Road, which is maintained by the Borough, and then to the Anchor River Road, which is maintained by the state."

In speaking with a highway construction consultant for the Department of Transportation (DOT) , State of Alaska, we learned that DOT defines a gravel pit haul route to be from the gravel pit site to the gravel's destination or delivery point.

The KPB Planning Department's statement about what constitutes the haul route for the proposed gravel pit would have us believe that only Danver Street is the haul route under question, and not the Anchor River Road (ARR), and other roadways the gravel pit owner may use to deliver gravel.

However, in DOT's letter to Bruce Wall, KPB Planning Department dated March 21, 2019, (see Attachment I) they confirm that they consider the ARR to be part of the Beachcomber LLC's haul route. They state, "As the owner of the Anchor River Road, directly adjacent to Danver Street, as well as Old Sterling Highway and the Sterling Highway, we have recommendations and requests to the eventual permitting of this proposed gravel pit."

They further state in part, "The pavement itself on the Anchor River Road and on Old Sterling Highway is in extremely poor condition and additional heavy truck travel along these routes will only hasten further deterioration. Given these serious considerations we request the KPB to: ...3. Require dust control or sweeping in the event truck hauling creates obvious pavement debris on the Anchor River Road." And, "4. Require pavement repair on the Anchor River Road by KPB in the event truck hauling creates obvious potholes, rutting, or pavement damage." Further, they state, "Absent these considerations being addressed through the Borough, we object to this application for a permit".

It can't be made more clear. The Department of Transportation, State of Alaska will hold the Kenai Peninsula Borough accountable for any damage caused by Beachcomber LLC's gravel pit operations to the haul route (defined by DOT as the ARR, Old Sterling Highway, and Sterling Highway).

On April 14, 2019, I personally walked the Anchor River Road from it's junction at Danver Street easterly to it's junction with the Old Sterling Highway with the purpose of documenting photographically as much of current condition of the roadway as possible (Attachment II). I was truly amazed by the terrible condition the ARR is really in. I took a total of 96 photos that depict significant pavement surface cracking, slumping along the sides of the pavement (some as much as 6" or more lower than the surrounding roadway) almost the full length of the ARR, settling, holes, and deep depressions in the pavement.

One of the most grievous observations I made is that at least 80% of the complete distance from Denver Street to Old Sterling Highway has very little or no shoulders on the roadway. For the most part there is less than 18-24" of shoulder for pedestrians to get off the roadway for heavy trucks.

While the photos show the ARR to be in serious condition, I found it impossible to show how really serious it is. My photos don't clearly show how deep and wide the pavement slumping is along the sides. In many cases, I'm certain the roadway dips at least 6" or more from the adjacent level surfaces.

I have only included a few of the total photos taken (Attachment II); however, I can make the complete set of 96 photos available on request of the KPB Planning Commission, or Planning Department.

We know, without a doubt, that if Beachcomber LLC is allowed to use the ARR as their haul route, the ARR will completely deteriorate in a short period of time. We spoke with Mr. Gary Cullip, a long time Highway Heavy Construction Contractor, who lives in this area. He stated, "If the proposed gravel pit operator is allowed to run heavy gravel trucks over the ARR in it's present condition, they will chew the road apart". When told the gravel pit application calls for up to 50 full truck loads a day through the summer he stated, "That's absurd. There's no way the road can stand up to that kind of pressure from heavy gravel trucks." In fact, Mr. Cullip helped construct the Old Sterling Highway. He said he told them then it wasn't designed for heavy trucking use.

It appears clear that the Kenai Peninsula Borough will be held accountable for the repair of the Beachcomber LLC's haul route. **Borough tax payers should not be saddled with the cost of maintaining, repairs, or replacement of the ARR to the benefit of one individual who apparently wouldn't be held accountable at all.**

Based on these considerations, **we urge the KPB Planning Commission to disapprove the Beachcomber LLC's application for a gravel pit near Denver Street in Anchor Point, Alaska.**

We wish to thank you for your time and effort to resolve this difficult issue.

Sincerely,

Gary and Eileen Sheridan
PO Box 661
Anchor Point, Alaska 99556

twoshar@acsalaska.net
907-235-5542

Attachments I & II (Photos)

CC: Mayor Charlie Pierce
KPB Planning Department
Joselyn Biloan, Area Planner, AKDOT&PF

From: Bloon, Joselyn (DOT) <joselyn.bloon@alaska.gov>
Sent: Thursday, March 21, 2019 4:21 PM
To: Wall, Bruce
Cc: Reese, Jill (DOT); Vanhove, Todd E (DOT); Post, David E (DOT); Jones, Galen K (DOT); Thomas, Scott E (DOT)
Subject: Regarding Beachcomber proposed gravel pit
Attachments: 05-01-01_Landings.pdf; 05-01-01_chapter1190_Sight_Triangle_Minimum.pdf

Dear Mr Wall,

The gravel pit permit application submitted by Beachcomber LLC to the Borough brings up some concerns for the Alaska Department of Transportation. As the owner of Anchor River Road, directly adjacent to Danver Street, as well as Old Sterling Highway and the Sterling Highway, we have recommendations and requests to the eventual permitting of this proposed gravel pit.

As you know the Anchor River Bridge is currently load restricted and we expect the replacement bridge to be constructed in 2020 at the earliest. The pavement itself on Anchor River Road and on Old Sterling Highway is in extremely poor condition and additional heavy truck travel along these routes will only hasten further deterioration. Given these serious considerations we request the KBP to:

1. Verify sight triangles at the Danver Street STOP sign per attached detail. Verification is by an engineer, surveyor, or KPB Public Works official. KPB public works can coordinate with DOTPF M&O when reviewing sight triangles.
2. Verify the landing of Danver Street is suitable for trucks – 30 feet staging at the STOP signs, per attached detail.
3. Require dust control or sweeping in the event truck hauling creates obvious pavement debris on Anchor River Road.
4. Require pavement repair on Anchor River Road by KPB in the event truck hauling creates obvious potholes, rutting, or pavement damage.
5. Require a traffic control permit from DOTPF when truck hauling meets or exceeds 25 trucks per hour.

Absent these considerations being addressed through the Borough, we object to this application for a permit.

Thank you,

Joselyn Bloon
Area Planner
AKDOT&PF

Hindman, Julie

From: Gary Sheridan <highwaterriver@acsalaska.net>
Sent: Sunday, April 21, 2019 9:37 PM
To: Hindman, Julie
Cc: Pierce, Charlie; Wall, Bruce; joselynbiloon@alaska.gov
Subject: Fwd: ARR Photos #1-#8, KPB Planning Commission, Beachcomber LLC Gravel Pit App.

Dear Ms Hindman, these are the first of two groups of photos I am sending you for the Planning Commission members for their April 22, 2019 public regarding the above subject.

Begin forwarded message:

From: Gary Sheridan <twoshar@acsalaska.net>
Subject: ARR Photos #1-#8
Date: April 21, 2019 at 8:20:09 PM AKDT
To: Gary Sheridan <highwaterriver@acsalaska.net>







Hindman, Julie

From: Gary Sheridan <highwaterriver@acsalaska.net>
Sent: Sunday, April 21, 2019 9:41 PM
To: Hindman, Julie
Cc: Pierce, Charlie; Wall, Bruce; joselynbiloon@alaska.gov
Subject: Fwd: ARR Photos #9-#16, KPB Planning Commission Meeting 4-22-19 Beachcomber LLC Gravel Pit App

Dear Ms Hindman, this is the second and last group of photographs I'm am sending you for the KPB Planning Commission members of their public meeting on April 22, 2019 regarding the above subject. Thank you. Gary Sheridan

Begin forwarded message:

From: Gary Sheridan <twoshar@acsalaska.net>
Subject: ARR Photos #9-#16
Date: April 21, 2019 at 8:24:24 PM AKDT
To: Gary Sheridan <highwaterriver@acsalaska.net>







Hindman, Julie

From: Planning Dept,
Sent: Monday, April 22, 2019 9:10 AM
To: Wall, Bruce
Cc: Hindman, Julie
Subject: FW: Beach Rd.

From: DJ Morra [mailto:ceeva49@yahoo.com]
Sent: Saturday, April 20, 2019 11:15 AM
To: Planning Dept, <planning@kpb.us>
Subject: Beach Rd.

Dear Sir,

I have lived in Anchor Point since March of 1979. I have seen many gravel pits created here. This gravel pit Emit Tremble is proposing is not in the interest of the people who live and enjoy this area. For many years I have fished the Anchor River from the Beach Rd., and campgrounds.

Does the borough plan to rebuild the Beach Rd. As you must know, the heavy equipment travel will destroy the Beach Rd. Whose money will pay pay for reconstruction. Please consider carefully your decisions on this matter.

Sincerely,

Douglas J. Morra

P.O. Box 141

Anchor Point, AK

Hindman, Julie

From: Planning Dept,
Sent: Monday, April 22, 2019 11:23 AM
To: Wall, Bruce
Cc: Hindman, Julie
Subject: FW: NO gravel pit in Anchor Point!

-----Original Message-----

From: amy rattenbury [mailto:akrattenbury@yahoo.com]
Sent: Monday, April 22, 2019 10:29 AM
To: Planning Dept, <planning@kpb.us>; Pierce, Charlie <CPierce@kpb.us>; G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: NO gravel pit in Anchor Point!

Dear Mayor Pierce and Planning Commissioners, I am writing in opposition to the proposed gravel pit mine which would be adjacent to the Anchor River recreational area and state campground sites as proposed by Emmitt and Mary Trimble of Breachcomber LLC. As a current Homer resident and past Anchor Point resident, my family, friends and I utilize this beautiful area all year long to fish, camp, walk and bike ride. If you allow the gravel pit in this location the noise, dust and crowded roads would greatly affect access and enjoyment of this pristine and important recreational area.

Unfortunately I cannot attend your meeting tonight due to my work schedule but ask that you again deny the permit for this gravel pit.

Thank you,
Amy Rattenbury
PO Box 1377
Homer, AK 99603

Kenai Peninsula Borough Planning Commission
Kenai Peninsula Borough
144 North Binkley Street
Soldotna, Alaska 99669

April 21, 2019

Re KPB Planning Commission Public Meeting, April 22, 2019, Beachcomber LLC Proposed Gravel Pit

Dear Planning Commission Chairperson and Commission Members:

In addition to our prior submissions, we are submitting the following documentation regarding the Beachcomber LLC's gravel pit application to help in your deliberations to either disapprove or approve their application.

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In speaking with a highway construction consultant for the Department of Transportation (DOT) , State of Alaska, we learned that DOT defines a gravel pit haul route to be from the gravel pit site to the gravel's destination or delivery point.

The KPB Planning Department's statement about what constitutes the haul route for the proposed gravel pit would have us believe that only Denver Street is the haul route under question, and not the Anchor River Road (ARR), and other roadways the gravel pit owner may use to deliver gravel.

However, in DOT's letter to Bruce Wall, KPB Planning Department dated March 21, 2019, (see Attachment I) they confirm that they consider the ARR to be part of the Beachcomber LLC's haul route. They state, "As the owner of the Anchor River Road, directly adjacent to Denver Street, as well as Old Sterling Highway and the Sterling Highway, we have recommendations and requests to the eventual permitting of this proposed gravel pit."

They further state in part, "The pavement itself on the Anchor River Road and on Old Sterling Highway is in extremely poor condition and additional heavy truck travel along these routes will only hasten further deterioration. Given these serious considerations we request the KPB to: ...3. Require dust control or sweeping in the event truck hauling creates obvious pavement debris on the Anchor River Road." And, "4. Require pavement repair on the Anchor River Road by KPB in the event truck hauling creates obvious potholes, rutting, or pavement damage." Further, they state, "Absent these considerations being addressed through the Borough, we object to this application for a permit".

It can't be made more clear. The Department of Transportation, State of Alaska will hold the Kenai Peninsula Borough accountable for any damage caused by Beachcomber LLC's gravel pit operations to the haul route (defined by DOT as the ARR, Old Sterling Highway, and Sterling Highway).

On April 14, 2019, I personally walked the Anchor River Road from it's junction at Denver Street easterly to it's junction with the Old Sterling Highway with the purpose of documenting photographically as much of current condition of the roadway as possible (Attachment II). I was truly amazed by the terrible condition the ARR is really in. I took a total of 96 photos that depict significant pavement surface cracking, slumping along the sides of the pavement (some as much as 6" or more lower than the surrounding roadway) almost the full length of the ARR, settling, holes, and deep depressions in the pavement.

One of the most grievous observations I made is that at least 80% of the complete distance from Denver Street to Old Sterling Highway has very little or no shoulders on the roadway. For the most part there is less than 18-24" of shoulder for pedestrians to get off the roadway for heavy trucks.

While the photos show the ARR to be in serious condition, I found it impossible to show how really serious it is. My photos don't clearly show how deep and wide the pavement slumping is along the sides. In many cases, I'm certain the roadway dips at least 6" or more from the adjacent level surfaces.

I have only included a few of the total photos taken (Attachment II); however, I can make the complete set of 96 photos available on request of the KPB Planning Commission, or Planning Department.

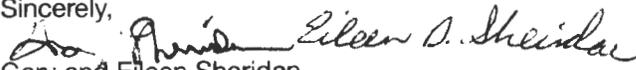
We know, without a doubt, that if Beachcomber LLC is allowed to use the ARR as their haul route, the ARR will completely deteriorate in a short period of time. We spoke with Mr. Gary Cullip, a long time Highway Heavy Construction Contractor, who lives in this area. He stated, "If the proposed gravel pit operator is allowed to run heavy gravel trucks over the ARR in it's present condition, they will chew the road apart". When told the gravel pit application calls for up to 50 full truck loads a day through the summer he stated, "That's absurd. There's no way the road can stand up to that kind of pressure from heavy gravel trucks." In fact, Mr. Cullip helped construct the Old Sterling Highway. He said he told them then it wasn't designed for heavy trucking use.

It appears clear that the Kenai Peninsula Borough will be held accountable for the repair of the Beachcomber LLC's haul route. **Borough tax payers should not be saddled with the cost of maintaining, repairs, or replacement of the ARR to the benefit of one individual who apparently wouldn't be held accountable at all.**

Based on these considerations, **we urge the KPB Planning Commission to disapprove the Beachcomber LLC's application for a gravel pit near Denver Street in Anchor Point, Alaska.**

We wish to thank you for your time and effort to resolve this difficult issue.

Sincerely,


Gary and Eileen Sheridan
PO Box 661
Anchor Point, Alaska 99556

twoshar@acsalaska.net
907-235-5542

Attachments I & II (Photos)

CC: Mayor Charlie Pierce
KPB Planning Department
Joselyn Biloan, Area Planner, AKDOT&PF

From: Biloon, Joselyn (DOT) <joselyn.biloon@alaska.gov>
Sent: Thursday, March 21, 2019 4:21 PM
To: Wall, Bruce
Cc: Reese, Jill (DOT); Vanhove, Todd E (DOT); Post, David E (DOT); Jones, Galen K (DOT); Thomas, Scott E (DOT)
Subject: Regarding Beachcomber proposed gravel pit
Attachments: 05-01-01_Landings.pdf; 05-01-01_chapter1190_Sight_Triangle_Minimum.pdf

Dear Mr Wall,

The gravel pit permit application submitted by Beachcomber LLC to the Borough brings up some concerns for the Alaska Department of Transportation. As the owner of Anchor River Road, directly adjacent to Danver Street, as well as Old Sterling Highway and the Sterling Highway, we have recommendations and requests to the eventual permitting of this proposed gravel pit.

As you know the Anchor River Bridge is currently load restricted and we expect the replacement bridge to be constructed in 2020 at the earliest. The pavement itself on Anchor River Road and on Old Sterling Highway is in extremely poor condition and additional heavy truck travel along these routes will only hasten further deterioration. Given these serious considerations we request the KPB to:

1. Verify sight triangles at the Danver Street STOP sign per attached detail. Verification is by an engineer, surveyor, or KPB Public Works official. KPB public works can coordinate with DOTPF M&O when reviewing sight triangles.
2. Verify the landing of Danver Street is suitable for trucks – 30 feet staging at the STOP signs, per attached detail.
3. Require dust control or sweeping in the event truck hauling creates obvious pavement debris on Anchor River Road.
4. Require pavement repair on Anchor River Road by KPB in the event truck hauling creates obvious potholes, rutting, or pavement damage.
5. Require a traffic control permit from DOTPF when truck hauling meets or exceeds 25 trucks per hour.

Absent these considerations being addressed through the Borough, we object to this application for a permit.

Thank you,

Joselyn Biloon
Area Planner
AKDOT&PF

ATTACHMENT II



Anchor River Rd-1

PHOTOS #1-96 TAKEN BY G. SHERIDAN 4/14/19
WEST VIEW DANVER INTERSECTION-ARC



Anchor River Rd-2

EAST VIEW DANVER INTERSECTION-ARC



Anchor River Rd-3

EAST VIEW ANCHOR RIVER ROAD (ARC)



Anchor River Rd-4

PHOTO #4-96 EAST ON ARC



Anchor River Rd-5

Gary Sheridan



Anchor River Rd-6

Gary Sheridan



Anchor River Rd-7

Gary Sheridan



Anchor River Rd-8

Gary Sheridan

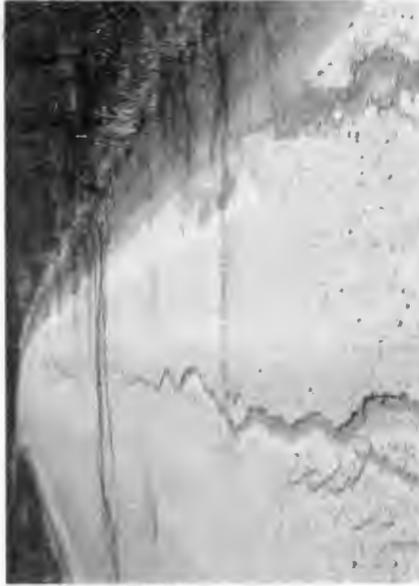


Anchor River Rd-9

ATTACHMENT II



Anchor River Rd-10



Anchor River Rd-11



Anchor River Rd-12



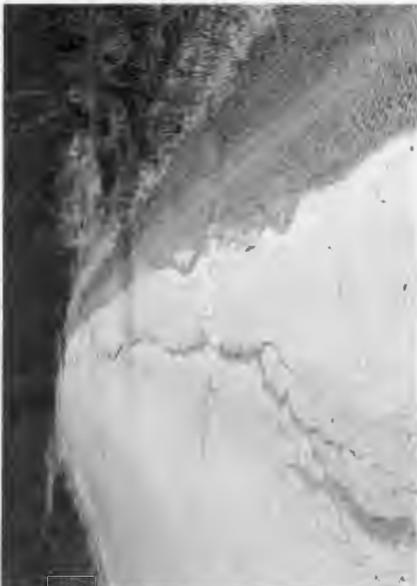
Anchor River Rd-13



Anchor River Rd-14



Anchor River Rd-15



Anchor River Rd-16



Anchor River Rd-17



Anchor River Rd-18

Hindman, Julie

From: Vickey Hodnik <vickey@gci.net>
Sent: Monday, April 22, 2019 12:26 PM
To: Planning Dept,
Subject: Fwd: Meeting Dates

Sent from my iPad

Begin forwarded message:

From: Vickey Hodnik <vickey@gci.net>
Date: April 19, 2019 at 9:37:03 AM AKDT
Subject: Meeting Dates

KPB Planning Commission,

We have been notified of an upcoming consideration to amend the hearing continuance date for the permit application of BeachComber LLC. This date was settled on and voted on some time ago. We have planned our vacations around dates set and agreed upon. BeachComber LLC should have set their dates by the schedule too. It appears that Bruce Wall has become their personal attendant and allows all contradictions raised by BeachComber LLC.

It is becoming difficult to depend on the borough. The date for the May 28th meeting was voted on and published for the public to schedule their lives around. The May schedule will allow our neighbors to attend and testify. Considering the huge opposition to this gravel pit I should hope the Planning Commission would give some consideration to allowing everyone to attend.

The process allows for "public hearings"..... what is this about? When the public hearing obviously shows that there is huge opposition, why are we still pleading our case? As American citizens we have a right to the "process"who interprets the results? As a commission are you unduly influenced by the planning department? Doesn't the Planning Commission have a requirement to digest what is presented and then protect citizens in an appropriate way? We surely request that you do and ask you to protect our homes and property from this viscous attack.

Please keep the May 28th meeting date and thank you for your time and consideration.
Sincerely, Vickey Hodnik and George Krier

Sent from my iPad

KC Baker, LLC

Email: kellycooper@kpb.us

Kelly Cooper
KPB Borough Assembly Representative
144 North Binkley Street
Soldotna, Alaska 99669

RE: Planning Commission

Dear Ms. Cooper,

I am writing to express my concern with the approach of the current Kenai Peninsula Borough (“KPB”) planning commission (the “Commission”) towards applications for land uses that some of the Commissioners dislike - such as applications for material extraction. I would urge the KPB Assembly (“Assembly”) to provide the Commission with additional training and guidance concerning the Commission’s duty to actively and diligently review all proposed land use permit applications and to schedule and hold hearings in a timely manner even if certain Commissioners dislike the land use proposed in the application before the Commission.

Over the past year, the Commission has engaged in conduct that gives the impression that certain land use applications will be handled one way and other land use applications (which some commissioners dislike) will be delayed, postponed and rescheduled. I am not suggesting that every member of the Commission is biased but it has become clear that the Commission is struggling to fairly and impartially conduct hearings for land uses which some Commissioners dislike. This ineffectiveness has a significant financial cost to land use applicants and to the Borough which must defend the Commission in costly administrative and legal challenges.

One of my prior clients has a permit application that is nearly a year old and yet this applicant is still trying to obtain a conditional land use permit¹. Several individuals challenging

¹ At the last Planning Commission Meeting the Commission delayed a hearing for a conditional land use application for material site for an additional two months! This delay occurred over the Applicant’s express desire to have the nearly year old application heard in April and over Planning Staff’s objection. However, despite these objections the Commission scheduled the

59545 E. End Road
Homer, AK 99603

CELL 561-254-3377
EMAIL kcbaker@kcbakerlaw.com

this permit have made outrageous and offensive statements throughout the lengthy permitting process. These accusations have been lobbed at my prior clients, their children and even other Commissioners. In short, the behavior is unacceptable. However, despite this behavior the Commission continues to delay a decision and allows this behavior to continue.

My prior client is just one example of the delays that have been pushed on certain permit applicants by the Commission. Over the past year the Commission has delayed votes for permit applications for land uses which certain commissioners dislike namely – material extraction permits. Throughout the Commission meetings negative comments are made by some Commission members about certain land uses. This type of behavior gives the impression that land use decisions are arbitrary and capricious. I hope the Assembly will act to create a more meaningful processes to prevent the appearance of bias in the permitting process.

I would encourage the Assembly to send a representative to the Commission meetings so it can witness some of the comments that are made throughout the Commission meetings about certain land uses namely material extraction. Obviously, everyone is entitled to their personal opinion about various land uses. However, if a Commissioner has become biased against certain land uses to the point that they are unable to schedule a hearing (in a timely manner) to review a permit application and apply the permit conditions to that application then the Commissioner should be provided education or removed. Second, there is apparently no procedure in the KPB Code that requires the Commission to hold a hearing on a permit application within a certain time period. This is a significant drawback to a land owner attempting to obtain a land use permit. Consequently, at the option of the applicant, I encourage the Assembly to impose a deadline on permit applications that requires the Commission to timely review a permit application.

To be clear I am making these comments of my own accord and not on behalf of any of my clients or prior clients. However, I personally sympathize with some of my clients that have been forced into expending significant amounts of time, money and effort to secure land

hearing months out even though staff informed the Commission that it would be unable to prepare a packet on that date because the staff member in charge would not be in town leading up to the meeting. Staff urged the Commission to timely hold a hearing in April when staff could prepare the materials in advance. However, the Commission opted to force the Applicant to wait two months to obtain a hearing on its application for a conditional land permit. Likewise, it is likely that when the hearing date finally arrives the Commission will attempt to delay the hearing again because as staff informed the Commission a packet will be nearly impossible to prepare on the day that Commission scheduled the hearing.

use approvals because of the Commission's approach to reviewing certain land uses that some Commissioners do not like.

Please consider providing additional training and resources to the Commission so that land use applicants and the Borough can avoid time consuming and costly administrative and legal proceedings going forward. Should you have any other questions or concerns feel free to contact me on my cell phone or via email.

Sincerely,
KC Baker, LLC

Keri-Ann Baker

Cc: Material Site Work Group

PLANNING COMMISSION

MINUTES

APRIL 22, 2019



Planning Commission

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

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

**April 22, 2019
7:30 P.M.**

APPROVED MINUTES

CALL TO ORDER

Chairman Martin called the meeting to order at 7:30 p.m.

ROLL CALL

Commissioners Present

Jeremy Brantley, Sterling
Paulette Bokenko-Carluccio, City of Seldovia
Cindy Ecklund, City of Seward
Robert F. Ernst, Northwest Borough
Diane Fikes, City of Kenai
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof / Clam Gulch
Paul Whitney, City of Soldotna

With 9 members of a 13-member Commission in attendance, a quorum was present.

Staff Present

Max Best, Planning Director
Julie Hindman, Administrative Assistant
Scott Huff, Platting Manager
Bruce Wall, Planner
Tom Dearlove, River Center Manager
Jordan Reif, Platting Technician

Others Present

Emmitt Trimble
Mary Trimble
Pete Kinneen
Rick Carlton
Gary Sheridan
Eileen Sheridan
Hans Bilben

APPROVAL OF REGULAR AGENDA AND ADOPTION OF THE CONSENT AGENDA

CONSENT AGENDA

AGENDA ITEM C. **CONSENT AGENDA**

- *3. Plats Granted Administrative Approval
 - 1. Don's Place Subdivision Heazlett Replat; KPB File 2018-145
 - 2. Foster Lake Subdivision Smith Addition; KPB File 2018-143
 - 3. Morning Panorama Subdivision Rickey Replat; KPB File 2019-003
 - 4. Wolverine Flats Russell Addition; KPB File 2018-070

personal delivery or mail as long as it is complete and received in the clerk's office by 5:00 p.m. on the day the notice of appeal is due (21.20.250).

- B. An application to proceed with an appeal as an indigent may be filed with the borough clerk's office on a form provided by the borough clerk in lieu of the filing fee. The chair of the board of adjustment may allow an applicant who qualifies as an indigent a reduced filing fee, a payment plan, or a waiver of the filing fee where the chair is able to make a written finding, based on information provided by the applicant, that payment of the appeal fee would be a financial hardship for the appellant. Based upon the information provided, the fee may be reduced or waived per the schedule in 21.20.250.**

END OF STAFF REPORT

Mr. Huff added that starting on page 70 of the packet there were some photos from Google maps. These photos are pre-construction of the garage.

Chairman Martin opened the meeting for public comment. Seeing and hearing no one wishing to speak, the public hearing was closed and discussion was opened among the commission.

MOTION: Commissioner Whitney moved, seconded by Commissioner Carluccio to adopt Resolution 2019-11, grant the building setback exception requested, citing staff report findings 4 through 6 and 8 in support of standard 1, findings 2 through 8 in support of standard 2 and 3.

Commissioner Carluccio noted that the staff report mentioned that this is a DOT road but no comments had been received from them. She wanted to know what would happen if they objected after it was passed. Mr. Huff is not sure what the response would be. This is one of the roads being discussed for a road swap between the Borough and DOT. After the swap it will be borough maintained.

MOTION PASSED: Seeing and hearing no discussion or objection the motion passed by unanimous consent.

SPECIAL CONSIDERATIONS

AGENDA ITEM I. PUBLIC HEARING

2. Amend a Hearing Date After Adoption for a Conditional Land Use Permit for a Material Site
 Staff Report given by Bruce Wall PC MEETING: April 22, 2019

Applicant: Beachcomber LLC

Landowner: Beachcomber LLC

Parcel Number: 169-010-67

Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Location: 74185 Anchor Point Road

BACKGROUND INFORMATION: The applicants wish to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

A public hearing was advertised and scheduled for March 25, 2019 for this application following a remand from the hearing officer. Prior to the hearing, the applicants' representative requested a continuance of the hearing due to unforeseen issues. Following public comments at the hearing, the Planning Commission voted to continue the hearing to May 28, 2019.

At the regular April 8, 2019 hearing of the Planning Commission, the applicants requested that the Planning Commission reconsider the decision concerning the date of the continuance. The applicants indicated that

they will be out of the country on May 28, 2019 and will not be available on that date. They suggested April 22, 2019 or May 13, 2019 as alternate dates.

The Planning Commission, by unanimous consent, agreed to amend after adoption the meeting date with the date to be decided at the April 22, 2019 meeting.

April 22, 2019	Is not an option because public notice needs to be provided.
May 13, 2019	There is sufficient time to meet the public notice requirements for this meeting. However, Max Best, Planning Director and Bruce Wall, Planner will both be unable to attend this meeting.
May 28, 2019	The applicants have indicated that they will not be available on this date.
June 10, 2019	Max Best, Planning Director will be unable to attend this meeting.
June 24, 2019	Bruce Wall, Planner will be unable to attend this meeting.

PUBLIC NOTICE: Public notice of this meeting was mailed on April 10, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel.

ATTACHMENTS

- Meeting minutes excerpt from April 8, 2019

END OF STAFF REPORT

Commissioner Brantley recused himself from the agenda item.

Chairman Martin opened the meeting for public comment.

1. Hans Bilben, PO Box 1176, Anchor Point

Mr. Bilben noted that in the packet were 19 or 20 letters from Anchor Point residents that are opposed to the rescheduling of the Planning Commission hearing date to any date prior to the current scheduled date of May 28th. The justification given for the continuance to the May 28th was to allow neighboring property owners that are not available prior to that time an opportunity to arrange their schedules accordingly in order to give in person testimony at the hearing. Several neighbors have made travel arrangements and will be available by May 28th.

There is a letter from Kasey Baker (Keri-Ann Baker), who is the applicant's former attorney. In her letter she talks about Commissioners that are guilty of delaying, postponing or rescheduling the application process because they do not like gravel. He first wanted to address delaying. Everyone was prepared for the March 25th hearing. Six days prior to the scheduled March 25th hearing Kasey Baker (Keri-Ann Baker) personally requested a delay or continuance for mysterious, unforeseen circumstances. No reason was given but more than likely it was because two of the three Commissioners that supported the application at the July 2018 hearing would be excused from the March 25th hearing. The delay was requested by the applicant's attorney and the delay was granted by the Planning Commission. At the March 25th meeting Kasey Baker (Keri-Ann Baker) the attorney, the applicant, their out of town gravel associates, arrived ready to proceed. He doesn't recall any postponement occurring during this permit process. He is present at this meeting because of a request from the applicant to reschedule not from the Planning Commission or from any opposing parties. He said that Kasey Baker (Keri-Ann Baker) is correct that there have been delays and a request to reschedule but both were initiated by the applicant and/or his attorney. Kasey Baker (Keri-Ann Baker) seems to be at the same mind set as the applicant, that the only people with rights are material extraction applicants. He wanted to thank the Planning Commission for not rubber stamping every application that comes before them. He also thanked those that realize that a material site that is improperly conditioned can have long lasting negative affects to families, neighborhoods and communities. He thanked all that insisted that an application be accurate and all conditions and standards are met before excepting or approving any permit.

The entire process is unfortunately stacked against neighboring property owners and in favor of the applicants. There are protections spelled out in the code and it is the job of the Planning Commission to ensure that those protections are afforded to neighboring property owners even if it means denying a permit at some point in time.

This hearing should remain on the schedule for May 28th and if the applicant cannot be it should be moved to June. May 13th will not work for several neighboring property owners that have made travel plans that coincide with the Planning Commission's March 25th decision, which was to hold it on May 28th. Additionally, the applicant will be pushing for the May 13th Planning Commission hearing. At that hearing neither the Planning Director or Planner will be present. He wanted to know who would answer technical or procedure questions when anyone has questions.

2. Ilene Sheridan, 32860 Seabury Ct., Anchor Point

Ms. Sheridan asked that the Commission not change the date from May 28th. That is the date many planned on and been working towards. She said everyone appreciates what the Planning Commission has done.

3. Lynn Whitmore, PO Box 358, Anchor Point

Mr. Whitmore stated that when this was scheduled for May 28th he made business plans for the meeting dates prior to that. Those are obligations he would like to keep. To have the date keep moving makes it difficult for any kind of planning. Even though they do not always agree with what the Planning Department has to say, anything that is done in this approval process will affect them down the line so it makes sense to have one or both of them available for decisions that may be upcoming.

4. Emmitt Trimble, PO Box 193, Anchor Point

Mr. Trimble wanted this done last July when all of the people that are coming this summer were already here. Everyone had a fair opportunity to testify at the original public hearing. They wanted it to happen in February but there were scheduling problems with staff. On the March 25th meeting the attorney had requested postponement and that was not possible. They received notice from staff that postponement was not possible but what could happen would be a continuation. When they arrived to the meeting they were prepared to go through with the process of the public hearing. They meet prior to the meeting with Planning Staff, Mr. Best and Mr. Wall, and the acting chairman, Dr. Foster. They made some changes to procedures and they wanted to make him aware of the changes. He listened and came away from the meeting knowing how the things would go regarding scheduling. All of the testimony would be allowed and at the end of public testimony they would ask for a continuance and that would be the end of the public testimony. Starting on April 22nd, the date presented by staff and Dr. Foster, that it would begin with his rebuttal and it sounded fine so they agreed. After lots of redundant testimony, a motion was made to continue but during the meeting individual testifiers were told they would be allowed to testify again. That was not his understanding. He said at least two people said that they would hold what they wanted to say until the next meeting. Obviously, the April 22nd meeting was not going to start with their rebuttal. Dr. Foster requested a motion for continuation and that happen. Someone asked what day, though they had discussed April 22nd which was proposed by staff and acceptable to them. During testimony people said they wanted to see it wait until at least May 28th so the snowbirds can be here. So the people, who do not live here, but they were here in July at the original hearing. They have had a year to testify in writing, telephonically and have had many opportunities. Someone mentioned making it May 28th because Dr. Foster said it would be left to staff. Someone moved to make it the May 28th because that is what the people said they wanted for the snowbirds to be able to be present. He did not think that was a valid reason. There was a vote, 2 people voted no and everyone else voted yes. They had no place other than to stand up and interrupt the meeting to say they would not be here on that date. He doesn't know where the conspiracy theory has come from of them being out of the country. They have a planned vacation, not out of country, but out of state. The next day they talked to staff and said that they would not be available on that date and they agreed to April 22nd. He was told that nothing could be done until the next meeting and he would need to come and request the change. They made the trip to Soldotna and requested the

change but was told they could not address it that night but they would have to come back two weeks later. None of these delays were anything they wanted. They should have had the permit in July. They are not available on May 28th but will be on May 13th and it seems that staff will be also. That date would be acceptable to them. In case someone had any concerns about whether the applicant would be here or not.

Commissioner Ruffner wanted to know if a date later than May 28th was discussed if he would be available in June. Mr. Trimble said that was not acceptable to him. Commissioner Ruffner understood that he would rather that not happen but if they would be available in June. Mr. Trimble said that as far as he knew he would be here in June. Mr. Trimble said they are going to be gone a week and it just happens to be that week and no one asked him.

5. Gary Sheridan, 32860 Seabury Ct., Anchor Point

Mr. Sheridan wanted to have the dates in the staff report clarified. He heard testimony saying that it appears that May 13th would be acceptable to everybody. He is concerned about that because the staff report says that Max Best, Planning Director and Bruce Wall, Planner, will both be unable to attend the meeting. The efficiency of the whole process both of those gentleman have a significant say in clarification in some of the points that will probably come up in some of the deliberations.

6. Pete Kinneen, 34969 Danver St., Anchor Point

Mr. Kinneen is concerned about the applicant keeps pushing the dates back and forth. He would like to see the date kept at May 28th or a following date for some of the reasons that others have already discussed.

7. Rick Carlton, 73500 Seabury Road, Anchor Point

Mr. Carlton wanted to ask a few questions. Conflicting testimonies have been heard. One is why the applicant would not say anything at the meeting that he would not be available when it was passed and approved for the May 28th meeting. He also wanted to know when Mr. Best and Mr. Wall would be present. He has heard some conflicts dates.

Seeing and hearing no one else wishing to speak, the public hearing was closed and discussion was opened among the commission.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Ruffner to consider a motion to amend after adoption of the hearing continuance date for a conditional land use permit application for material extraction for the applicant Beachcomber LLC.

Commissioner Ecklund stated that the dates in the staff report list reasons why April 22 was not an option was due to public notice would not have been able to be provided. May 13, neither Mr. Best or Mr. Wall will be able to attend the meeting and she wanted to know if that was correct. Mr. Wall confirmed that they would both be out of town on that date. Commissioner Ecklund followed up that on May 28th the applicant will not be available. June 10, Mr. Best will not be available and June 24, Mr. Wall will not be available. That would move the meeting into July when the borough attorney that has been handling this will no longer be with the borough. She said it was looking like they would need to pick the least bad date.

Mr. Wall stated that Mr. Best and himself have discussed that they do not both have to be present. Either of the dates in June would work.

Commissioner Fikes asked if there was an obligation to take an action and wanted to know the options the Commission has. Commissioner Ruffner stated that they could leave it as scheduled on May 28. There is no motion to change it to date specific. It is possible to not reschedule but referencing the dates of who is available when and the fact that the applicant is not available needs to be considered.

Commissioner Carluccio stated that she thinks the applicant should be present on the date his application is discussed. Normally there is some give and take with the applicant at that time for some of the

requirements wanted and it will be hard to have that give and take if he is not present. Since neither Mr. Best or Mr. Wall will be present for the 13th meeting it would not be in Commission’s best interest to discuss it at that time. They are experts on this and the Commission needs at least one of them.

Commissioner Ruffner was not at the meeting when the date was set. He is trying to take everything in to decide when the best date would be. He recalls that typically with other applications ask to postpone the commission generally honors that. At the same time a statement was made to reschedule to May 28th that puts the other side feeling like they have been disenfranchised by moving the date again. His preference would be to have it on May 13th but the fact that both the Director and the Planner that have handled this will not be present he would make a motion for June 10th.

AMENDMENT MOTION: Commissioner Ruffner moved, seconded by Commissioner Carluccio to set the date for June 10, 2019.

Commissioner Whitney wanted to know if moved to the June 10th meeting would public testimony be allowed during the hearing. Mr. Wall said it was announced at the previous public hearing that they would allow additional public testimony. Chair Martin said yes it would be allowed.

Commissioner Fikes wanted to know if anyone from the administration could sit in for Mr. Best or Mr. Wall in their absences for the May 13th meeting. Mr. Wall responded that Marcus Mueller would be present at that meeting. Chairman Martin wanted to know if they felt if Mr. Mueller could fill in for them. Mr. Wall stated that Mr. Mueller is the Land Management Officer and he deals with borough lands and is not familiar with the material site ordinance.

AMENDMENT MOTION PASSED: Seeing and hearing no discussion or objection the amendment motion passed by unanimous consent.

MOTION PASSED BY UNANIMOUS VOTE: 8 Yes, 0 No

Yes:	Carluccio, Ecklund, Ernst, Fikes, Martin, Morgan, Ruffner, Whitney
Recused:	Brantley
Absent:	Bentz, Foster, Venuti

SUBDIVISION PLAT PUBLIC HEARINGS

1. Commissioner Chairman reported that the Plat Committee heard and approved 5 preliminary plats.

COMMISSIONER COMMENTS

Commissioner Ruffner updated the Commission on the Material Site Work Group. They will be meeting April 24th, which will be the last meeting to make proposals and vote on changes to the code to be recommended to the Commissioner and Assembly. April 30th the group will meet one more time to review the package and compose a cover letter. This should be an informational item in the May 13th packet.

ADJOURNMENT

MOTION: Commissioner Carluccio moved to adjourn the meeting at 8:18 p.m.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

Julie Hindman
Administrative Assistant

MEETING PACKET

&

DESK / LAY DOWN PACKET

JUNE 10, 2019

(Please note that some information has been dispersed throughout the record so that there was not duplicate information.)

RESOLUTION

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2018-23
HOMER RECORDING DISTRICT**

A resolution granting a conditional land use permit to operate a sand, gravel, or material site for a parcel described as Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

- WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS,** KPB 21.25.040 provides that a permit is required for a sand, gravel or material site; and
- WHEREAS,** on June 4, 2018 the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district; and
- WHEREAS,** public notice of the application was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS,** public notice of the application was published in the July 5, 2018 & July 12, 2018 issues of the Homer News; and
- WHEREAS,** a public hearing of the Planning Commission was held on July 16, 2018 where public comment was taken and the Commission denied the approval of the conditional land use permit; and
- WHEREAS,** the denial was appealed, a subsequent appeal hearing was held, and the hearing officer remanded the application to the Planning Commission; and
- WHEREAS,** a public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News; and
- WHEREAS,** at the March 25, 2019 meeting, the Planning Commission continued the hearing to May 28, 2019, which was later rescheduled for June 10, 2019. Public notice of the hearing was mailed on April 30, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the May 30, 2019 and June 6, 2019 issues of the Homer News; and
- WHEREAS,** a public hearing of the Planning Commission was held on Jun 10, 2019 where public comment was taken;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On June 4, 2018, the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. Land use in the rural district is unrestricted except as otherwise provided in KPB Title 21.
5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres and provides regulations for material extraction.

6. The proposed disturbed area is approximately 27.7 acres.
7. Consistent with KPB 21.25.050(A) on June 21, 2018, the applicant submitted a revised site plan and application to the Planning Department that addressed issues raised by staff with the initial review of the application.
8. The submitted application with its associated documents was reviewed by staff for compliance with the application requirements of KPB 21.29.030. Staff determined that the application was complete and scheduled the application for a public hearing.
9. A public hearing of the Planning Commission was held on July 16, 2018. Public notice of the hearing was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the July 5, 2018 & July 12, 2018 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
10. Testimony was filed and heard regarding issues that are not addressed by the KPB 21.29.040 standards or 21.29.050 conditions. Staff and the Planning Commission in reviewing the application are not authorized by the code to consider those issues such as property values, water quality, wildlife preservation, a material site quota, and traffic safety.
11. A public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
12. A public hearing of the Planning Commission was held on Jun 10, 2019. Public notice of the hearing was mailed on April 30, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the May 30, 2019 and June 6, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
13. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
14. *Parcel* boundaries. All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. The submitted site plan indicates the location of each of the parcel boundary stakes.
 - B. Planning staff has visited the site several times and has observed that the boundary stakes are in place.
15. *Buffer zone*. A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
 - B. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
 - C. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.
 - D. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.
 - E. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
 - F. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
 - G. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
 - H. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that can provide visual and noise screening of the material site for some of the adjacent uses.
 - I. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent properties.
 - J. A 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - K. The total buffer width, as recommended by staff, along the southern and eastern

- property boundaries is 98-feet.
- L. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
 - M. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
 - N. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - O. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
 - P. There has been testimony that the material site will mar the view of Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.
 - Q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.
16. Processing. Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
- A. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the north property line.
 - B. The applicant proposed the following justifications for waiving the processing setback: "Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant's daughter & 169-022-08 is not developed."
 - C. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
 - D. The portion of the proposed processing area greater than 300 feet from the property line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.
 - E. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.
17. *Water source separation.* All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.
- A. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
 - C. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.
18. *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.
- A. This permit approval does not allow excavation in the water table.
19. *Waterbodies.* An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
- A. The Cook Inlet lies about 600 feet west of the proposed material extraction.
 - B. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
 - C. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast corner of the property.
 - D. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.
 - E. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - F. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the

- floodplain is an existing stripped area.
- G. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.
 - H. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
 - I. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
20. **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.
 - A. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.20.050(A)(7).
 21. **Roads.** Operations shall be conducted in a manner so as not to damage borough roads.
 - A. The submitted site plan indicates that the material site haul route will be Danver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - B. There was a significant number of public comments concerning the condition of Anchor Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
 - C. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
 22. **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.
 - A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
 23. **Dust control.** Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 24. **Hours of operation.** Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - B. This condition reduces off-site noise impacts of the material site.
 25. **Reclamation.** Reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
 - A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.
 - C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission
 - D. The application states that less than 50,000 cubic yards will be mined annually therefore the material site qualifies for a small quantity exception from bonding.
 26. **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.
 - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
 27. **Voluntary permit conditions.** Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - A. No additional conditions have been volunteered by the applicant.
 28. **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.
 - A. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm between the vegetated buffer and the extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm between the vegetated buffer and the extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 12-foot high berm between the vegetated buffer and the extraction area.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.
 These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
10. The permittee shall ensure that fuel storage 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.
11. The permittee shall conduct operations 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.
16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 2019.

Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Julie Hindman
Administrative Assistant

PLEASE RETURN
Kenai Peninsula Borough
Planning Department
144 North Binkley St.
Soldotna, AK 99669

COMMENTS

Re: Beachcomber LLC gravel pit permit application

Dear Planning Commission Board,

Mary and Emmitt Trimble are the best owners for this particular piece of land. They have a 40 year tract record of developing amazing properties and being exceptional examples of responsible land stewardship. Prior to them purchasing this property, the field behind my house (also the viewscape of my neighbors' homes) was littered with gnarly stumps, slash, and huge ugly burn piles that the previous owners never got around to actually burning. You could not even walk thru the field because of this. My parents spent over \$60,000 to clean up this particular area of the property to make it the park-like field that it is today. This is a prime example of the level of reclamation they routinely do to clean/clear/improve all properties they come in contact with. THIS is the type of property developers they are! They care about this property more than any other individual or developer would, as shown by their careful and meticulous improvements to it. They have followed the letter of the law and worked with the borough to adhere to all regulations and staff recommendations for this permit, as they always will, because that is the type of developers, and humans, that they are. There is a valuable and needed resource within this property that our community as a whole can benefit from. A different developer might purchase this property solely for that resource and would not care about the actual land left behind after extracting that resource, but to my parents, the land is the most valuable resource of all. I would argue that keeping property values high is more important to the Trimble family than it is to any other sole family in the Anchor Point area. We have a lot of money invested in properties, and it does not behoove our family to take any action that would lower or jeopardize those investments. There is most certainly a way to responsibly and respectfully extract gravel from a parcel of land, without negatively impacting the surrounding area. As a neighbor and property owner, I appreciate and respect the borough's regulations on gravel pits. I want privacy berms and dust mitigation and reclamation plans to be enforced. Mary and Emmitt Trimble have always followed the law and have always been upstanding contributors to our community. They will be exceptional stewards of THIS parcel of land, just as they have been to all the other properties they have cared for over the last 40 years.

Respectfully,

Lauren Isenhour

To the Members of the Planning Commission,

Beachcomber LLC is owned by the Trimble Family Trust. Emmitt and Mary Trimble have created and improved over 150 residential homesites in the 43 years they have been living and contributing to the Anchor Point Community. My sister, Lauren, and I are actively involved in our communities and our parents raised us to be honest, law abiding and good stewards of the land, led by their example. We in turn are raising our children with the same mindset. Our little family started in the hearts of Mary and Emmitt in the Silver King Tackle Shop over 40 years ago. That area is our home and our heart. As a contractor, Lauren has worked hard to create a residential atmosphere in Anchor Point that is welcoming and enticing to new families. The commentary made by the opposition with regards to my parents is unfounded, and quite frankly, those people stooping to personal attacks should be ashamed of themselves. The toxic community environment that the opposition is creating is far more detrimental to the health of the Anchor Point Community than any development ever could be.

When the Planning Commission denied the application last year, you did so against the recommendations of staff, and in direct violation of your duties. To receive a permit, the applicant is required to meet certain standards outlined in code, and Beachcomber LLC agreed to all standards. The hearing examiner found on appeal that as you as the "Commission exceeded the scope of its authority in denying the permit based upon its determination that the conditions would not afford adequate protection from noise and visual blight. Further, the findings issued by the Commission did not provide substantial evidence in support of its denial and were not adequate," and kicked it back to you, the Planning Commission, so here we are.

On the Kenai Peninsula, gravel pits are one of the only regulated land uses. On this same piece of property, the following land uses could exist without regulations for sound or visual impact: sawmill, heavy equipment training facility, retirement home for sled dogs, motocross track, cattle feedlot, junkyard, and the like. My parents have been improving properties for 40 + years with not one blemish on their record for misuse of the land.

Gravel can be extracted on one acre or less without a permit. This pit already has a counter permit for 2.5 acres. The additional permitting only ensures greater standards of noise and visual minimization, which my parents have voluntarily agreed to. Every one of the conditions have been met. This is not a potential gravel pit. It is an existing gravel pit.

People believe there would be a better location for the site. Gravel exists where it does, not where we choose. This property comes with a bundle of rights, and as such is rich in a much needed resource. It also was for sale for a long time, on the open market; not one member of the opposition inquired about it, or made an offer to purchase.

This specific area was first settled in 1890, 129 years ago, exclusively for the value of the minerals discovered there, and continues to prosper as a result of the commercial utilization of those resources. The four nearby gravel pits have operated in harmony with the town and valley community for the last 68 years more or less. They have provided the access to the river, Parks and beach for residents and visitors alike. In fact they provided the very gravel that improved the homesites of those in opposition.

This is an unincorporated, un-zoned, multi-use area as a result of the preexisting industrial and commercial resource development. ALL of the people in opposition drove past 4 PEU gravel pits within a mile of our site, the most important being one off the Beach Rd between Danver and Kyllonen Dr. This pit is 60 ft from our pit, which is 3 years old. The claim that it is spent, or isn't in use, doesn't change its potential for land use in the future. The same people deny the current state of land use on our property claiming that it would still have the potential for greater use. Changing the facts to fit the argument is reckless and misleading.

They claim there was a nefarious effort made by my parents to sell them properties and not disclose their intentions, and that simply is not true. It really should be required for testimony in these proceedings to be made under oath.

This area relies on far more than Tourism and visitors for livelihood. The main goal for the gravel was the development of our personal properties along with select projects that improve the community and bring jobs to the area. Prior to my family applying for the CLUP, they were approached by Cook Inlet Construction to contract for approximately 9,500 yards at a value of approximately \$80,000. When the counter permit was granted and issued, it was disclosed to the complainants that there was a contract to provide that material to Hilcorp. A concerted effort and a barrage of complaints and threats to Hilcorp management erupted and as a result they instructed CIC to get the material from another source 22+ miles away. That Tortious Interference with a commercial transaction between CIC and Beachcomber LLC significantly damaged our family and caused us to postpone planned projects that left 3 separate contractors and their families looking for scarce other winter projects.

The opposition asserts that this is an issue of gravel trucks on the roads, however their interference with the contract with Hilcorp resulted in larger trucks, traveling further distance, to accomplish the same job. The Hilcorp project would have been one of the larger potential projects for this pit, and would have taken maybe a week to complete.

They have also stated that the noise in the area would deter tourism. The noise from the campground during Memorial Weekend camping was extremely loud from dirtbikes, ATVs, trucks pulling campers, fireworks and gunshots. This is not a place that people come for solitude. They come to recreate, which includes many loud activities.

Much of the community outrage is being stirred up by people who really don't care about impacts on the community. They spread misinformation to garner support, when their only real standpoint is NIMBY (Not In My Back Yard). They simply don't want something in their area, but would have no issue if it were next to someone else's home. In this community, under these codes, that is not a legal standpoint. If their point were valid, under the same argument, my parents would have the right to not want residences constructed on any new lots because it would interfere with the use of their property. Both are legal uses of land in this area, one use no more allowable than another.

I came home this week to tour the site and be here for the Open House that my parents are providing to welcome the community to see the gravel pit site. I drove with my Dad across the parked-out property, and visited our horses, all which exist on this property. We are here often, but many of the improvements were made since my last trip. The property is stunning and so well maintained. I could see my kids playing in the distance in my sister's backyard as we traveled. We drove into the gravel pit, observed the mitigation steps they have taken, such as the rolling berm, and I stood in the floor of the gravel pit and could not see a single house or other property. I couldn't help but exclaim "this is it? This is what they are complaining about?" It is simply ludicrous the level of complaints with how well designed and well maintained a project is presented. Many of complainants' properties are more displeasing to look at than the gravel pit.

The pit borders my sister's personal residence. My husband, children and I will also be living bordering the pit in the summers. For our family, the intention was always to build a family homestead and enjoy this as a legacy property where the grandchildren could play and learn to love the area just as we did. We spend countless hours exploring, bbqing and enjoying this property.

What is also true is that this is how our family has made a living for nearly a half a century, following in the footsteps of those before us on this very property. It is also our right and responsibility to provide for our children and their children in years to come. This is a legal use of this property being sought by the most likely people to complete the work respectably.

The opposition's standpoint hinges on emotional outbursts and attempts at scientific arguments and potential impact. The truth is, this is already a gravel pit and this is exclusively an issue of allowable land use. Any change in land use code must go through due process for change. This permit was applied for under specific code. The conditions have been met and the permit MUST be granted.

Allison Trimble Paparoa

From: Katie Elsner <Katie@907legal.com>
Sent: Friday, May 31, 2019 10:21 AM
To: Wall, Bruce
Subject: Beachcomber PC Hearing
Attachments: Beachcomber Findings - Denial.pdf; Beachcomber Findings - Alternate buffer zone.pdf

Hi Bruce,

Attached are the proposed findings that the neighbors opposed to the material site would like included in the packet meeting. The neighbors are proposing two different alternative findings of fact which would support the Planning Commission's decision to either 1. Disallow the application; or 2. Modify the buffer and berm requirements so as to actually provide sufficient minimization of noise and visual impact.

Thank you,

Katie Elsner

Ehrhardt, Elsner & Cooley
907-283-2876
www.907legal.com

PROPOSED FINDINGS OF FACT
DENYING THE APPLICATION FOR A MATERIAL SITE CONDITIONAL LAND USE PERMIT
SUBMITTED BY BEACCOMBER LLC FOR PARCEL ID NUMBER 169-010-67

1. It is unlawful for any person to use land, or to assist another to use land, within the rural district of the Kenai Peninsula Borough as a commercial sand, gravel or material site without first obtaining a permit from the Kenai Peninsula Borough.
2. A conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres, if the material extraction enters the water table, and for materials processing.
3. The provisions of KPB Chapters 21.25 and 21.29 are applicable to material site CLUPs. These chapters are to be read in harmony, although, if there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of 21.29 control.
4. The purpose of Chapter 21.25 is to require advance public notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes public property rights.
5. In consideration of an application for a material site CLUP, the planning commission is directed to conduct a permit hearing and may thereafter approve, modify or disapprove the permit application.
6. Before granting a material site CLUP, the planning commission must find at a minimum that the proposed activity complies with the requirements of the code.
7. 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 are allowed to be imposed by the planning commission to meet these standards:
 - a. Protects against the lowering of water sources serving other properties;
 - b. Protects against physical damage to other properties;
 - c. Minimizes off-site movement of dust;
 - d. Minimizes noise disturbance to other properties;
 - e. Minimizes visual impacts; and
 - f. Provides for alternate post-mining land uses.
8. To obtain a material site CLUP, an applicant shall first complete and submit an application which shall include, among other things:
 - a. A buffer plan consistent with KPB 21.29.050(A)(2);
 - b. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, which includes proposed buffers consistent with 21.29.050(A)(2) or an alternate buffer plan.
9. 21.29.050(A)(2) requires that a buffer zone be maintained around the excavation perimeter or parcel boundaries.
 - 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. The buffers and berms can be used individually or in combination as deemed appropriate by the planning commission or planning director.
 - c. The vegetation and fence must, however, be of sufficient height and density to provide visual and noise screening of the proposed use.
- 10. Applicant Beachcomber LLC submitted a material use CLUP application on June 4, 2018 to Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
- 11. The application proposed the following buffer zone:
 - a. North: 6-foot high berm except along the east 400 feet where a 50-foot vegetated buffer is proposed.
 - b. South: 6-foot high berm.
 - c. East: 6-foot high berm.
 - d. West: Greater than 50-foot vegetated buffer.
- 12. Planning Department staff found the proposed buffer zone did not comply with the requirements of the code and suggested the following buffer zone:
 - a. North: 50-foot vegetated buffer adjacent to the south boundary Parcel 169-022-033 (Brantley) with a six-foot high berm between the vegetated buffer and the extraction area; a six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain; and a 12-foot high berm along the rest of the northern boundary.
 - b. South: 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm between the vegetated buffer and the extraction area.
 - c. East: 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 12-foot high berm between the vegetated buffer and the extraction area.
 - d. West: Greater than 50-foot vegetated buffer along the western most parcel boundary.
- 13. While the Planning Department must provide assistance to the planning commission to reach its decision, the planning commission is authorized and required to exercise its own discretion to judge whether the application for a material site CLUP conforms with the code.
- 14. This application is not complete and does not comply with the requirements of the code:
 - a. The buffer zone proposed by the applicant does not include vegetation and fence that are of sufficient height and density to provide visual and noise screening of the proposed use.
 - b. The buffer zone proposed by Borough staff does not include vegetation and fence that are of sufficient height and density to provide visual and noise screening of the proposed use.
- 15. Because the applicant fails to provide a buffer zone that complies with the conditions set out in KPB Code 21.29.050(A)(2), the standards set forth in KPB Code 21.29.040(A)(4) and 21.29.040(A)(5) are necessarily not met.
 - a. The application does not minimize noise disturbance to other properties;
 - b. The application does not minimize visual impacts.
- 16. The planning commission has relied on substantial evidence to support these findings:

- a. On July 16, 2018, March 25, 2019 and June 10, 2019, neighbors testified that, given the geographic topography of the proposed site, the vegetation and fencing proposed were not of sufficient height and density to provide visual screening of the proposed use.
 - b. On July 16, 2018, March 25, 2019 and June 10, 2019, neighbors testified that, given the geographic topography of the proposed site, the vegetation and fencing proposed were not of sufficient height and density to provide noise screening of the proposed use.
 - c. On July 16, 2018, March 25, 2019 and June 10, 2019, neighbors testified that, given the geographic topography of the proposed site, the proposed buffer zone does nothing to minimize visual impact.
 - d. On July 16, 2018, March 25, 2019 and June 10, 2019, neighbors testified that, given the geographic topography of the proposed site, the proposed buffer zone does nothing to minimize noise disturbance to other properties.
 - e. On July 16, 2018, the planning commission reviewed topographic and property maps which confirmed the neighbors' testimony.
 - f. On July 16, 2018, the planning commission reviewed visual depictions which confirmed the neighbors' testimony.
 - g. On June 10, 2019, the planning commission reviewed GIS profile drawings of the geographic and line-of-site profile from six surrounding residences which established that the proposed vegetation and fencing were not of sufficient height and density to provide visual and noise screening:
 - i. Gary Gordon – Parcel 169-230-26
 - ii. Hans Bilben – Parcel 169-240-11
 - iii. Rick Oliver – Parcel 169-280-16
 - iv. Steve Thompson – Parcel 169-230-11
 - v. RC Cline – Parcel 169-230-10
 - vi. Brandon Myers/Pete Kinneen – Parcel 169-230-13
17. The application does not comply with the mandatory conditions set forth in KPB Code 21.29.050(A)(2) and does not comply with the standards set out in KPB Code 21.29.040.
18. No voluntary conditions were offered by the applicant.

PROPOSED FINDINGS OF FACT
MODIFYING THE APPLICATION FOR A MATERIAL SITE CONDITIONAL LAND USE PERMIT
SUBMITTED BY BEACCOMBER LLC FOR PARCEL ID NUMBER 169-010-67

Having considered the testimony and evidence presented, the recommendations made by Borough staff, and being fully advised in the premises, the Planning Commission hereby adopts Borough staff's recommended findings of fact and permit conditions, with the following modifications:

Replace Finding of Fact 14, in its entirety, with the following:

14. *Buffer zone.* A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
- A. The application proposed the following buffer zone:
 - i. North: 6-foot high berm except along the east 400 feet where a 50-foot vegetated buffer is proposed.
 - ii. South: 6-foot high berm.
 - iii. East: 6-foot high berm.
 - iv. West: Greater than 50-foot vegetated buffer.
 - B. Planning Department staff found the proposed buffer zone did not comply with the requirements of the code and suggested the following buffer zone:
 - i. North: 50-foot vegetated buffer adjacent to the south boundary Parcel 169-022-033 (Brantley) with a six-foot high berm between the vegetated buffer and the extraction area; a six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain; and a 12-foot high berm along the rest of the northern boundary.
 - ii. South: 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm between the vegetated buffer and the extraction area.
 - iii. East: 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 12-foot high berm between the vegetated buffer and the extraction area.
 - iv. West: Greater than 50-foot vegetated buffer along the western most parcel boundary.
 - C. While the Planning Department must provide assistance to the planning commission to reach its decision, the planning commission is authorized and required to exercise its own discretion to judge whether the application for a material site CLUP conforms with the code.
 - D. The planning commission must deem the vegetation and fencing to be of sufficient height and density to provide appropriate visual and noise screening of the proposed use.
 - E. The planning commission has the authority to modify an application.

- F. Therefore, the planning commission imposes the following buffer zone requirements pursuant to KPB 21.29.050(A)(2):
- i. North: 50-foot vegetated buffer adjacent to the South boundary Parcel 169-022-033 (Brantley) with a twelve-foot high earthen berm between the vegetated buffer and the extraction area; a twelve-foot high earthen berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain; and a 50-foot vegetated buffer with a twelve-foot high earthen berm between the vegetated buffer and the extraction area along the rest of the northern boundary.
 - ii. South: 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 43-foot high earthen berm between the vegetated buffer and the extraction area.
 - iii. East: East: 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 53-foot earthen high berm between the vegetated buffer and the extraction area.
 - iv. West: Greater than 50-foot vegetated buffer along the western most parcel boundary.
- G. The planning commission has relied on substantial evidence to support these findings:
- i. On July 16, 2018, March 25, 2019 and June 10, 2019, neighbors testified that, given the geographic topography of the proposed site, the vegetation and fencing proposed were not of sufficient height and density to provide visual screening of the proposed use.
 - ii. On July 16, 2018, March 25, 2019 and June 10, 2019, neighbors testified that, given the geographic topography of the proposed site, the vegetation and fencing proposed were not of sufficient height and density to provide noise screening of the proposed use.
 - iii. On July 16, 2018, March 25, 2019 and June 10, 2019, neighbors testified that, given the geographic topography of the proposed site, the proposed buffer zone does nothing to minimize visual impact.
 - iv. On July 16, 2018, March 25, 2019 and June 10, 2019, neighbors testified that, given the geographic topography of the proposed site, the proposed buffer zone does nothing to minimize noise disturbance to other properties.
 - v. On July 16, 2018, the planning commission reviewed topographic and property maps which confirmed the neighbors' testimony.
 - vi. On July 16, 2018, the planning commission reviewed visual depictions which confirmed the neighbors' testimony.
 - vii. On June 10, 2019, the planning commission reviewed GIS profile drawings of the geographic and line-of-site profile from six surrounding residences which established that the proposed vegetation and fencing were not of sufficient height and density to provide visual and noise screening and that the substituted buffer zone was necessary in order to provide sufficient noise and visual screening from the proposed use:

1. Gary Gordon – Parcel 169-230-26
 2. Hans Bilben – Parcel 169-240-11
 3. Rick Oliver – Parcel 169-280-16
 4. Steve Thompson – Parcel 169-230-11
 5. RC Cline – Parcel 169-230-10
 6. Brandon Myers/Pete Kinneen – Parcel 169-230-13
- H. With the modified buffer zone, the planning commission can conclude that the standards imposed by KPB 21.29.040 are met.

Replace Permit Condition 2, in its entirety, with the following:

2. The permitte shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - a. North: 50-foot vegetated buffer adjacent to the South boundary Parcel 169-022-033 (Brantley) with a twelve-foot high earthen berm between the vegetated buffer and the extraction area; a twelve-foot high earthen berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain; and a 50-foot vegetated buffer with a twelve-foot high earthen berm between the vegetated buffer and the extraction area along the rest of the northern boundary.
 - b. South: 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 43-foot high earthen berm between the vegetated buffer and the extraction area.
 - c. East: East: 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 53-foot high earthen berm between the vegetated buffer and the extraction area.
 - d. West: Greater than 50-foot vegetated buffer along the western most parcel boundary.

From: Hans Bilben <catchalaska@alaska.net>
Sent: Friday, May 31, 2019 10:04 AM
To: Wall, Bruce
Subject: Fwd: Beachcomber hearing

To KPB Planning Commission Chair:

The following information needs to be reviewed and included in the Record for the Beachcomber hearing so that should this case again end up with a Hearing Officer all facts are known.

1. Commissioner Ruffner has made public statements (attached) stating that *“the Planning Commission doesn’t have the authority to say no”* in reference to a material site application. The statement was made during an interview with Renee Gross of KBBI Radio, published January 4, 2019, and conflicts with KPB Code 21.25.050 which states that the Commission can deny an application that does not meet the requirements of the Code. The contentious Application in Anchor Point is referenced in the interview. This statement shows that Commissioner Ruffner is biased in his decision making on material site applications and based upon guidelines in the Planning Commissioners Manual should recuse himself from discussion and voting at the upcoming hearing dealing with the Beachcomber application.
2. The applicant stated at the 4/22/2019 Planning Commission hearing that he had met with Acting Chair Foster and Staff prior to the 3/25/2019 Commission meeting to discuss aspects of the hearing. This type of contact with a Commissioner would seem to be inappropriate in that it amounts to ex parte contact and may constitute bias. The minutes from the 4/22/2019 meeting have written transcription, but the audio recording is more specific as to what was said.
3. Commissioner Venuti through his work as a respected, longtime residential and commercial building inspector may have gained financially through past dealings with Coastal Realty (owned by the applicant), and may likewise gain financially in the future. In a real estate transaction the realtor will either refer a client to a specific building inspector, or make direct contact with the inspector. If Commissioner Venuti and the applicant do not have a working relationship, then no bias or conflict of interest would be apparent—however, if there is a working relationship, then it would be appropriate for Commissioner Venuti to recuse himself.

Hans Bilben
35039 Danver Street
Anchor Point

Borough work group questions gravel pits proximity to neighborhoods and homes

By [RENEE GROSS](#) · JAN 4, 2019

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CREDIT COURTESY OF THE KENAI PENINSULA BOROUGH

The Kenai Peninsula Borough's Material Site Work Group has been reviewing codes regulating gravel pits and other resource development for roughly a year now. The work group will eventually provide recommendations on how the borough's planning commission handles the permitting process for such operations.

Work group members say it's unlikely they will recommend that the Kenai Peninsula Borough Assembly give the planning commission the ability to outright deny permits. But during a meeting Wednesday, some members discussed creating new codes that are more friendly to residential areas.

The borough's current code has led to a contentious debate in rural neighborhoods near Anchor Point where gravel pits have sprouted up near homes.

Currently, the borough's planning commission does not have the authority to deny a permit for a gravel pit or other resource extraction as long as it fits certain criteria surrounding noise, the visibility of the site and basic buffer zones among other standards.

"When an applicant comes in and applies to develop a gravel pit, there's a notification that goes to the surrounding land owners and often times those surrounding landowners will come to the borough with the expectation that if they really rally the troops, that the planning commission may say no to a permit," said work group chair Robert Ruffner. "And I don't think that the borough has done a particularly good job of letting people know when those notices come out, that the planning commission doesn't have the authority to say no."

But during its past few meetings, Ruffner asked the group if there are certain scenarios that would warrant an outright denial. For example: if a gravel pit is near a school or a senior living home.

Ruffner said the work group doesn't want the process to be arbitrary.

"So the working group decided that they would rather see criteria laid out so that both a potential developer and neighborhoods would know what those criteria are, but that there shouldn't be a scenario where the planning commission could use some discretionary criteria to outright deny a gravel pit," he said.

The work group has not come to a formal consensus on any potential changes to the planning commission's powers during the permitting process. Members such as Larry Smith are opposed to anything that will increase the planning commission's ability to deny a permit.

"Honestly, I don't want to see anything changed from the way it is now," Smith said. "I don't want anybody to have any illusions about my representation on this board. I represent the gravel pits."

However, some members want to change the criteria for approving gravel pits. During the meeting on Wednesday, member Robin Davis borrowed language from the Matanuska-Susitna Borough's code and suggested the borough require a material site to preserve character of the surrounding area, among other changes.

"This will get us started on that direction," he said. "If this doesn't work for y'all, what will you put in here to protect residences, residential areas? What would you do?"

Davis plans to put some of his suggestions up for a vote in the near future. Group member Brent Johnson suggested modifying codes based on the number of homes in an area.

“We could look at residential areas and find the density of homes per acre or per whatever and when we are satisfied that a typical area that has yea much density shouldn't have a gravel pit within yea distance of it, then I think that that's an aspect that everybody could look at, those measurements, and say ok, that's not capricious, it's a standard thing,” he said. “When this many people move into area, you can't have a gravel pit there.”

While it's unclear when the work group will agree on what, if any, changes will be made to the borough's permitting criteria for gravel pits, it has agreed on other changes such as the hours of operation for gravel pits.

“So crushing rocks, shaking them and sorting them: those types of activities are particularly noisy and the current code right now says that you could do that between 6:00 a.m. and 10:00 p.m. and we voted to make a recommendation to the planning commission and the assembly that we think those hours should be reduced to 6:00 a.m. to 7:00 p.m. with the ability for a material side operator to request an exception to that,” Ruffner said.

The group has already voted on roughly 15 general recommendations it plans to give to the assembly – mostly minor administrative changes.

Ruffner says they still have about 15 recommendations to work through. The group's next meeting will be on Jan. 16.

CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT:
 BEACHCOMBER LLC
 PO BOX 193
 ANCHOR POINT, ALASKA 99556



LEGEND	
	RECORD MONUMENT
	PROPERTY CORNERS
	PROPOSED INGRESS/EGRESS
	WELL SETBACK
	INTERVISIBLE FLAGGING
	EXISTING TRELINE
	PROPOSED BUFFER TRELINE
	WETLAND
	APPROX. TESTHOLE LOCATION
	EXISTING FENCE LINE

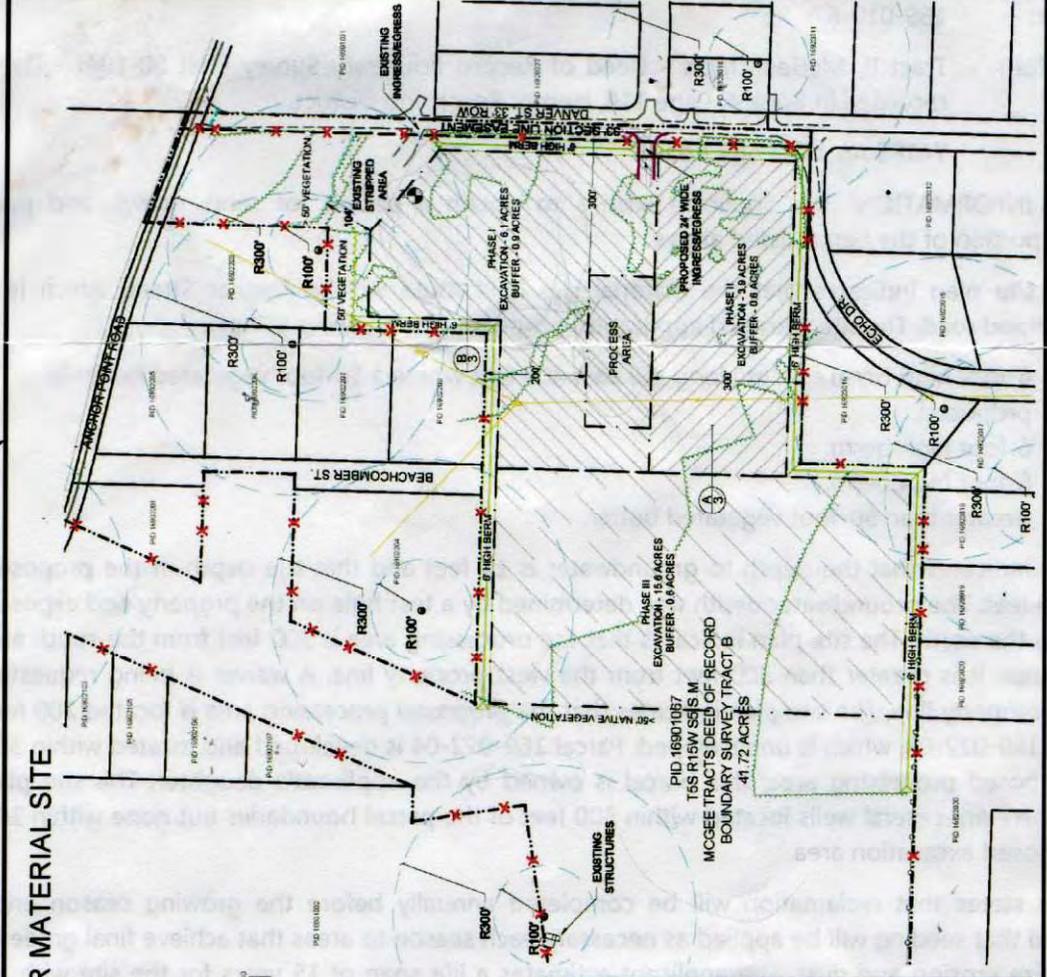
CLUP DEVELOPMENT NOTES

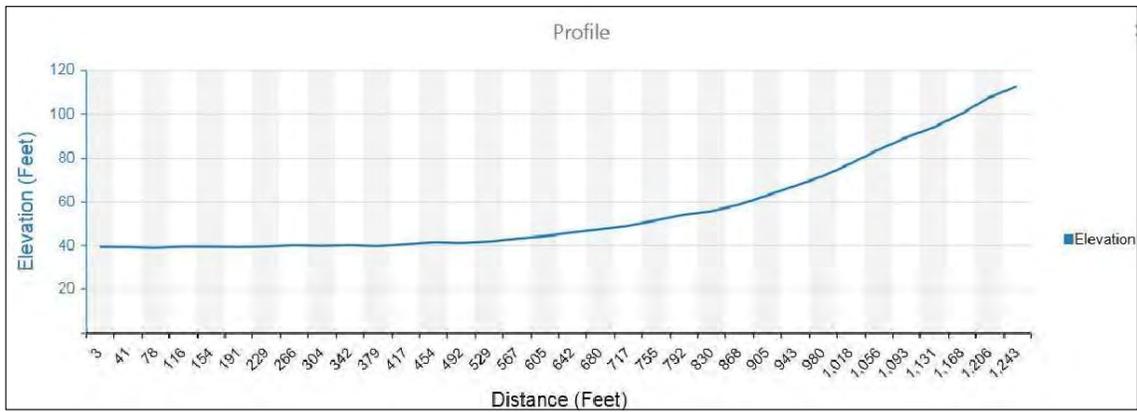
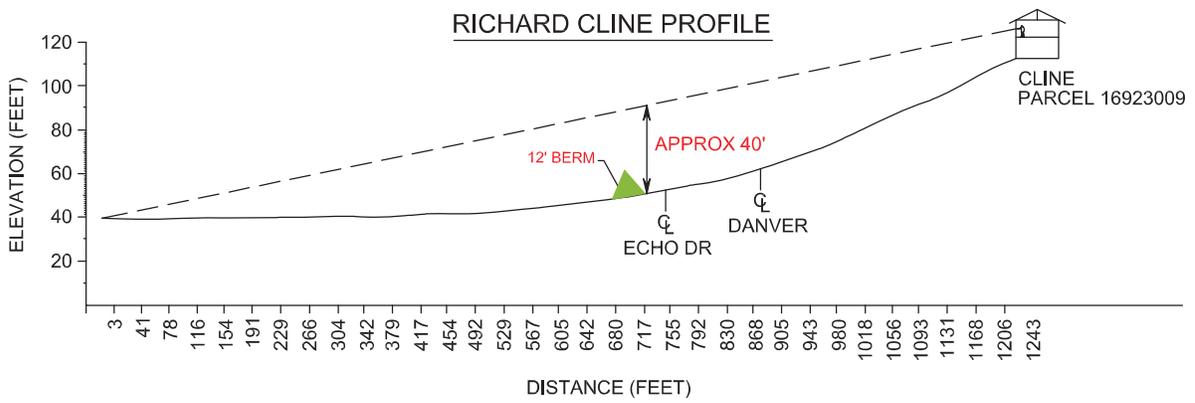
1. THIS PERMIT APPLICATION IS FOR PARCEL 16901087, T5S R15W SECTION 5 SEWARD MERIDIAN, MCGEE TRACTS DEED OF RECORD BOUNDARY SURVEY TRACT B.
2. THE ENTIRE PARCEL IS UNDEVELOPED AND COVERED IN NATIVE VEGETATION AND GRASS FEEL.
3. THE EXISTING AND PROPOSED INGRESS/EGRESS IS TO DANVER STREET AND/OR SECTION LINE EASEMENT, AS SHOWN.
4. THE PREFERRED BUFFERS ARE A COMBINATION OF 50' (OR GREATER) NATIVE VEGETATIVE BUFFERS AND 8' HIGH BERM.
5. WELLS WITH IN 100' AND/OR 300' OF THE EXCAVATION AREA ARE SHOWN HEREON.
6. THE EXCAVATION AREA IS TO BE EXCAVATED TO A MINIMUM OF 10' FROM THE CORNER OF THE PARCEL. PROPOSED EXCAVATION IS A MINIMUM OF 10' FROM WATERBODIES. THIS SURFACE WATER SETBACK WILL PROVIDE PROTECTION VIA PHYTOREMEDIATION OF ANY RUH-OFF PRIOR TO ENTERING THE SURFACE WATER.
7. GROUNDWATER IS ESTIMATED AT APPROXIMATELY 20' (AVERAGE) BELOW EXISTING GROUND IN PROPOSED EXCAVATION AREAS. THIS ESTIMATE IS FROM T1 ST HOLE.
8. THE RECLAIMED AREA WILL BE GRABBED AND RECONSTRUCTED USING STRIPPINGS, OVERBURDEN AND TOPSOIL TO A CONDITION THAT ALLOWS FOR RE-ESTABLISHMENT OF NATURAL VEGETATION AND SLOPES STEEPER THAN 2:1 WILL BE SEEDED.
9. PROPOSED MATERIAL EXTRACTION INCLUDING STRIPPING WILL BE DONE IN INCREMENTALLY BEGINNING AT THE NORTHERN LIMITS, AS SHOWN, AND PROCEEDING SOUTHERLY AS MARKET FOR MATERIAL SALES JUSTIFIES. THE CENTRAL AREA WILL BE EXCAVATED LAST.
10. PROPOSED PROCESS AREA IS SHOWN. A PROCESS WAIVER WILL BE REQUESTED FOR SEPARATION TO THE NORTH PROPERTY LINE.
11. THE PROPERTY CORNERS, WITNESS CORNERS, OR SECTION LINE EASEMENT WAS LOCATED AND THE PARCEL BOUNDARY HAS BEEN FLAGGED AT VISIBLE INTERVALS AS SHOWN HEREON.
12. ALASKA DEPARTMENT'S MANUAL, BEST MANAGEMENT PRACTICES FOR GRAVEL/ROCK EXTRACTION AND PROCESSING, CHAPTER 10, SECTION 10.1.1, WILL BE UTILIZED AS A GUIDELINE TO REDUCE POTENTIAL IMPACTS TO WATER QUALITY.

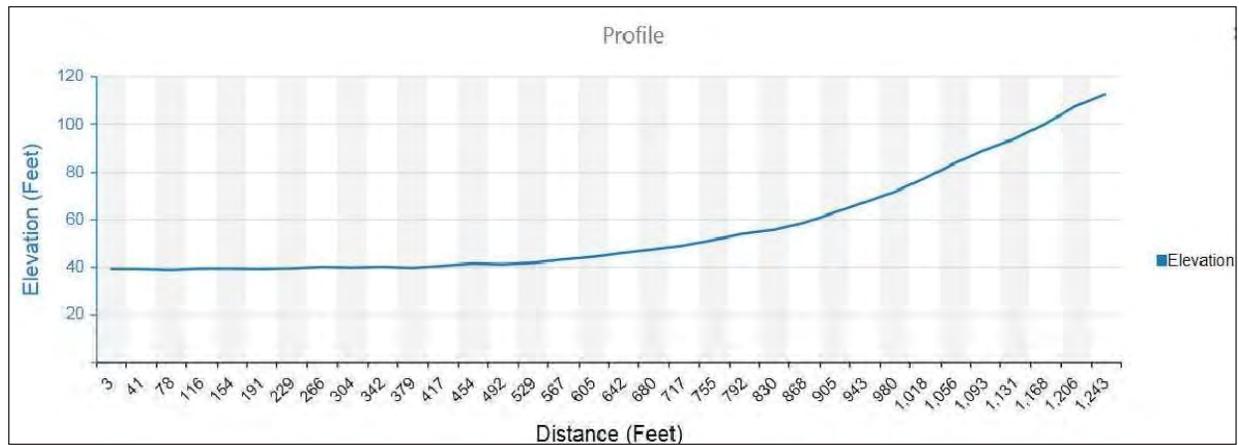
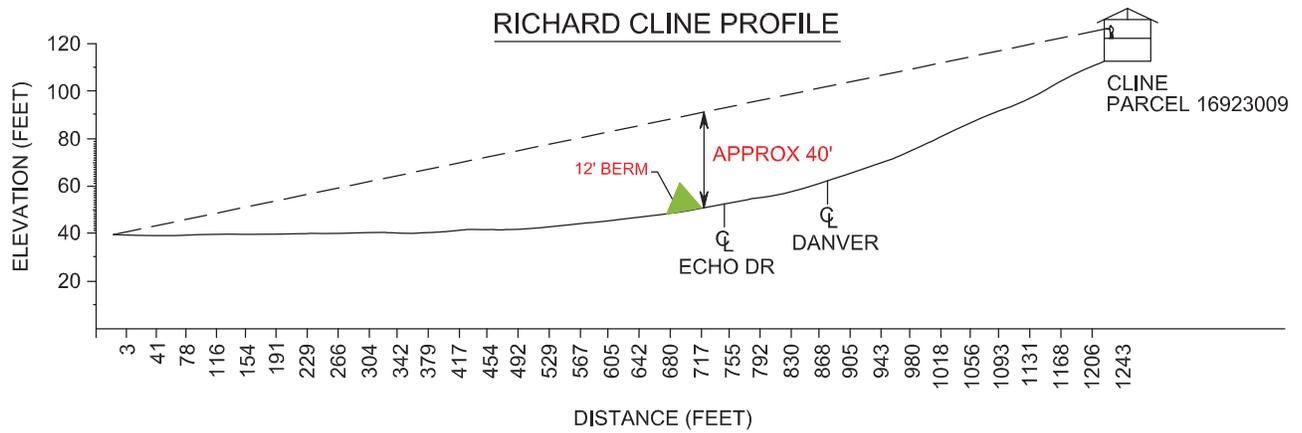
ANCHOR POINT RD
 ROAD CONDITIONAL LAND USE PERMIT

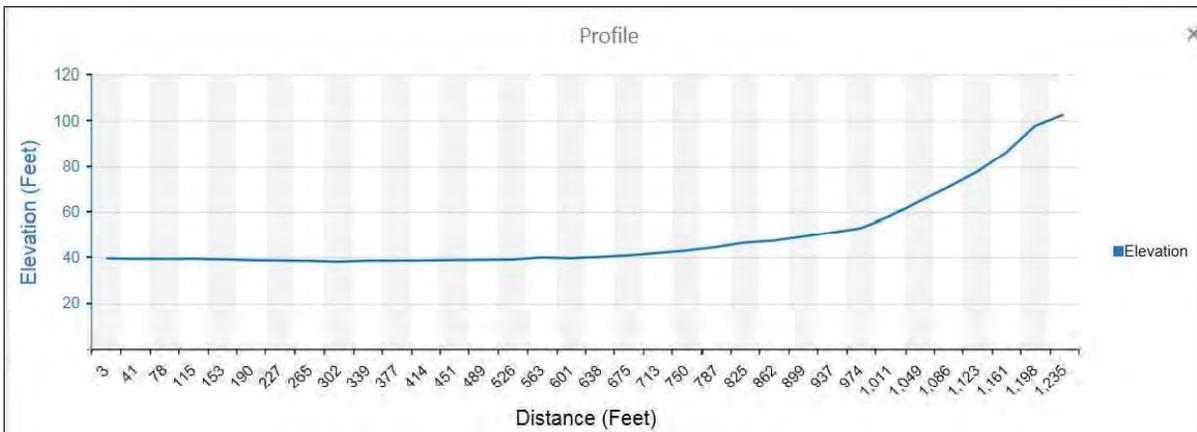
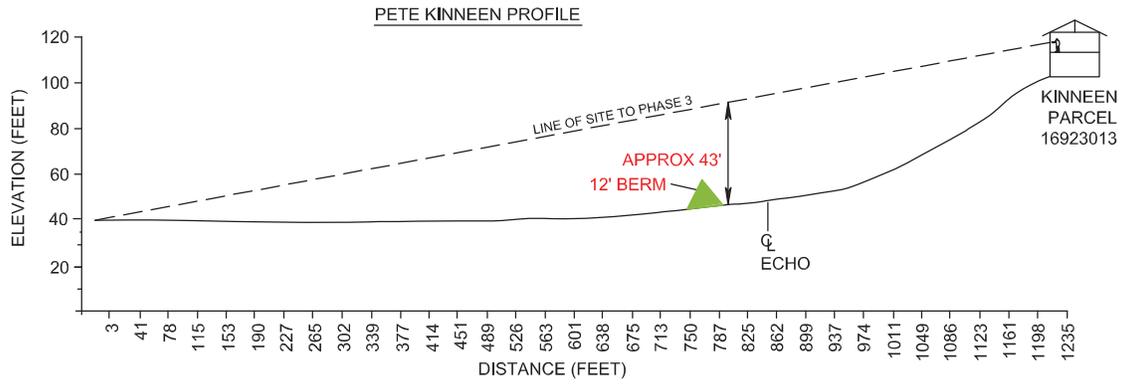
M-LANE Consulting Inc.
 ENGINEERING, TESTING, SURVEYING & ARCHITECTURE
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 ANCHORAGE, ALASKA 99501
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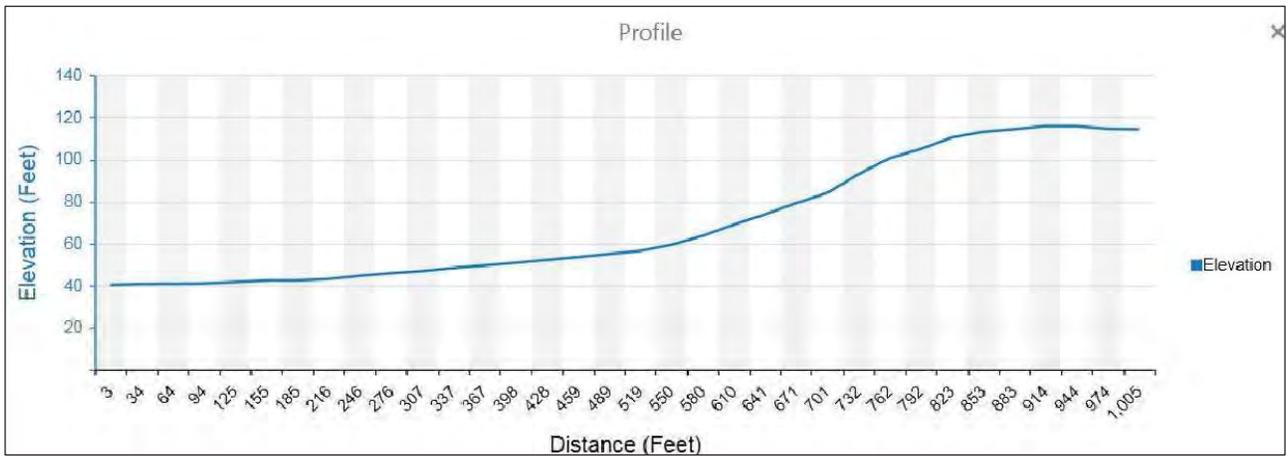
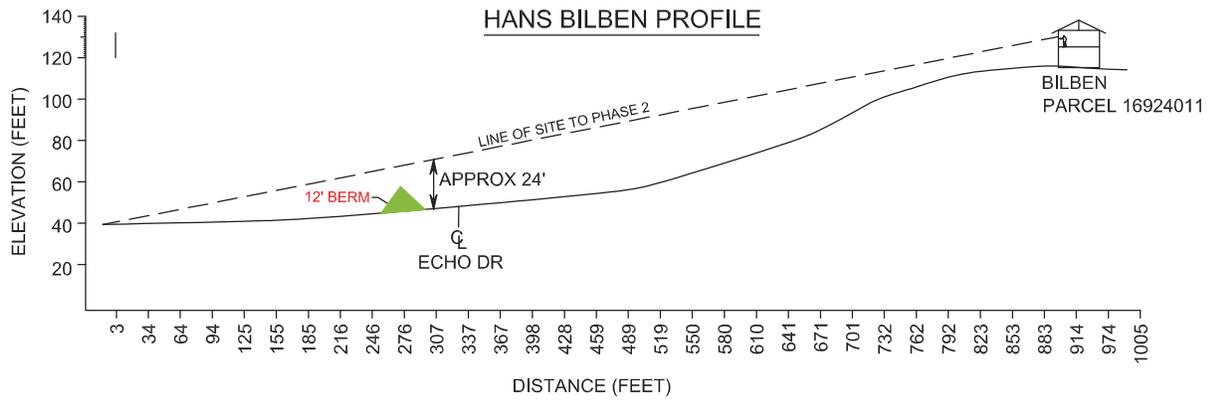
PROJECT NO.: 16901087
 SHEET NO.: 17-25
 DATE: 11-25
 SHEET: P1

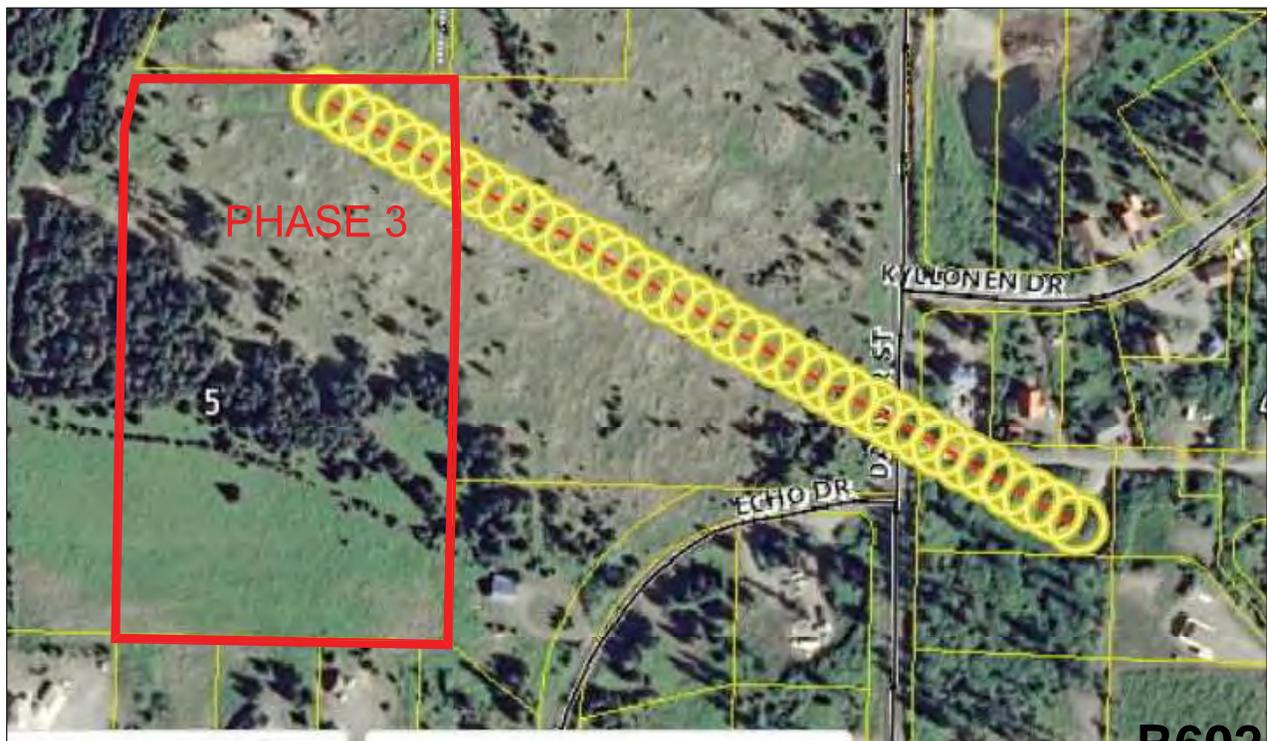
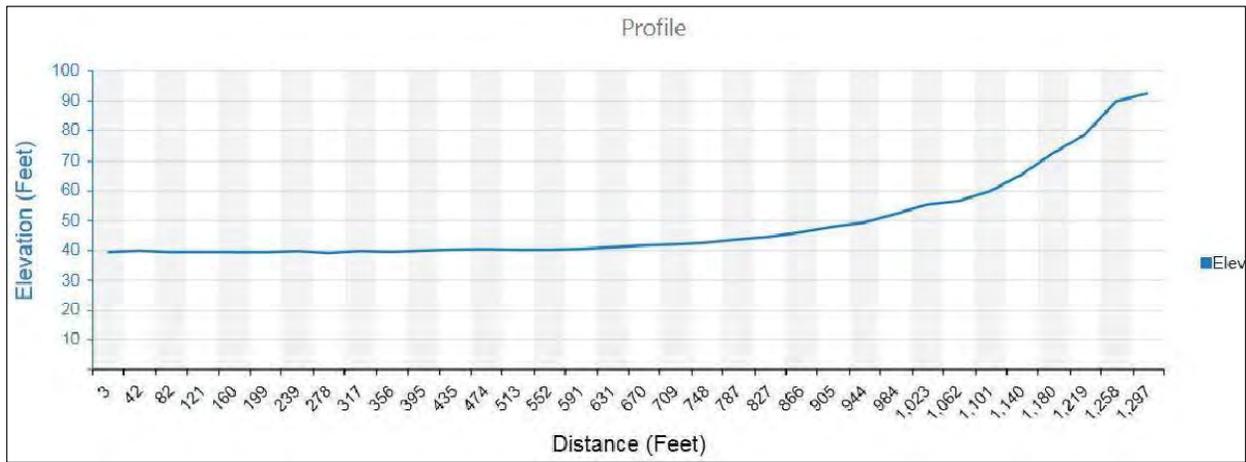
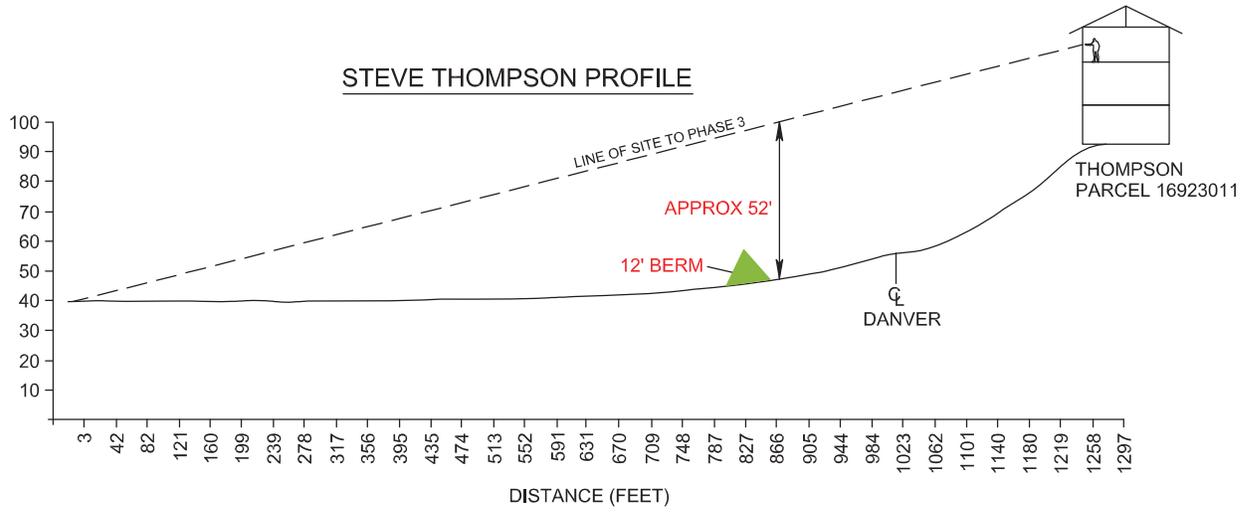












Philip J. Brna
5601 E. 98th Avenue
Anchorage, AK 99507
(907) 346-2131

May 30, 2019

Planning Commission Chairman
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669

Via email to bwall@kpb.us

RE: Comments on Conditional Land Use Permit for Material Site; Beachcomber LLC; 169-010-67; Remand on Appeal

I am again providing comments on the referenced Land Use Permit application

I want to reiterate that I am disgusted with the KPB gravel pit regulations and the actions of Planning Department staff. The regulations and the process are stacked against adjacent property owners and meaningful public comment in favor of gravel pit developers. The regulations do little to protect property values or uses adjacent to gravel pit locations. Additionally, Planning Department staff have been less than honest with adjacent property owners. This proposal has cost me several thousand dollars in attorney fees, and lots of time and effort to prepare comments, not to mention lost sleep.

I am opposed to development of a material site and approval of a land use permit at this location. I request that the KPB deny the permit.

I am the owner of the residential parcel (PID 169-022-08), which is immediately to the north of the proposed processing area and which is bordered by the proposed material site on two sides.

I purchased this property in 2001 and installed an access road and pad several years later. My intent was to build a cabin at this location when I retired and spend a good portion of the year there. I fully retired in 2015, and I began investigating building a cabin on my property at PID 169-022-08. However, I put those plans on hold when I first heard about the proposed gravel pit. I discussed this with the applicant's daughter who told me that her parents had no plans to

develop a gravel pit. At about the same time the applicant began mining gravel on a portion of his property.

I offer the following specific comments with regard to compliance with Borough regulations at 21.29.

1. According to KPB 21.29.040.A, "These material site regulations are intended **to protect against** aquifer disturbance, road damage, physical damage to adjacent properties, **dust, noise, and visual impacts**. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards: 1. Protects against the lowering of water sources serving other properties; 2. Protects against physical damage to other properties; 3. Minimizes off-site movement of dust; 4. Minimizes noise disturbance to other properties; 5. Minimizes visual impacts; and 6. Provides for alternate post-mining land uses." These regulations are internally inconsistent in that they are intended to "protect against dust, noise and visual impacts," yet the individual standards only require off-site movement of dust be minimized, that noise disturbance to other properties be minimized, and that visual impacts be minimized. Therefore, in my comments which follow, I will focus on the more stringent requirement which is "**to protect against**."
2. Approval of the proposed material site application will preclude me from building a cabin because of noise, dust and visual disturbances which is contrary to the regulations. Nothing can **protect** my property other than no gravel pit. Additionally, a material site will significantly diminish my property value and will impact my ability to sell this property. Development of a material site at this location effectively constitutes a taking of my property value and my enjoyment of this property. Imposition of the conditions set forth in the regulations are not sufficient to **protect** my property.
3. The idea that construction of berms or retention of vegetative buffers, as required by the code, can protect my property or other adjacent properties against the noise, dust, or visual effects of a gravel pit is ludicrous. The only method available to mitigate the adverse effects of noise, dust, and visual effects as required by the code is no pit or increased and adequate distance. In this case increased distance is impossible which leaves only the no pit alternative. I have attached photos of the berms taken from inside of my property. **Imagine waking up at 6:00 am on a beautiful summer morning at your recreational cabin, which you have saved for your entire adult life, only to hear the sound of heavy equipment working on the other side of the berm and generating clouds of dust. If this is your vision of an Alaskan recreational experience, call me and we can discuss your purchase of my property.**
4. The proposed onsite processing area is located 200 feet south of my parcel 169-022-08. I disagree with the statement in the public notice that my parcel is "undeveloped." I have constructed a road and building pad. I have not proceeded with construction of a cabin because of the threat of gravel pit development. I am caught in a "catch 22 situation." I would be an idiot to build a cabin for spring, summer and fall use, which is exactly the period of time when gravel would be mined. I also note that while I

presently do not camp on this parcel, I do let friends camp there during the summer, and I camped there many times in the past.

5. According to KPB 21.29.050.A.2.c, "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." As I previously noted, I put my cabin construction plans on hold because of the threat of gravel pit development, but I did construct a road and pad, and friends camp on my property. Therefore, my recreational use of my property has proceeded the application for a gravel pit, and therefore buffer waivers are not appropriate.
6. According to KPB 21.29.050.A.3, "In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time." The planning commission should not waive the 300-foot processing distance requirement because it would further preclude my use and enjoyment of my property. As mentioned in the previous paragraphs, my use of my property has proceeded the gravel pit proposal.
7. According to KPB 21.29.050.5, "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." Compliance with this condition cannot presently be determined because the applicant has not yet gathered the required the required data or conducted the required studies.

In addition, I offer the following additional comments.

1. This is a residential and recreational area and it is inappropriate for the KPB to allow development of a material site at this location. A material site will

significantly impact property values and use and enjoyment of residential and recreational property, including the Anchor River Recreational Unit, a part of the State Park System. A material site will conflict with existing residential and recreational use of the area.

2. There is considerable recreational use of the Anchor Point Road and Danver Street by people, including children, walking, running, walking dogs, bicycle tours, and riding bikes in the summer. Use of these roads by gravel trucks is a disaster waiting to happen.

Sincerely,

s/

Philip J. Brna

Attachments () – photos of berm from within my property

Photo 1: Southwest corner of my property (the stake with pink flagging) looking south toward Trimble gravel pad and horse corral. (May 24, 2019)



Photo 2: Southeast corner of my property (pink flag at bottom of berm). Imagine waking up at 6:00 am at your recreational cabin to the sound of equipment working on the other side of the berm and generating clouds of dust. If this is your vision of an Alaskan recreational experience, call me and we can discuss your purchase of my property. (May 24, 2019)



Photo 3: View of middle portion of berm on south side of my property. (May 24, 2019)



Photo 4. View of berm along my east property boundary looking to the northeast corner of my property (behind the tree). (May 24, 2019)



Photo 5. View of middle portion of berm on the east side of my property. (May 24, 2019)



Photo 6: Looking west from Danver St. across existing gravel development toward Mike Brantley's rental cabins. Is gravel pit development good for the neighbors? (May 24, 2019)



Photo 7: View from the edge of my gravel pad, toward the berm on the east side of my property. Note the berm is about at a 1:1 slope and there are numerous uncovered stumps and woody debris. (May 30, 2019)



Photo 8: View from the edge of my gravel pad toward the south across the berm and gravel pit toward a hillside house. (May 30, 2019)

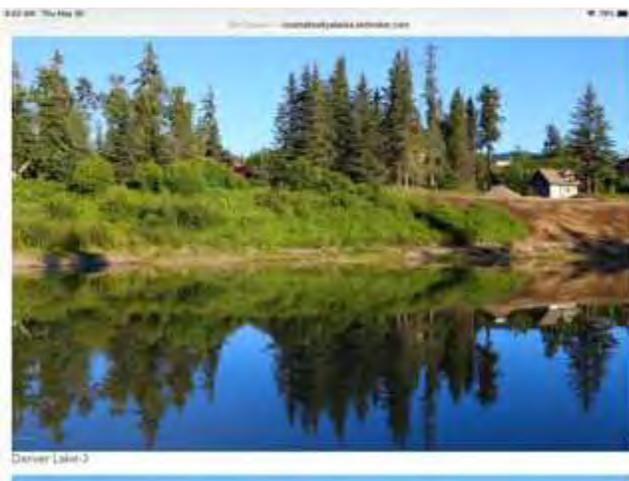


From: Hans Bilben <catchalaska@alaska.net>
Sent: Thursday, May 30, 2019 9:59 AM
To: Wall, Bruce
Subject: Evidence in Beachcomber hearing

To Planning Commission members.

This is the listing for the PEU gravel pit (now known as Denver Lake Retreat) that we all drive by every day on Denver Street—it is the only PEU on or near Denver Street! In 2003 when we bought property to build our home on Denver Street this 1.86 acre property was what appeared to be a small, worked out gravel pit with no sign of any recent activity. The property owner showed us many lots he had for sale in the area, including this one. Since that time there has been little to no commercial activity there except that in the past couple years the owner excavated below water table to make the lake which is the feature in the listing. For the applicant to claim that this is a mining district because of this insignificant, exhausted former gravel pit, and that all of the neighbors moved to a mining district is absurd. A 1.86 acre gravel pit operated decades ago in an undeveloped area is a far cry from a 27.4 acre industrial mine in the middle of a residential/recreational neighborhood!

Hans Bilben
35039 Denver Street





17A-18A Dancer Lake Retreat
Asker Price: \$1,180,000
Active

1,200 sq ft 15-12-196

Submit Offer

Address: 17A-18A Dancer Lake, Alaska
Schools: ...
Map: ...

From: james gorman <captainboomer@hotmail.com>
Sent: Thursday, May 30, 2019 10:02 AM
To: Wall, Bruce
Cc: captainboomer52@gmail.com
Subject: Beachcomber gravel pit

My name is Jim Gorman. My residence is located at 73608 Twin Peaks Loop, which is the street overlooking the Beach Road.

These remarks address sections 21.29.030 and .040 of the Materials Site Permit Code and cover noise pollution which was a basis for the denial of this permit by the Planning Commission.

In a previous letter I articulated my concerns about additional heavy truck traffic through a narrow corridor shared by both residential and recreational users. This, I believe, poses a threat to public safety as conflicts are sure to arise. The State has just finished ditching the road resulting in the narrowing of what shoulders previously existed. Two wide loads have little room to maneuver and pedestrians have virtually no where to go.

In addition, the volume of truck traffic would create unacceptable noise levels for residences in the vicinity of the road. I do not see how such noise can be "minimized" as stated in the Borough code. Trucks currently traversing the road are loud and they would be generally smaller than the trucks need to service a mine of this size.

In conclusion, the insertion of an industrial size gravel mine in this particular location is a poor idea. It boggles the mind to see how this in any way promotes the "general welfare" or insures the "domestic tranquility" of the residents, both current and future.

Sincerely,

James and Cynthia Gorman

Sent from my iPad

To: KPB Planning Commission
From: Linda and Mike Patrick, Parties of Interest in the Beachcomber Gravel Pit
Proposed for the Anchor Point Residential/Recreational location.
Date: May 28, 2019

Concerns about Planning Department Report; March 25, 2019.

We believe the KPB should provide for the safety and health of all residents that lived within its boundaries equally. This statement does not imply that we are entitled to all the same services as city dwellers but we do deserve to be equally protected when it comes to our safety and health. We look to the KPB Planning Commission and the KPB Assembly to extend those protections to rural residents particularly when it comes to the air we breathe and the safety of the roads in our community. It appears that the planning department feels that the rural community of Anchor Point does not deserve protections from Noise pollution, Dust Pollution (*See DEC guidelines and alerts for road dust and gravel pits in rural residential area*), and protection for our roads to access our homes. The Planning Department seems to think that rural residents shouldn't have safe routes to their homes, parks, businesses, and beachfront and tourist attractions. They have not even attempted to evaluate the % increase of harmful PM_{2.5} and PM₁₀. (*The DEC thinks this is important for rural Alaskans to have access to clean air.*) They also don't seem to think that the Anchor Point Advisory Planning Commission has a right to review this proposed gravel pit. The KPB material site codes are primitive at best and even recently proposed changes do nothing to protect the health and safety of rural residents.

We question the following *Section 14 Buffer Zones*.

Sections B, C, and D

These sections appear to restrict parties of interest to only adjacent properties and very nearby parcels. We were under the impression that parties of interest went way beyond a few hundred feet past the buffer zone.

Section E

This is a very inaccurate representation of the Inverse Law of Sound Dissipation. "As sound dissipates over distance." This is a theoretical representation and has very little to do with acoustical sound. The Inverse Law deals with sound waves in an Ideal sound environment. It must meet specific lab standards in order to approximate any sort of sound behavior in an uncontrolled environment. In the real world sound is heard by humans and other life forms. This is referred to as acoustical sound. It is measured via Psycho-Acoustic Perception. This is scientific terminology for ears and brains.

The supposition made by the Planning Department does not take in to account reflective surfaces, lower temperatures than ideal standards (69 degrees F.), higher humidity, cloudy days, atmosphere changes at 300 feet, and prevailing winds blowing into the residential/ recreational area. All of these factors will increase noise levels beyond those levels that are projected by the Inverse Law of Dissipation. These real world conditions all exist in this location. If the Planning Department would have constructed a theoretical sound contour involving a 100db heavy equipment source, measuring it a 50 feet. The Inverse Law indicates a -6db drop when the distance is doubled for each distance measurement. This means at 1550 feet the decibel level would be at 76db. This sound level would extend far beyond the adjacent properties discussed in sections B, C, and D mentioned above. Because of the real world factors I mentioned above, this 1550 foot sound contour boundary could increase as much as 10 to 20dbs. Meaning a boundary level between 86dbs and 96dbs. This would only be a 4-14dbs drop from the level of sound of the heavy equipment. Many states require sound levels at 60dbs or less filtering into residential areas. I see no evidence that the Planning Department made any attempt to investigate the evidence presented to them by the residents of this location. These human observational statements are more accurate in the verification of extraordinary noise transmission in this location due to the real world conditions in this geographic location.

Instead the Planning Department appears to rely on a purely academic concept that only accurately represents controlled lab experiments. (“As sound dissipates over distance.”) It has very little standing on the accurate measurement of acoustical noise.

Note: Section E states, “ Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.” *I have pointed out the gross inaccuracy of the of the underline statement, however the non-underlined part of the statement is even more significant because* **it points out the adjacent properties are impacted by the material site. (Therefore permit denied) Here is the specific information provided by the planning department for a motion to deny any pit permits at this location. (Noise impact)**

On top of this admission the Planning Department Report in section Q of buffer zones also states: “ Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally

screened by the buffers. The differences in elevations of the parcels, varying vegetation on surrounding parcels and the proposed material site, and the distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.” Even your codes don’t recognize equality for rural residents.

Motion- Based on the findings of the Planning Department section Q and E in the Buffer zone report stated findings of non-equal impact and screening of material site from the surrounding properties exist, therefore the Permit for the Beachcomber Gravel permit should be denied.

Simplification of Noise, Acoustics and visual impact statements

Lets simplify this whole process. The human ear accurately measures noise. You have numerous written and verbal testimonies to confirm the characteristics of noise at this location. That testimony is a very valid source of factual interpretation of noise measurement as are the visual testimonies given by residents. Beauty is in the eye of the beholder. The gravel pit berm will not block the view of the mountain peaks across the inlet, it will destroy the panoramic view of the entire area by filling the foreground of a majestic view with defoliated land, piles of gravel and waste, oh an don’t forget the heavy industrialize equipment parking lot that will take the place of spruce trees and meadow. It would be like having the Mona Lisa altered to be a nude. Who would notice that beautiful smile anymore?

A Tree Falls in the Forest Analogy (Pure Science vs. Applied Science)

If a tree falls in the forest and nobody is around is there any sound? To the physicist the answer is obvious. When the tree fell molecules were vibrated, therefore sound was created. The applied science person would say that it is obvious that if there are no ears present there will be no noise.

If you say if a tree falls in the forest is there any noise? To this the applied scientist would reply if humans were nearby they would hear it. If the humans found the sound unwanted, there would be Noise. It is the ears that hear the sound that determine the noise levels.

The following analogies are stereotypical in nature. You would have to ask each individual their opinion to make things accurate.

If a human owned land nearby and paid large amounts of money for what is heard and seen around him the trees falling would be unbearable noise!

If the humans were loggers they would hear the sound of \$\$\$\$. This certainly would not be noise to them. If it were next to their house they might consider it noise, however if enough \$\$\$ were to be made they could always move their loved ones away with all the \$\$\$ they could make. They could even buy them nicer homes.

If the human was an environmentalist he/she might hear the end of the world, as we know it. Yes, this would be noise. He/she might also hear the collapse of an ecosystem, air pollution, destruction of nearby infrastructure, unsafe conditions for human inhabitants and all Flora and Fauna. **Wow!** That is a lot to be heard. However, what you hear is subject to your mental perception.

Alert! The accurate measurement of noise is Psycho Acoustical Perception. Noise is in the ear and mind of the beholder. When you put a pit at this location noise will be maximized not minimized. You have heard from the ears that have monitored the place for many years. The Patricks' became parties of interest in this place in 1992.

Respectfully Submitted by: Linda Patrick Retired Educator with 32 years of classroom service and 2 years of administrative service, Bachelors Northern Illinois University Elementary Ed., and Masters in Curriculum Concordia University. William Patrick Retired Educator with 28 years of service in the classroom and four years administration, 2 ½ years in Marine Engineering curriculum at the U.S. Merchant Marine Academy, Bachelors Degree Northern Illinois University – Science major (Physics and Chemistry), Masters in Curriculum at Concordia University, Masters in School Administration at University of Alaska, Anchorage.

**See Attached pages

Dust and Potential Health Problems

Why is dust a concern?

EPA health research tells us that dust can cause health problems. People with heart and lung disease and those with breathing problems can be impacted when inhaling dust. Even healthy people can have short term irritation when breathing dust. Dust is a nuisance, it settles on your tables, your coffee cup, your subsistence foods, and salmon drying racks.

Dust has been around for generations. Winds have been blowing dust off glaciers and dry river banks forever. We have lived with dust for thousands of years, but that doesn't make dust healthy to breathe. Now, we help throw dust back into the air with our four wheelers, trucks and cars.

In the past three years the Alaska Department of Environmental Conservation (ADEC) received dust complaints from over 50 communities. Is dust a problem in your village?

If you believe you have a dust issue, ADEC would like to help you find a solution to this potential health threat.

Causes of Dust

- Wind across dirt roads, runways riverbeds
- Human activities on lots without vegetation
- Quarry operations in gravel pits
- Vehicles and four wheelers on dirt roads
- Residents have told us that traffic is increasing in villages over the past 10 years, making the dust problem worse.

Sources of Dust

- Dirt roads, runways
- gravel pits, dry river beds, unvegetated land

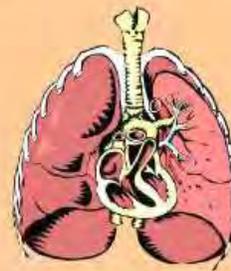
Contacts

Gerry Guay, Air Monitoring, Program Manager
gerry_guay@dec.state.ak.us
907-269-3070

Alice Edwards, Nonpoint & Mobile Source, Program Manager
alice_edwards@dec.state.ak.us
907-465-5100

Health Impacts

ADEC has heard there is an increase in respiratory problems in the villages. Health studies indicate breathing problems are either somewhat worse or higher than expected in rural Alaska

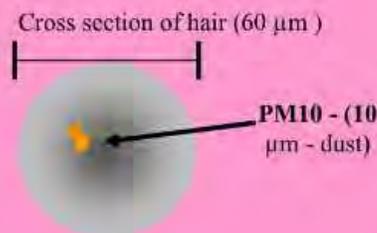


Health problems associated with dust:

- Aggravates existing heart and lung disease
 - Damages lung tissue
 - Mostly impacts children, seniors, people with asthma, people with heart conditions
- Has been shown to increase hospital/clinic visits

How does ADEC measure for dust?

ADEC has equipment that can measure for dust - particles less than 1/10 the diameter of your hair.



Dust is a very small particle that can reach the inner lung. ADEC compares their measurements to the following EPA standards for dust:

- 24 hours - 150 micrograms per cubic meter
- Annual - 50 micrograms per cubic meter

External images are now more secure, and shown

by default. [Change in Settings](#) **Particulate**

Matter - Health

Impacts [Air Non-Point & Mobile](#)

[Sources](#) There are anecdotal and some peer reviewed studies suggesting more respiratory problems in Alaska's villages than expected. The causes for this are varied and hard to pinpoint. On the other hand, Alaska is committed to reducing pollutant levels when possible. The opportunity to reduce particulate matter levels is now upon us. Coarse and fine particulate cause health problems when people are exposed to harmful concentrations. Fine particulate ($PM_{2.5}$) is associated with more severe health consequences than coarse particulate (PM_{10}). In addition, particulate matter is a nuisance, especially dust. Particulates can settle on furniture, a coffee cup, or subsistence foods, making food inedible, and damaging electronics. Controlling particulate matter will benefit our health and enhance our quality of life. **PM_{10} - Coarse Particulate**



(Dust)

(Photo by D. Haggstrom, ADF&G) EPA health

research tells us that dust, measured as PM_{10} , can cause health problems. People with heart disease, those with existing breathing problems (like asthma), children and the elderly are more susceptible to dust than others.

These problems include:

- short term airway irritation;
- aggravation of existing heart disease;
- aggravation of existing lung disease (like asthma);
- and
- damage to lung tissue

$PM_{2.5}$ - Fine particulate (Smoke /



Exhaust)

(Photo by D. Haggstrom, ADF&G) Numerous

scientific studies have linked fine particle pollution exposure to a variety of problems, including:

- increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing;
- decreased lung function;
- aggravated asthma;
- development of chronic bronchitis;
- irregular heartbeat;
- nonfatal heart attacks; and
- premature death in people with heart or lung disease

The links below further detail particulate matter and its affect on human health:

- [EPA - Particulate Matter, Health and the Environment](#)
- [EPA brochure - Particle Pollution and Your Health \(PDF\)](#)
- [EPA - How Smoke from Fires can Affect Your Health](#)
- [State of Alaska Epidemiology Bulletin: Association between Air Quality and Hospital Visits--Fairbanks, 2003 - 2008 \(PDF\)](#)

From: Deanna Chesser [mailto:rddcr@acsalaska.net]
Sent: Tuesday, May 28, 2019 8:04 AM
To: Planning Dept, <planning@kpb.us>; Pierce, Charlie <CPierce@kpb.us>; G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: Attn: Charlie Pierce, Bruce Wall - Beachcomber Llc and Emmitt Trimble gravel pit

Hello there -

I am a property owner within a mile of this proposed gravel pit. However, I am a daily traveler and user of the Beach Access Road and Danver, as my daughter lives on Danver. I also frequent the Anchor Point beach, gathering coal or recreating.

There are a number of reasons why this gravel pit should never be allowed in this area.

Here are a few: Watershed, wetlands, proximity to spawning salmon stream.

Health hazard - dust/pollution

Noise

Safety of pedestrians, tourists, bikers, bicyclists, ATVs, and other vehicular traffic

Damage to roads
Plummeting property values Historically this is a prime tourist recreation area, which is one of the main sources of income for keeping Anchor Point alive. If this gravel pit is permitted to exist in this area, tourism may very well cease, due to the noise, dust, and lack of safety on the road for pedestrians, bicyclists, etc.

People are already leaving the area due to the potential damage of this pit.

The only person that will benefit from this gravel pit is Emmitt Trimble. Not this community.

Emmitt Trimble, through Coastal Realty, has sold many properties in the area, knowing that he intended to open that gravel pit, but not disclosing this to buyers. This is unethical, if not illegal.

I would like to point out that I am not against gravel pits. I am against the location of this gravel pit.

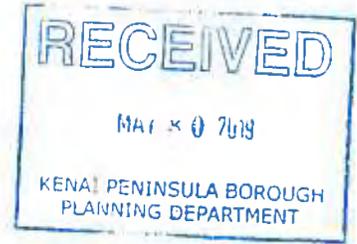
Thank you for considering the rest of us who will be effected if this gravel pit is allowed to operate in this location. This is a huge deal. Please, do NOT issue a permit to Beachcomber Llc / Emmitt Trimble for this gravel pit in this location, on Danver / Anchor Point Beach Access Road.

Sincerely,

Russell and Deanna Chesser
35020 Scandinavian Drive
PO Box 515
Anchor Point, AK 99556
(907) 399-1235

5/25/2019

Planning Department
144 N. Binkley Street
Soldotna, Alaska 99669



RE: Permit for sand, gravel, and peat extraction by Beachcomber LLC

Dear Chairman,

The purpose of this letter is to comment and protest the Beachcomber LLC application for the permit to establish a gravel pit in Anchor point. The proposed extraction is within 1/2 mile of our property, 34907 Fisher Ct., Anchor Point, and will negatively impact us and other residents and visitors in the area. When we purchased the property, it was marketed as a view property in a neighborhood developed by Buzz Kyllonen with covenants, underground shared water, and underground utilities. It is a beautiful and quiet piece of land with magnificent views and easy access to the Cook Inlet and Anchor River so many of us enjoy. The proposed material extraction would cause financial depreciation of all the properties around as well as diminish our enjoyment and use of it. This is a residential area and should not have commercial holdings destroying its character.

Furthermore, the immediate surroundings are used by many locals and tourists. Halibut Campground is a well-known State Park just to the North and would be adversely affected by dust, noise, and heavy equipment traffic. The Anchor River State Recreation Area is also heavily used for fishing and outdoor activities and would suffer a similar fate.

Beachcomber LLC has several other land holdings in the area and this encroachment is unnecessary and will have a detrimental impact on the residents of this established neighborhood as well as its surroundings.

Chairman and Planning Commission, we urge you to take all the above into consideration and deny this permit. You have denied a similar permit request in 2018. Buffers, no matter the size, will not mitigate dust, road traffic, noise disturbances and will negatively impact a great deal of people who have come to love and enjoy this area.

Thank you in advance for your support and thorough consideration of this critical matter.

Kim Wiersum
Lidia Wiersum
Sophia Wiersum 12yo
Samuel Wiersum 9yo
William Wiersum 7yo

Kim Wiersum
Lidia Wiersum
Fam Wiersum

[Signature]
william Wiersum

PO Box 39004
Ninilchik, AK 99639
May 22, 2019

Kenai Peninsula Borough
Planning Commission
144 N. Binkley Street
Soldotna, AK 99669

RE: Beachcomber LLC, Parcel Number 169-010-67, 74185 Anchor Point Road

Commission Members:

On the first public testimony opportunity, I wrote regarding my objections to the conditional use permit for the gravel pit owned and operated by Beachcomber LLC.

I am now submitting further public testimony on behalf of my wife and me regarding this topic.

Since my initial letter dated July 1, 2018, apparently much has occurred on the process for a permit for gravel and peat extraction on the parcel listed above and yet, at the same time, a decision has yet to be made. In our opinion, that's a good thing.

My objections, shared by my wife, still stand – **we are vehemently and adamantly opposed to the issuance of a permit** and we are shocked by the staff report dated March 25, 2019 that the Planning Department will recommend approval of the Conditional Land Use Permit. It's apparent that this is an about face for Mr. Wall in his support of this application, however as we mentioned previously, there's so much more than meeting the weak and in this case, ineffective current conditions to be granted a permit.

We realize, sometimes only too painfully and pointedly that we do not live in the lower 48 contiguous United States. This can oft times be a positive, however in this particular case, it is most definitely a negative. In this day and age, where do you find in the lower 48 that any planning department and/or planning commission would even consider, let alone approve a conditional use permit for a gravel pit directly in the confluence of a high-use recreational area, state parks, and a large residential area? I think the answer is an obvious one but just in case it should slip past you, you don't. And there's a very good reason for that, just as there is now a very good reason to not allow this to become the exception here in Alaska.

In the close to a year that we've had to observe this process, several things have occurred. This request was turned down by the Planning Commission, was appealed by the Applicant, was sent to a hearing officer who bounced it back to the Planning Commission saying they failed to do their job, and is now back in the hands of the Planning Department but soon to appear before the Planning Commission again. In this span of time, we have been able to make several observations which do not reflect favorably on the process. At one point, the KPB attorney weighed in on behalf of Beachcomber which appears to have been a highly prejudicial action. No one representing the borough, attorney or otherwise, should weigh in on behalf of either side in this contentious action unless it's a legal suit, which it is not.

Also during this timeframe, it's very concerning that Mr. Trimble appears to be creating troubling situations of harassment and intimidation to people opposing his application. This should be a huge red flag to the borough that there is enough opposition to this application that it's resulting in criminal activities and charges. In our opinion, this should be enough to indicate that the location of this gravel pit and its' attendant activities is in the wrong place and should be considered for placement elsewhere. There's also been the suggestion that Mr. Trimble has or is attempting to disrupt the boat launch business in Anchor Point by contacting the Department of State Parks which could result in this business owner being put out of business. There are none of us, most certainly those in city government, who should condone fear and intimidation tactics.

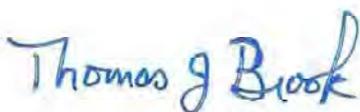
Then there's the mysterious question of why NO one from the borough or the State has submitted a finding about the extreme potential damage caused to the Anchor Point Road when running multiple huge side dumps back and forth daily during peak tourist season not to mention the peril to ANYONE using that road when confronted with a narrow space to pass said dump truck. This road is already in terrible shape and to add the constant heavy large truck traffic is just asking for serious trouble and an inevitable lawsuit. This may be rumor, however we have heard that the Planning Department may be favorable to permitting this application in order to create a more favorable cost bid for the Kenai Peninsula Borough and/or the state for the cost of the gravel haul to the projected road construction from Anchor Point to Homer. Don't we find it coincidental that Mr. Trimble/Beachcomber is pressing for this gravel pit at precisely the time when a huge road project is planned, needing a fortune's worth of gravel?

And then there's the rock crusher. Last year when mounds of material were submitted about the gravel pit and a hearing held, there was huge concern over the environmental hazards of a rock crusher, but we were assured during the hearing process that Beachcomber didn't own a rock crusher. Apparently in the interim, that fact has been negated by the fact that indeed, Beachcomber does own or lease a rock crusher because there is a rock crusher in the pit. After the studies submitted substantiating the perils of the carcinogens produced from a rock crusher, that alone should be enough to deny the requested permit.

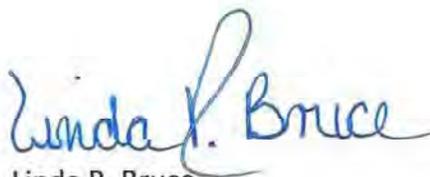
I believe in due process but this has gotten ridiculous. This gravel pit is wrong time wrong place. There are so many other pieces of property in the Anchor Point area where a gravel pit could be developed and used without interference from, aggravation to or hazard to anyone. Mr. Trimble has backed off of his position that this would not devalue much of the property in the area because there is no doubt in our minds that this gravel pit will drastically reduce the value of all the property surrounding this pit. As if that isn't insult enough, the true irony is that Mr. Trimble sold most if not all of the land to the owners sharing our objections in this letter!

We will restate that we think the extreme down side to this permit cannot be ignored or sacrificed just because your criteria does not specifically prohibit this activity. Again, we ask that you NOT support this application by voting to turn it down.

Thank you for your consideration and support.



Thomas J. Brook



Linda R. Bruce

RECEIVED

MAY 22 2019

KENAI PENINSULA BOROUGH
PLANNING DEPARTMENT

20 May 2019

KPBSD Planning Dept.
144 N. Bunkley St.
Soldotna AK 99669

Dear Sirs:

I'm a retired Army Colonel with 26 years of service. The wife and family have been all over the world and U.S. When retirement time came, we both decided the best place to retire is in Anchor Point. We have been here since 1981.

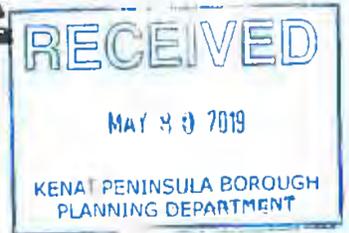
With all the acreage on the peninsula can't we find a more suitable spot for the gravel pit? Please say no to this proposal!!!

Sincerely

Ed J. Gray



**SILVER KING
R-V
VILLAGE**



May 20, 2019

Attn: Mayor Charlie Pierce and Planning Commissioners

Subject: Mention Beach Comber LLC/ Anchor Point Gravel Pit.

The Silver King RV Village Association has a total of 90 Lots we are opposed to the Mention Beach Comber/Anchor Point Gravel Pit. This Association has been established since 1980.

We have brought this before the SKRVV Association at our Annual Meeting in May. The lots that are owned by people that are very concerned about the safety, noise and dust that will be created by the Gravel Pit and the truck traffic on the Anchor River Road.

The owners have bought their lots for the peace and quiet of Anchor River. They are also concerned about the safety of their families and guest that walk to the river and inlet. The Anchor River Road has no shoulders or walk ways for them.

We have lots of owners that have boats and are concerned about the extra truck traffic to get on and off the River Road safely.

We are concerned about the road as it already has problems with the road bed. There are lots of cracks in it and with the heavy truck traffic it will fall to pieces. Who will be responsible for the problems that arise when the road falls apart?

We stand with the other land owners of the Anchor River Road Area that are against the Mention Beach Comber/Anchor Point Gravel Pit.

Silver King RV Village Association

*PRESIDENT
MARK CLAYPOOK
Mark Claypool*

Wall, Bruce

From: Kidder, Kyle W (DNR) <kyle.kidder@alaska.gov>
Sent: Tuesday, May 7, 2019 5:44 PM
To: Wall, Bruce
Subject: KPB notice of meeting Beachcomber LLC Parcel Number 169-010-67

Bruce,

DNR Division of Mining Land and Water, Southcentral Regional Land Office received a notice on Parcel Number 169-010-67 for Tract B, McGee Tracts Plat 80-104 for the applicant Beachcomber LLC's request for a conditional land use permit for material extraction on a parcel in Anchor Point. In accordance with Alaska Statute 27.19, reclamation is required of all mining operations, including sand and gravel extraction. The applicant (Beachcomber LLC) will be required to apply for a Material Site Reclamation Plan or letter of intent (LOI) annual Reclamation Statement AS27.19.030-27.19.050.

Kyle Kidder

Natural Resource Specialist



Material Sales-Leasing Unit - Southcentral Regional Office
Department of Natural Resources
Division of Mining Land and Water
550 W. 7th Ave Suite 900c
Anchorage AK, 99501
907-269-8560
Fax 907-269-8931



"Develop, conserve and maximize the use of Alaska's natural resources consistent with the public interest."

o:akrattenbury@yahoo.com]

Sent: Monday, April 22, 2019 10:29 AM

To: Planning Dept, <planning@kpb.us>; Pierce, Charlie <CPierce@kpb.us>; G_Notify_AssemblyClerk
<G_Notify_AssemblyClerk@kpb.us>

Subject: NO gravel pit in Anchor Point!

Dear Mayor Pierce and Planning Commissioners, I am writing in opposition to the proposed gravel pit mine which would be adjacent to the Anchor River recreational area and state campground sites as proposed by Emmitt and Mary Trimble of Breachcomber LLC. As a current Homer resident and past Anchor Point resident, my family, friends and I utilize this beautiful area all year long to fish, camp, walk and bike ride. If you allow the gravel pit in this location the noise, dust and crowded roads would greatly affect access and enjoyment of this pristine and important recreational area. Unfortunately I cannot attend your meeting tonight due to my work schedule but ask that you again deny the permit for this gravel pit.

Thank you,

Amy Rattenbury

PO Box 1377

Homer, AK 99603

From: Gary L. Gordon <garygordon4@gmail.com>
Sent: Tuesday, April 16, 2019 2:45 PM
To: Wall, Bruce
Cc: Hans
Subject: Beachcomber Permit

My wife Pamela, and I Gary Gordon attending the commissions meeting Monday the 25th of March, regarding the Beachcomber's Extraction Permit in Anchor Point Beach Area. We're owners of the home at 34919 Fishers Court, overlooking the proposed pit.

The word used by both sides that really stood out to us was "inappropriate ". We looked up the definition "not suitable or proper in the circumstances". Yes, that sums up a gravel pit at this location.

I would like to comment on Mary Trimble's address, regarding Mom and Pop operation, Max value of their property, and developing their 42 parcels of land with the referenced gravel. I would comment on Emmitt's, but we could all just read that again ourselves.

First, I don't think The Trimble's a believable Mom and Pop operation; nor, do any of us think this gravel will be used merely for their and their daughters housing development projects. I have built close to twenty houses. The average gravel used on a suitable building lot would be between 250 and 400 cubic yards, putting pencil to paper you can verify this by your building area. Therefore, 42 parcels at 400cyds is 16,800cyds, or just over one years extraction of gravel in a 15 year stated development. It should be noted that the Trimble's, or their contractor mobilized equipment to the extraction site while weight restrictions were at there max restriction. Taking that risk, doesn't sound like a slow paced Mom and Pop gravel extraction project. Now look at the cost of trucking gravel the 18 stated miles, using the Old Sterling back to Anchor Point. Operated ten yard dump trucks are \$120/hr, going yard of gravel loaded is \$6. At an average of 40mph, 18 miles takes 1.33 minutes per mile, 24 minutes each way, just drive time, now add loading time and dumping time. It's more than an hour easy for a round trip. Out of any of the 5 or 6 operating gravel pits on the Anchor Point side of the river you can get two loads of gravel delivered for the price of just the trucking from the Beachcomber Pit. I printed out the six pages from the borough site showing 47 parcels owned by Mary and Emmitt. The majority of theses parcels are smaller residential building sites in Anchor Point or North of Anchor Point. The point is, hauling gravel from the Beachcomber site is not cost effective. The true Max Value of this gravel is hauling to Homer. Homer requires far more gravel than Anchor Point.

A question that needs response is " how is gravel extraction going to be monitored"? Can permittee mine without consequences over the stated/permitted 15,000cyds yearly? Who and How is or will bonding be enforced? Are surveys going to be required?

I am or was a general contractor both building and civil, and I own a commercial gravel pit. From previous experience, I believe the State of Alaska will put or maintain existing 50% weight restrictions on the deteriorating paved Beach Access Road. The State is not going to stand by and watch over weight gravel trucks destroy this road.

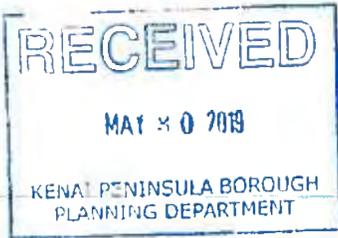
Here is another thought I want to share, for your decision making. This proposed pit area is 25.6 acres times 43,560sft/acre times 18' deep divided by 27cft/cyd is 743,424 possible yards of gravel. The applicant states 15,000cyds/year for 15 years. Why would someone propose to mine one third of the potential gravel?

Just for your information, a belly or side dump can haul about 18cyds legally. Mom and Pop Hauling, using four side dumps, using one hour RT, for that would occupy a loader operator, can move 720cyds in a ten hour shift. In less than 22 days they can move their stated 15,000cyds. Trimble's don't own mining and trucking equipment; therefore, this will be

subcontracted and the contractor will move gravel in the least expensive way, as stated above, with full time loader operator maximizing truck efficiency.

Summary, I don't believe Mom and Pop are planning a slow paced, personal use gravel pit, nor should anybody be deceived into such a thought.

Sent from my iPad



April 8, 2019

To = Kenai Peninsula Borough Planning
Commission

I Jay Alan Wright vote

"No" To the Gravel Pit

operation Located at

74185 Anchor Point Road

I feel the Damage to

the road consistantly used

by Dump Trucks will be

a big problem not to

mention, Noise, Dust and

no sidewalk People walk

along That road. My vote

is "No!"

Jay Alan Wright



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Natural Resources

Division of Mining Land & Water
Southcentral Regional Office

550 West 7th Ave
Anchorage, Alaska 99501
Main: (907) 269-8503
Fax: (907) 269-8913

September 24, 2018

McLane Consulting, Inc.
PO Box 468
Soldotna, AK 99669

Re: LAS 32591 – Letter of Acceptance for Non-State Land Reclamation Letter of Intent

Dear Beachcomber LLC,

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Office (SCRO), received your Letter of Intent (LOI) for the reclamation of 2.5 acres after extracting 15,000 cubic yards of sand, gravel and topsoil. According to the application, the subject site is located on Kenai Peninsula Borough land within Township 5 South, Range 15 West, Section 5, Seward Meridian.

Thank you for submitting a LOI for gravel extraction activities. After reviewing the LOI we have determined that the LOI is complete as submitted. The proposed reclamation measures are appropriate provided that the operation is conducted in a manner that will prevent unnecessary and undue degradation of land and water resources, and the operation shall be reclaimed using current reclamation methods so that the site is left in a stable and safe condition. No financial assurance is required for activities under a LOI.

Although the proposed gravel extraction is exempt under the provision for small operations, an annual reclamation statement needs to be filed with this office at the end of the year. This statement should disclose the total acreage and volume of material mined in the current year, the total acreage reclaimed, and the specific reclamation methods used to comply with AS 27.19.020 (Reclamation Standards). Please submit this statement to SCRO no later than December 31, 2018. If a statement is not submitted, subsequent operations, regardless of size, will no longer be exempt from a mining reclamation plan and bonding.

This acceptance letter does not alleviate the necessity to obtain authorizations required by other agencies and entities for this activity. If you have any questions, please feel free to contact Brittany Smith at (907)269-8116 or email at brittany.smith@alaska.gov.

Respectfully,

Clark Cox
Regional Manager

A handwritten signature in blue ink, appearing to be "C. Cox", written over the typed name and title.

cc: Marcus Mueller, Kenai Peninsula Borough Land Management Officer

From: Hans Bilben <catchalaska@alaska.net>
Sent: Friday, May 31, 2019 12:13 PM
To: Wall, Bruce
Subject: beachcomber evidence

Planning Commissioners:

The attachment is an overhead picture of the proposed Beachcomber mine and the surrounding neighborhood.

Hans Bilben



From: Planning Dept,
Sent: Friday, May 31, 2019 1:16 PM
To: Wall, Bruce
Cc: Hindman, Julie
Subject: FW: BeachComber LLC/Anchor Point Gravel Pit

From: Emily Munter [mailto:munterej@gmail.com]
Sent: Friday, May 31, 2019 12:19 PM
To: Planning Dept, <planning@kpb.us>
Subject: BeachComber LLC/Anchor Point Gravel Pit

Dear Planning Commission Members,

I am a resident of the Kenai area and a frequent visitor and recreationist of the Anchor Point area. My family enjoys at least monthly visits to the Anchor Point State Recreation Site and campgrounds during the spring/summer/fall months.

As a user of the area, I am writing to express my serious concerns regarding the proposed gravel extraction pit and processing area. The increased traffic and noise will greatly reduce the quality of recreational experiences in the area and the loss of habitat in close vicinity to critical habitat (Anchor River and beach) is concerning for fish and wildlife species.

Please take the steps to protect the habitat and scenic qualities of the area and to protect the quality of recreational experiences by locals and visitors alike by voting no on the proposed gravel pit.

Sincerely,
Emily Munter
Kenai, AK

From: Mike Brantley <zz49er@outlook.com>
Sent: Friday, May 31, 2019 4:02 PM
To: Wall, Bruce
Subject: ELUT 7A1b)(1) Silica Dust - Gravel Pit Flyer.pdf
Attachments: ELUT 7A1b)(1) Silica Dust - Gravel Pit Flyer.pdf

In my opinion, the attached article states reasons why "Note Approve" the Conditional Land-Use Permit for a Open Gravel Pit and Rock Crushing Operations by Emmitt Trimble and Beachcomber LLC.

The article presents it clearly, a Gravel Pit and Rock Crushing Operations do creates Carcinogens and other Respiratory health hazardous once exposed.

I firmly believe our Bird Sanctuary, and the Anchor River fishery will be seriously damaged or killed, once exposed. There by greatly damaging Anchor Point's economic commerce, and the States Anchor River Recreational areas. Who would want to visit, camp, bird watch or fish, for the next 15 years with the carcinogens dust and materials in our air every day.

KPB Planning Commission previously stated, "for the Welfare, and Safety of the Community". If this Application is approved by you, the KPB Planning Commission is not thinking about the Welfare and Safety of the Anchor Point Community. They are only thinking about revenue.

I've spent over many many thousands of dollars to create my Retirement plans, Anchor River Fly Fishing Cabins and RV sites.

The Beachcomber's LLC northern property line, is my southern property line. Therefore creating carcinogenic dust to expose my clients, and the noise it would create. Most likely, killing my business and others too.

I firmly request, that the KPB Planning Commission, DENY this Application for Limited Conditional Land-use by Beachcomber LLC and Emmitt Trimble.

Mike Brantley

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Why put a Gravel Pit / mining operation that creates a known carcinogen (cancer-causing) right next to homes and a school?

You won't find the answer to that here, or anywhere else for that matter. It's a bad and lethal idea.

What's in the dust created by a Gravel Pit operation?

It is not the same as the dust created by farming or other periodic natural events. The killer is the fine particles of dust you cannot see. The mining and crushing of gravel creates and releases fine particulate matter called Crystalline Silica into the air which will be carried by the wind towards homes and schools. These dangerous particles will permeate homes, neighborhood parks, schools, and playgrounds.

Adults and vulnerable children and seniors will be exposed to this harmful carcinogen every day, all day. Why the City and County would **CHOOSE** to allow the creation of a toxic environment for our neighborhoods and these neighborhood schools when they do, *in fact*, have state and local government statutory and federal regulatory authority, and Texas Attorney General and Supreme Court ruling precedence to use their authority to deny the permit in order to protect public health, safety, economic development, and quality of life is inexcusable, incomprehensible, and UNACCEPTABLE.

So what's wrong with Crystalline Silica?

Crystalline Silica, a known carcinogen (cancer causing agent) which has been found to cause lung cancer, silicosis, and other health hazards!

SOME FACTS:

- Some of the Crystalline Silica can be of the most dangerous variety with a designation as a PM2.5 particle. These are particles that measure less than 2.5 micro meters in size
- Once these tiny particles enter the lung *they stay there*. The body's natural defense encapsulates them *causing permanent lung damage or cancer*.
- Winds can carry these fine particles over great distances.
- The closer you are to the source, the higher the concentration and danger
- Health effects can range from Silicosis, lung cancer, tuberculosis increased lung irritation
- There is no cure for silicosis
- Once these fine particles enter the lungs, the body has no means to expel them
- Crystalline Silica clings to inanimate objects like homes, outdoor and playground equipment, trees, plants, and grass and vehicles / cars, so you and your families will come into contact with it.
- Crystalline Silica will infiltrate home and schools' heating and cooling system and there is no viable way to stop it or mitigate it.
- The dust is cumulative; each day over the 20 or more years the pit is in operation more and more of this hazardous dust will accumulate inside and around homes and the schools.
- Our neighborhood homes and the new middle school is adjacent to and/or sits downwind of the proposed pit and its loading and hauling facilities
- They don't call this "Wind Country" for nothing. Most days of the year the wind speed exceeds 15 mph and is often much, much higher in our neighborhoods.

Why put a Gravel Pit / mining operation that creates a known carcinogen (cancer-causing) right next to homes and a school?

Below are some links and excerpts from articles that address this serious hazard.

http://www.osha.gov/OshDoc/data_General_Facts/crystalline-factsheet.pdf

What is crystalline silica?

Crystalline silica is a basic component of soil, sand, granite, and many other minerals.

Quartz is the most common form of crystalline silica. And we are NOT talking countertop grade. Cristobalite and tridymite are two other forms of crystalline silica. **All three forms may become respirable size fine particles when workers chip, cut, drill, or grind objects that contain crystalline silica.**

What are the hazards of crystalline silica?

Silica exposure remains a serious threat to nearly 2 million U.S. workers, including more than 100,000 workers in high risk jobs such as abrasive blasting, foundry work, stonecutting, rock drilling, **quarry work** and tunneling. The seriousness of the health hazards associated with silica exposure is demonstrated by the fatalities and disabling illnesses that continue to occur in sandblasters and rockdrillers. **Crystalline silica has been classified as a human lung carcinogen. Additionally, breathing crystalline silica dust can cause silicosis, which in severe cases can be disabling, or even fatal. The respirable silica dust enters the lungs and causes the formation of scar tissue, thus reducing the lungs' ability to take in oxygen. There is no cure for silicosis. Since silicosis affects lung function, it makes one more susceptible to lung infections like tuberculosis.**

http://www.airinfonow.com/html/ed_particulate.html

Particles can come in almost any shape or size, and can be solid particles or liquid droplets. We divide particles into two major groups. These groups differ in many ways. One of the differences is size, we call the bigger particles PM10 and we call the smaller particles PM2.5.

BIG. The big particles are between 2.5 and 10 micrometers (from about 25 to 100 times thinner than a human hair). These particles are called PM10 (we say "P M ten", which stands for Particulate Matter up to 10 micrometers in size). These particles cause less severe health effects.

SMALL. The small particles are smaller than 2.5 micrometers (100 times thinner than a human hair). These particles are called PM2.5 (we say "P M two point five", as in Particulate Matter up to 2.5 micrometers in size).

The smaller particles are lighter and they stay in the air longer and travel farther. PM10 (big) particles can stay in the air for minutes or hours while PM2.5 (small) particles can stay in the air for days or weeks.

And travel?

- **PM10 particles can travel as little as a hundred yards or as much as 30 miles.**
- **PM2.5 particles go even farther; many hundreds of miles.**

From: Planning Dept,
Sent: Friday, May 31, 2019 4:57 PM
To: Wall, Bruce
Cc: Hindman, Julie
Subject: FW: BeachComber LLC, permit opposition

-----Original Message-----

From: Vickey Hodnik [mailto:vickey@gci.net]
Sent: Friday, May 31, 2019 2:32 PM
To: Planning Dept, <planning@kpb.us>
Cc: Hindman, Julie <jhindman@kpb.us>
Subject: BeachComber LLC, permit opposition

Kenai Peninsula Planning Commission
BeachComber LLC, material site application

Memorial Day weekend, along the Anchor River, was a huge success! We welcomed hundreds of campers, fishermen and those out for a drive to appreciate the beautiful views, beach, baby moose and eagles. This is exactly what the Comprehensive Plan is about and how to encourage the use of our natural resources to create a healthier economy. This area is the "gem" of Anchor Point and helps to sustain the economy of this small, rural community.

The history of Anchor Point does include mining and much of the North Fork Road is absolutely "disfigured" because of it. To experience the noncompliance of the gravel people take a look at the North Fork and the lack of remediation along that drive. The park area of the Anchor River should not be subject to the blight of the North Fork Road. Just because an area has a "history" doesn't mean that destruction should be allowed to reoccur. We implore you to embrace our rural residential community and allow it to maintain itself as the park that it is.....not an industrial area.

There is no way to hide a gravel pit at the BeachComber LLC site and no way to contain the noise. We ask you to weigh the loss to this community, if the pit ruins our park, for Beachcomber's financial gain.

Without the cooperation of the Planning Commission we are left to supplicate the legal system to help secure our rights as Alaskan residents and citizens of the United States.

Sincerely,

Vickey Hodnik and George Krier
Sent from my iPad

To: Planning Commission Chair and Commissioners

From: Mary Trimble, Beachcomber LLC member

RE: Beachcomber CLUP Application

May 31, 2019

5 pages total

Realities and Random Thoughts

1. The Anchor Point Beach Road is not in horrible condition any more than most paved roads in our local area, Homer or the road to Anchorage. Each lane of the Beach Road is 12' wide, which is a common road width, and the speed limit is maximum 25 MPH. Speeders and unsafe drivers should be reported to the Troopers. It is used by all kinds of water, fuel, delivery, gravel trucks, pickups, boat trailers and RV's on a daily basis. That is what the road is there for. I have not heard of an accident on that road. What I see is that during busy times the users slow down and share the road with whoever is using it.
2. Dump Trucks are 8.5' wide and the drivers must have a CDL license. Pickups with boat trailers and RV's are often wider and they do not require a special license to operate. A commercial truck driver is unlikely to drive in a manner to risk the loss of his license or the inability to get work. Safety is paramount for CDL drivers.
3. The distance from the Old Sterling to Denver Rd is only 60% (3,860ft) of the entire 1.2 mile road and there are no businesses in that portion. From the Old Sterling to the Silver King parking area there exists 2,250ft of a walking trail with only 1,610ft of trail left to create before Denver Rd. Beachcomber would be happy to supply the material and get any necessary permits if those people that are so extremely worried about safety would volunteer the labor.
4. The claim that Coastal Realty has sold many properties to people in the area is false. Since the beginning of the brokerage in 1991 (28 years ago) they have only sold to 7 parties of which 3 are not in opposition to the Beachcomber pit. Continuing to repeat a falsehood does not make it true. Prior to April of 2018 Beachcomber did not have plans for a CLUP so there should be no accusations of unethical actions or failure to disclose it.
5. The rumor that the Trimble's intention is to sell out and move away is quite untrue. What is true is that we (our entire family) love and care for that property and all of its value above and below ground. Unfounded claims and heresy should not be a part of the record. Unsworn testimony presented as unsubstantiated, emotional claims, exaggerations, rumors and ramblings should not be allowed and should not influence the Planning Commissions decisions. An inordinate amount of time, money and paper has been wasted by many people because of frivolous rhetoric. The time for change is now - a mission of the Trimble's and Beachcomber.

6. The KPB has professional staff in the planning department and the legal department. They apply the code when they review applications for material sites and work with the applicant until all criteria are met before presenting to the Planning Commission. That is the reason permits are approved either at the Planning Commission or appeal level. In this case, an organized and mean-spirited group has come together to essentially do or say anything to prevent our application being approved even to the point of accusing an upstanding commission member of nefarious behavior. The Planning Commission should be able to see through this and not be caught up in it. Codes are codes, rules are rules and that is what is at hand here for the PC to review. Allowing "snowbirds" who were notified many times by mail and were present last summer to testify in person additional time is ludicrous. And, allowing the opposition multiple opportunities to repeat what they last testified should not be allowed unless they have new substantiated facts to present. That is how an efficient commission would operate not dragging out the process as has been the procedure in this case.
7. The campgrounds and state park contribute little to the economy of Anchor Point which is the opposite of the claims. The tourist season is very short, weather is often not suitable for camping and the river is often not in good condition for fishing or the runs are poor so many fishermen go to other locations. The campers stock up on supplies before they get to Anchor Point and pay their camping fee to the State. Crowded campgrounds are anything but quiet – it is not why people come to the Anchor River on the weekends. A small number of visitors come at quiet times during the week days or when the river is closed to fishing. It is truly a beautiful river and area that we value and have enjoyed for over 40 years.
8. Many of the resident opposers to our CLUP present themselves as concerned property tax payers when in fact they are over 65 and have chosen to accept the Borough senior exemption of \$350,000. There are 7 parties that pay no property taxes: Hans and Jeanne Bilben, Lynn Whitmore, William and Linda Patrick, Gary and Eileen Sheridan, Rick Oliver, Daniel Syme and Jim Gorman. Three parties pay tax on any assessment over the \$350,000: Joseph and Denise Sparkman, Robert Baker and Hodnick/Crier. The Carltons and Gregorys may soon join the group. These main players have combined property assessments of over \$3 million which is equal to over \$33,000 to the borough in lost tax revenue yet these are the folks costing the Borough significant money.
9. Much has been said about property values but no study has been done by borough assessors to substantiate any reduction in value for properties with a gravel pit in the neighborhood. In fact, the Girtons sold their home for full price of \$495,000 after 20 DOM and after the first notice of the permit application was out last year.
10. LiDar drawings by a layman of the opposition are falsely presenting that berms must be very tall in order to be effective and that the permit should not be issued because of that. The reality that is being totally ignored is, per the permit, the berms will be at or close to the excavation site, otherwise known as "rolling berms" to provide visual protection to the neighborhood. Licensed surveyor, Steve Smith, used the LiDar to show that "rolling berms" will be effective and those drawings were submitted earlier to the record and are hereby attached again for reference.
11. For the record, there have been submitted 14 letters in support of this permit. They may have been missed since they were mixed in with hundreds of other pages of repetitious rants.

Geovera, LLC

PO Box 3235 • Homer, Alaska 99603 • (907) 399-4345 • scsmith@gci.net

March 22, 2019

Emmitt Trimble
PO Box 193
Anchor Point, AK 99556

Re: McGee Tracts Line of Sight Drawings:

Dear Mr. Trimble,

Please find attached two drawings (plan and profile) that show the line of sight from a point on Lot 3, Parkinson Tracts - Del Mar Addition (85-102 HRD) along two vectors to points within Tract B, McGee Tracts Deed of Record Boundary Survey (80-104 HRD).

The plan drawing shows two vectors originating at the Bilben property (Lot 3). This point is the approximate location of the house on Lot 3 as determined from the Kenai Peninsula Borough fixed wing imagery as shown on their Geocortex Viewer. The plan drawing shows the boundaries of the existing Beachcomber, LLC counter permit gravel extraction area as well as the proposed three phase conditional land use permit material site area that is under consideration by the borough.

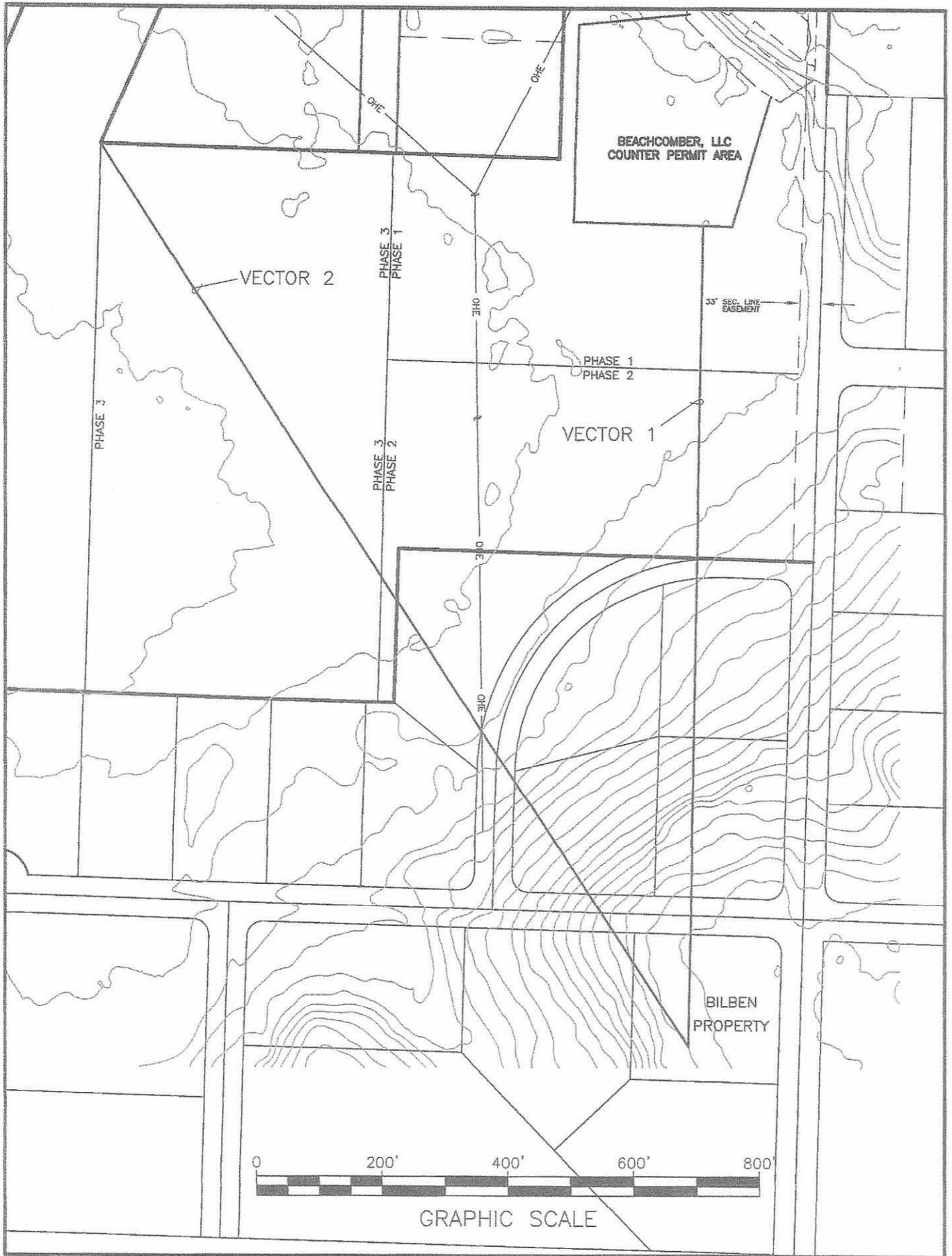
The contours shown are 4 foot interval LiDAR contours downloaded from the Kenai Peninsula Borough Terrain Viewer. The LiDAR data is in the Alaska State Plane Coordinate System (NAD83).

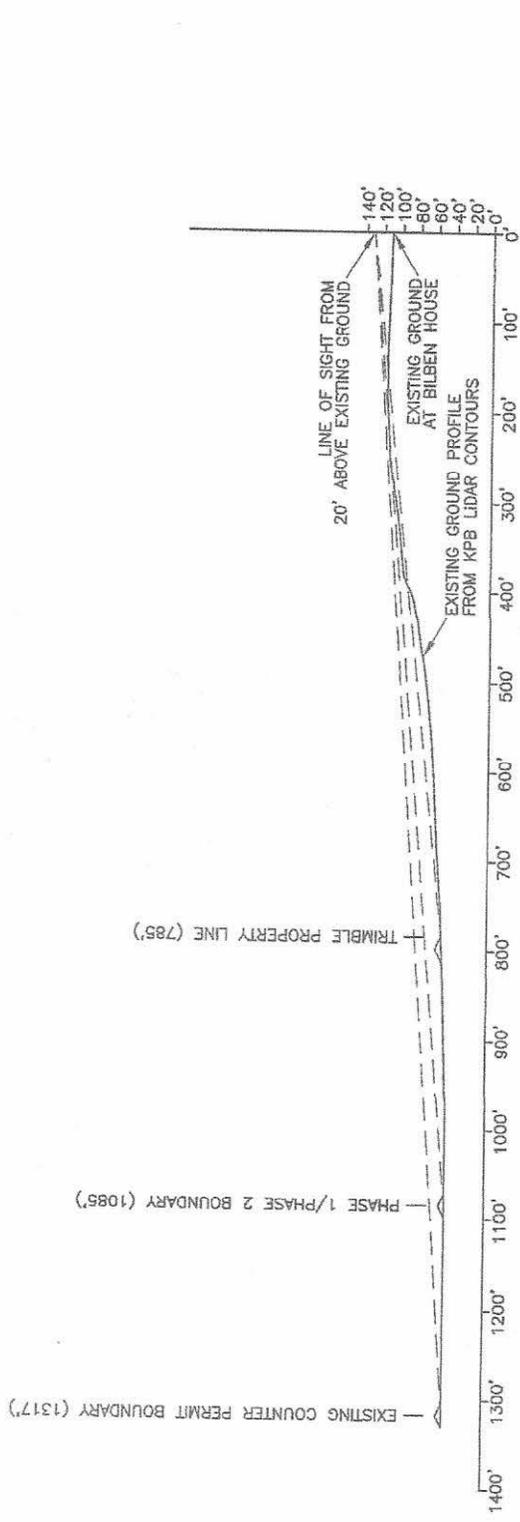
The representation of the property boundaries of Lot 3, Parkinson Tracts - Del Mar Addition and Tract B, McGee Tracts Deed of Record Boundary Survey is from a retracement survey conducted by me in 2017. The retracement survey was done utilizing GPS methodology. The basis of coordinates for the retracement survey was the Alaska State Plane Coordinate System (NAD83) determined from a GPS static observation on a control point that was submitted to OPUS (Online Positioning User Service) for processing.

The profile drawings show line of sight from a point 20 feet above existing ground at the approximate location of the house on Lot 3, to two points within Tract B (Vector 1 and Vector 2). The original ground profile is interpolated from the 4 foot interval LiDAR contours along the two vectors. The horizontal to vertical relationship on the profile drawings is 1 to 1. If you have any questions, please feel free to call me at (907) 399-4345.

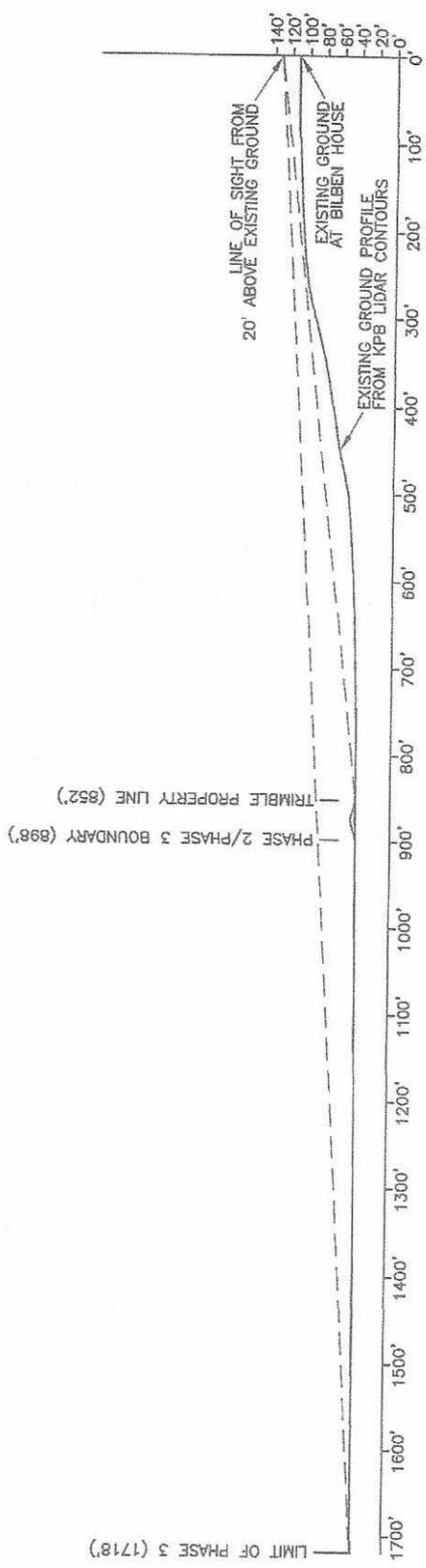
Sincerely,

Stephen C. Smith P.L.S.





VECTOR 1 PROFILE



VECTOR 2 PROFILE



GRAPHIC SCALE

From: Mark Yale <markyale2001@yahoo.com>
Sent: Monday, June 3, 2019 11:22 AM
To: Wall, Bruce
Subject: Anchor Point Gravel Pit

Hello Mr. Wall, and Planning Commission,

Thank You for all your time and efforts on this issue.

A family emergency has arisen and my wife and I will be unable to attend the June 10th Planning Commission 7:30 meeting in which we were planning to give oral testimony to the following. So upon your advise I am sending an email.

Please be advised as well as advise the Planning Commission on the following:

As owners of the property of 74140 Seaward Ave, Anchor Point, AK. my wife, Lee, and I would like to withdraw our objections to the proposed gravel pit which includes all oral and written correspondence. Also, please remove the photographs and all showing the 5 yard property boundary for phase 3 of the pit. Through our conversations in which you are recommending the fifty foot buffer and a twelve foot berm we are satisfied that the KPB will protect our interest as tax paying property owners. We also have had several conversations with Mr. and Mrs. Trimble regarding the fifty foot buffer and twelve foot berm in which they have agreed to. My wife and I took advantage of The Trimbles hospitality of the open house on June 2nd on the property of the proposed gravel mine. The current berm on the two and half acres displays the type of berm in use. I could not see the surrounding homes from out of the pit as it is now.

Our only other concern was the reclamation of the property after the proposed mining operations were concluded as this could affect surrounding property values. Upon our tour of the property, Mr. Trimble showed us where he has reseeded and reclaimed an area already which was done very well. We also realize, to not reclaim this property upon termination of mining activity would be a mistake as the property would not have the value as it is in a pristine location.

Should you have any questions please feel free to contact us by email or phone at 907 226-2026.

Respectfully Submitted,

Mark and Lee Yale

Waylon Janousek
Taxidermist



When Good Just Isn't Enough!

- Game Heads •
- Birds •
- Life Size •
- Rugs •
- Fish •
- Horn Mounts •

406 771 2710
2110 River Drive North
Great Falls, MT 59401
www.waylonswildlife.com




Mikes Window Tinting &
AutoGlass
804 13TH Ave So
Great Falls Mt 59405
406-452-7938
Window Tinting, Auto Glass, Clear bra

I'm visiting Alaska in Sept.
& will be staying in anchor pt.
I've got halibut charters out
of Homer & anchor pt. I'm a
regular out-of-stater & go there
almost every year
NO GRAVEL Pit Please

Appointment

For: Mike Broady

Date: July Time: _____

Location: Anchor PT Alaska
Fishing Charter

If you are unable to keep your appointment, please contact
us as soon as possible.

RECEIVED

JUN 07 2019

KENAI PENINSULA BOROUGH
PLANNING DEPARTMENT

Dear Planning Chairman,

I am a summer time resident of Anchor pt.

Recently purchased a place along the road on Anchor river.

Its truly a beautiful part of Alaska. There are about five campsites that hold around twenty units per campsite totaling around 100 camp

I live on the Silver King RV Park, I see moose almost every day.

Every morning in the summer there happy couples walking their dog + child along the roadside + the Anchor river.

I have alot of company visit from the lower 48, they spend alot of money on out-of-state licences, meals, charters enjoying the Homer - Anchor pt. wonderlans.

I believe a commercial gravel pit heavy traffic "just dont go together"

I sincerely hope you can see the effect this commercial gravel pit will have on the roads, narrow bridge, and mostly people walking the road side.

Thank you
Ronald Paulson
406 9523131

From: Carrie Harris <myalaska9.3@gmail.com>

Date: June 10, 2019 at 3:02:31 PM PDT

To: <MBest@kpb.us>

To all the KP planning commissioners, the assembly members, and mayor.

I am an Anchor Point area Borough resident. I support the Anchor point Gravel pit. I understand their is an issue with the loss of view. That view is of private property, and no private property owner should be required to maintain a view at their expense or loss of use for other property owners enjoyment.

Befor you know it their will be people demanding manicured lawns, and dictating building sizes and types.

Those who want that lifestyle can buy into HOAs or land that has covenants attached to it. The people who are loosing a view that never belonged to them can plant a tree line on their property.

I have heard the owners say when they bought the property they were told the land the gravel pit is going on would not be developed, if they feel they were cheated then they can take it to civil court.

Thanks Carrie Harris
Anchor Point Ak

MEMO

Regarding: a proposed Sand and Gravel operation in Anchor Point as a Conditional Use Permit

From: J. L. Jorgensen, property owner of two parcels on Anchor River Road

Request for Consideration and Response

My previous experience has been that a CUP (conditional Use Permit) may be approved or conditionally approved only if the agency makes the following findings:

- That the proposed development will **not adversely affect the applicable land use plans** of the area, burrow, or county;
- That the proposed development **will not be detrimental to the public health, safety and welfare;**
- That the proposed development will comply to the maximum extent feasible with the regulations of the general plan, the applicable zoning district and the development standards;
- That the proposed development is appropriate at the proposed location.

In the earlier consideration I would support the findings of the Planning Commission to deny the permit. I understand that the Planning Department staff has prepared what should be an objective advisory recommendation to the Planning Commission. The Planning Commission after hearing extensive testimony denied the permit.

I do not believe that the four above findings can be met.

1. That the proposed development will **not adversely affect the applicable land use plans.**

The area is currently developed as a combination of RESIDENTIAL and RECREATIONAL USES. Neither of these uses are compatible with the proposed development and the effects that are generated in terms of traffic, safety, noise or dust or visual blight.

In addition the proximity to the Anchor River recreational and wildlife area is of serious concern.

2. proposed development **will not be detrimental to the public health, safety and welfare;**

The traffic on Anchor River Road currently includes pedestrians, bicycles, cars, boats and wildlife crossing.

The width of the Anchor River Road clearly does not allow SAFE use of multiple ton trucks with the right of way. Safety of Human life, children, youth and adults. This alone should be clear grounds for denial. The recreational and commercial fishing charter boats that are launched as well as the property involved is a substantial concern.

The bridge on Old Sterling Highway may allow two way traffic but is generally used by vehicles going one direction as a neighborly courtesy.

The bridge recently repaired may physical accommodate trucks serving the area but I would strongly question the wear and tear that the proposed site serving many other locations would be able to serve.

3. That the proposed development will comply to the maximum extent feasible with the regulations of the general plan, the applicable zoning district and the development standards.

The proposed development CANNOT comply with the general plan of the area.

4. That the proposed development is appropriate at the proposed location.

The proposed development might be possible if it were the first and only use in the area but is clearly NOT APPROPRIATE AT THE PROPOSED LOCATION. Other locations are available for this type of use that will not jeopardize the HEALTH SAFETY or WELFARE OF THE COMMUNITY.

The requirement of a CUP for any operation indicates that there is an underlying and preliminary anticipation of concerns. At times these can be adequately mitigated at appropriate locations. This situation is a clear intrusion into a residential and recreational area. The proposed sand and gravel and the associated truck traffic is directly detrimental to the Health, Safety and Welfare that the Planning Commission and those above are empowered to protect through this process.

Topic:

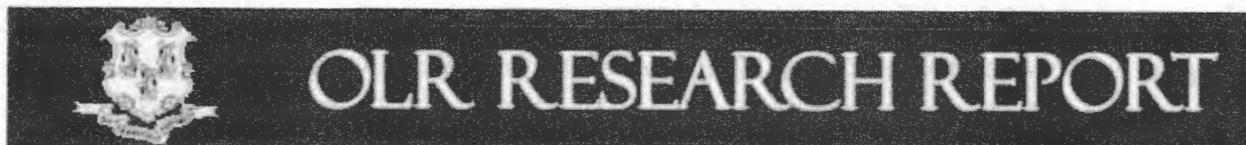
MUNICIPALITIES; ZONING; ENVIRONMENTAL PROTECTION (GENERAL);

Location:

ENVIRONMENT (GENERAL); PLANNING AND ZONING;

Scope:

Court Cases; Other States laws/regulations; Connecticut laws/regulations;



September 18, 2002

2002-R-0653

REGULATING SCENIC VIEWS

By: Kevin E. McCarthy, Principal Analyst

You asked that we identify (1) states that explicitly authorize the regulation of developments to protect scenic views and (2) ways that municipalities and other political subdivisions protect views, either under such explicit authorization or their general zoning authority.

SUMMARY

Hawaii has established statutory guidance for a state agency regarding the preservation of views in the Kakaako development district on Oahu. Maine, Minnesota, New York, Oregon require political subdivisions to regulate developments to protect scenic views and other aesthetic values, and Vermont and Wisconsin allow subdivisions to do so. The regulation generally occurs under zoning enabling law, although Maine provides for the protection of scenic views in its subdivision control laws. Minnesota's law applies to areas near lakes, streams, and wetlands. The remaining laws apply statewide. Connecticut allows municipalities to protect scenic views by establishing village districts pursuant to CGS § 8-2j, which is described in OLR memo 98-R-0945. To date Brooklyn and Middletown have established village districts.

As discussed in OLR memo 2002-R-0618, Connecticut also requires municipalities to address scenic preservation goals when acting on proposed developments in designated coastal areas. At least four states (California, Maine, Oregon, and Washington) require municipalities to address scenic preservation goals when acting on proposed coastal developments, while in New Hampshire and Rhode Island state agencies address scenic views in their regulation of coastal developments.

While most states do not explicitly authorize political subdivisions to regulate scenic views, many subdivisions have done so under laws that grant them broad zoning powers. These laws, in Connecticut and elsewhere, are based on the Model Zoning Enabling Act, which establishes the promotion of the general welfare as a purpose of zoning. The U.S. Supreme Court, in *Berman v. Parker* 348 U.S. 26, 31 (1954), has indicated that the general welfare can include aesthetics. Courts in several states, including Connecticut, have ruled that municipalities can regulate development solely or in part based on aesthetics.

Several municipalities have used this general welfare provision to regulate on the basis of aesthetics, including the protection of scenic views. One common approach is to protect viewsheds, i.e., the view that can be seen from a specific location. Another approach is to protect views of specific natural or manmade features. In several cases, municipalities have established overlay districts to protect views. Such districts can cover different types of zones within a municipality (e.g., residential and commercial) and impose additional restrictions on development within the district. Another approach is the establishment of view corridors, which regulate development along specified streets to protect views of natural resources such as rivers.

In addition to these techniques, municipalities protect scenic views under their power to regulate the height and bulk of buildings under the Model Zoning Enabling Act. Don Poland, legislative director of the Connecticut chapter of the American Planning Association, notes that many shoreline municipalities in the state regulate the height of buildings near Long Island Sound to protect the views of nearby properties.

Municipalities can also preserve scenic views by regulating signs, including billboards. Municipalities routinely adopt such ordinances, and in some cases require that an architect or other design professional to review the proposed sign to determine whether it is compatible with its surroundings. OLR memo [2000-R-0773](#) describes the law in Connecticut and other states regarding local regulation of billboards. A number of states (including Connecticut) have statutory procedures for the designation of scenic roads, which regulate activities such as tree cutting. OLR report [93-R-0554](#) provides information on Connecticut's law.

STATE LAWS

Hawaii

Haw. Rev. Stat. § 206E-33 provides guidance policies for the state Community Development Authority with regard to the Kakaako development district. Among other things, the guidance calls for the preservation of major view planes and view corridors through regulation and design review. It also calls for the preservation of culturally significant settings and locations.

Maine

Under state law, local subdivision control ordinances must protect aesthetic, cultural, and natural values from undue harm. In adopting an ordinance and approving subdivisions, the municipality may not permit undue harm to visual access to the shoreline (Me. Rev. § 30-A-4404). Municipalities

can meet these requirements by having planning board members view the site, comparing the height of proposed buildings with the tree line, and reviewing engineering studies. The developer can protect the view by entering into scenic easements that limit development of the property (see *Conservation Law Foundation v. Town of Lincolnville* 2001) Me., 786 A. 2d 616).

As discussed in OLR memo 2002-R-0618, Maine also has a law requiring municipal of developments on the seashore and along lakes and rivers that requires the preservation of visual access.

Minnesota

By law (Minn. Stat. §§103F.201 to 103F.221), each county containing unincorporated land and each city must adopt a shoreland ordinance at least as protective as the Department of Natural Resource (DNR) model ordinance at Minn. Rules Ch. 6120. The DNR ordinance applies development setbacks and restrictions to lands adjacent to water basins and watercourses designated as public waters. In addition, a municipality may apply its ordinance to lands adjacent to wetlands designated as public waters wetlands. The DNR ordinance regulates building lot sizes, the placement of structures and sewage disposal systems, and other land uses within the shorelands of public waters—defined as within 1000 feet of the ordinary high water mark of a lake or locally designated wetland and within 300 feet of an ordinary high stream elevation. These ordinances are primarily are directed toward viewshed protection (See Minn. Rules Ch. 6120.3300).

New York

The state constitution (Article 1454) establishes a state policy to conserve and protect scenic beauty. State law explicitly allows all municipalities to protect scenic views under Mun. Home Rule Law Sec. 10(1)(a)(1), which allows them to adopt land use laws to protect and enhance their physical and visual environments. Towns and villages may consider viewshed protection in their definition of open space (N.Y. Env. Cons. Law § 55-0119).

Under the State Environmental Quality Review Act a wide range of developments are subject to environmental review. Under regulations developed pursuant to the act (6 NYCRR Part 617.10) all local agency reviews of developments must consider whether the project will have a negative impact on resources of historic or aesthetic importance, and if so, establish conditions on the project to mitigate that impact.

Oregon

Oregon addresses scenic view regulation as part of a broader statewide land use planning policy, which includes protecting natural resources and conserving scenic and historic areas and open spaces (Or. Admin R. 60-015-0000(5)). The policy specifies 19 goals municipalities must address in their respective land use plans and regulations, which must be reviewed and approved by the Land Conservation and Development Commission (Or. Rev. Stat. § 197. 015(5)).

Vermont

The state allows municipalities to establish design control districts, which may include urban settlements with striking views and views extending access of open fields up to the forest edge. Planning commission approval is required build, substantially alter, demolish, or move buildings within such districts (Ver. Rev. Stat. § 24-4407).

Wisconsin

State law allows towns to “regulate any place, structure, or object with a special character, historic interest, or other significant value, for the purpose of preserving the place, structure, or object and its significant characteristics” (Wis. Rev. Stat. § 60.64).

LOCAL ORDINANCES

California

The Big Sur Local Coast Land Use Plan was developed pursuant to the California Coastal Act of 1976, which is described in OLR memo 2002-R-0618. The plan includes policies to protect particularly important scenic views. Under the plan, areas that otherwise could be developed may not be because of constraints imposed by the policies. In Monterey County, owners of residentially zoned properties within such areas can receive a transferable development credit. To receive the credit, the property owner must grant the county an irrevocable scenic easement on the property, permanently restricting its development. The credit is transferable and can be sold to a third party. This credit allows the holder to more intensively develop a residential building site elsewhere in the county that is not subject to the restrictions. The new residential developments made possible by the credit must meet the other requirements of the plan, e.g., its water supply and geological safety criteria. In addition, they must have the minimum feasible number of driveways leading onto the Pacific Coast Highway.

Colorado

Denver has adopted an ordinance to restrict development in order to protect mountain views. The ordinance includes a map specifying the area where development is restricted, which amounts to about 12.5% of the city. The tops of buildings in this area cannot exceed 5,434 feet, plus one foot for every 100 feet the building is located from a reference point located in Cranmer Park. (Denver's altitude is approximately 5,200 feet.) The city also regulates the height of downtown buildings to protect views of its Civic Center. The ordinance is available on-line at <http://www.sonoran.org/town/denver.pdf>. The state Supreme Court has upheld the ordinance in *Landmark Land Company, Inc. v. City and County of Denver*, 728 P.2d 1281 (1986), citing *Parker* and holding that the ordinance did not constitute a taking.

Maryland

Washington County has established an overlay zone designed in part to preserve the existing viewshed of the historic Antietam Battlefield site. The ordinance covers the subdivision of land as well as development within the zone.

New York

North Elba, a resort community in the Adirondack Mountains, has established an overlay district to protect the viewshed of Whiteface Mountain. Developers in the district must demonstrate that their projects will not “result in a clearly adverse aesthetic impact.” Among other techniques, the planning board uses computer simulations to determine the impact of proposed developments. In 1998, the town's planning board rejected an application to build a Wal-Mart within the district, finding that it would cause a noticeable change to the visual character of the viewshed. The state's appellate court upheld the decision (*Wal-Mart Stores Inc. v. Planning Board of the Town of North Elba* NYS2d 774 (1998)).

Rochester has established corridors to preserve and enhance views of the Genesee River, which runs through the center of the city. The corridors were established by ordinance (Rochester City Code § 115-85.1.1) as part of the river management overlay district. All proposed construction, reconstruction, remodeling, alteration or moving adjacent to or above corridors must comply with additional dimension and bulk restrictions. The ordinance provides design guidelines for pavements, lighting, and safety barriers. The arrangement and scale of improvements must encourage and allow easy flow of pedestrian traffic across the site as well as to and from adjacent sites.

Oregon

Portland has established four view corridors to protect views of Mt. Hood and Rocky Butte from selected vantage points in Columbia South Shore. The height of nearby buildings is restricted. Portland has also established view corridors of the Willamette River along seven streets. For six of these streets, buildings cannot intrude in the 30 feet from each side of the street. For the seventh street, there can be no intrusion in the 60 feet from each side of the street. These corridors were established to provide visual access and connections to the river for neighborhoods and

business districts that might otherwise be visually cut-off from the river. The corridors are generally extensions of existing public rights-of-way through to the river.

All development and vegetation with areas with a view corridor designation must undergo design review. Buildings in these areas can have facades of no more than 100 feet. Two rows of trees (one deciduous and one evergreen) must be planted on 30-foot centers. The ordinance also has provisions requiring screening of garbage cans and mechanical systems, establishing set-back requirements, and limiting the size and height of signs. The ordinance generally prohibits the removal of mature trees within the street setback. Additional sign standards apply in the Columbia South Shore view corridor.

Like many other cities, Portland allows developers to build larger buildings than would normally be permitted in a particular zone if the developer provides more open space than is required or meets other criteria. The developer cannot use this bonus space to violate view corridors.

These provisions are contained in §§ 33.480.40 *et seq.* of the municipal code (<http://municipalcodes.lexisnexis.com/codes/portland/>).

Texas

Austin has established an overlay zone by ordinance to protect views from its hill country roadways. Among the goals of the ordinance is to preserve the scenic values of the Hill Country Corridor Parkways. The height of buildings and floor area ratio of buildings in these corridors are restricted, with the restriction varying with the underlying zone and the distance from the development to a state highway. Developments are subject to site plan review and landscaping requirements. The ordinance establishes landscaping requirements and limits new streets and driveways. The ordinance also provides incentives for developers who exceed its requirements by protecting scenic views of downtown Austin and various water bodies. The ordinance (Mun. Code § 5180 *et seq.*) is available on-line at <http://www.sonoran.org/town/austin.pdf>.

San Antonio has established overlay districts to protect views of the Alamo and other landmarks and sites. According to the ordinance (Unified Development Code § 35-337), the purpose of these districts is to "safeguard San Antonio's heritage by preventing the despoliation of views of areas and buildings that reflect important elements of the city's cultural, natural, historic, and economic fabric." The ordinance established the process by which the districts are created. Developments that protrude into the viewshed and block the view of the protected building or site are limited by the ordinances setting up the individual districts. Existing structures within the viewshed that were legally erected are permitted to continue in existence. They may be modified, so long as they do not further encroach into the viewshed. The viewsheed protection provisions are available on-line at http://www.sanna.org/udc_article3.pdf.

Utah

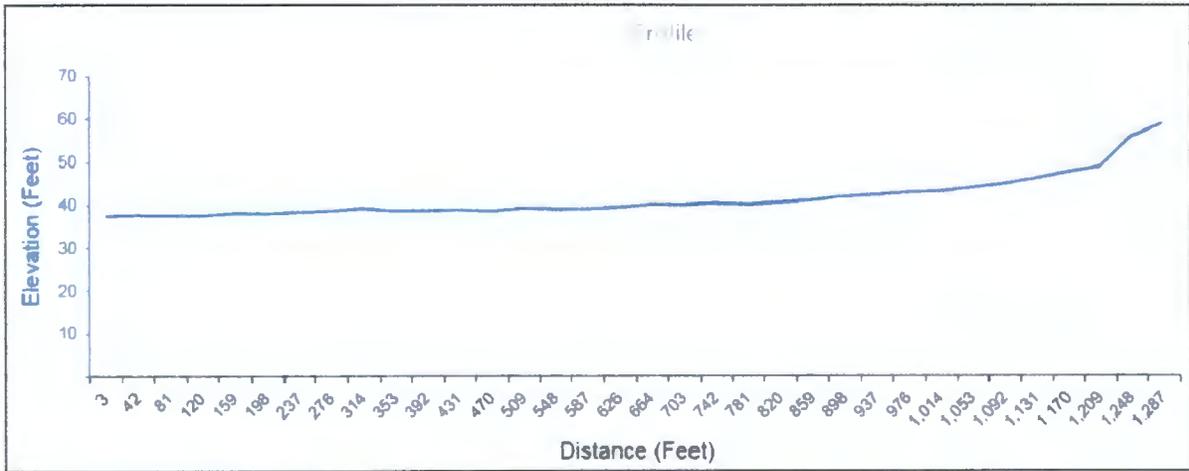
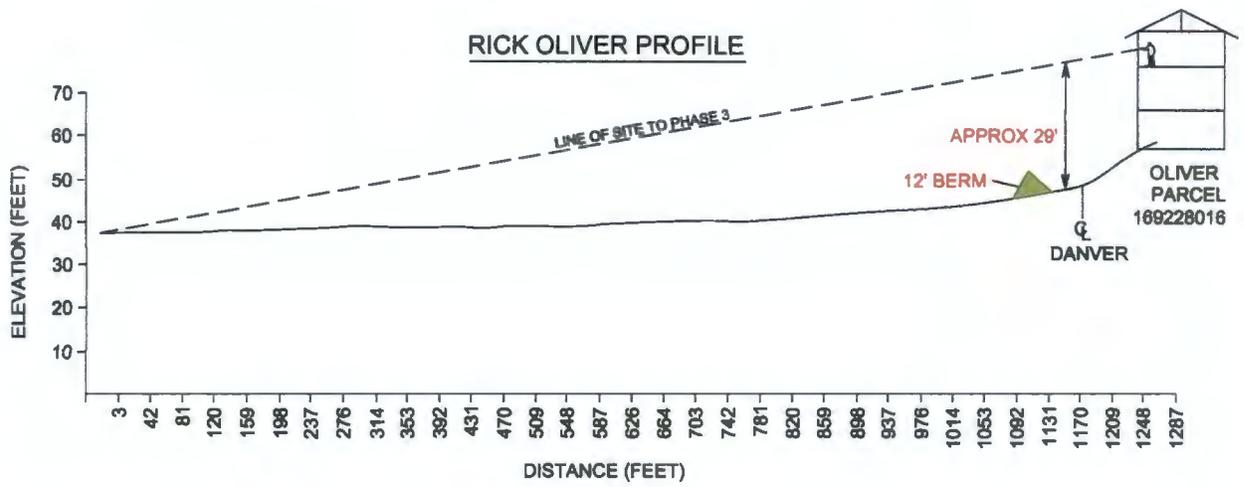
Summit County has developed policies to protect views of meadows and hillsides in the Snyderville Basin. The policy divides the basin into four areas, subject to different levels of development controls. Residential and other forms of development are not permitted in preservation areas. In retention areas, developments are only permitted if they are not visible from major roads in the basin. In modification areas, developments are permitted but their visual impact must be mitigated through such means as siting, landscaping, and lighting. The final type of area are those which have been visually degraded and should be rehabilitated and where the landscape should be restored. In all areas, development should occur in a way to preserve the scenic foreground and distant views, by placing development at the edge of open meadows and at the bottom of the hillsides. The policy is available on-line at http://www.co.summit.ut.us/dept/planng/sville/Chpt6_drft.htm

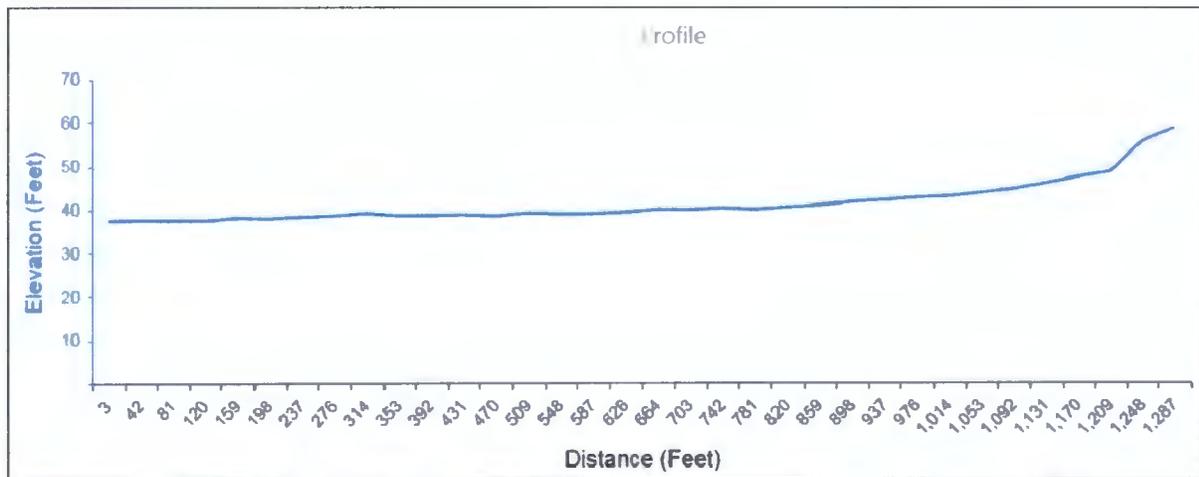
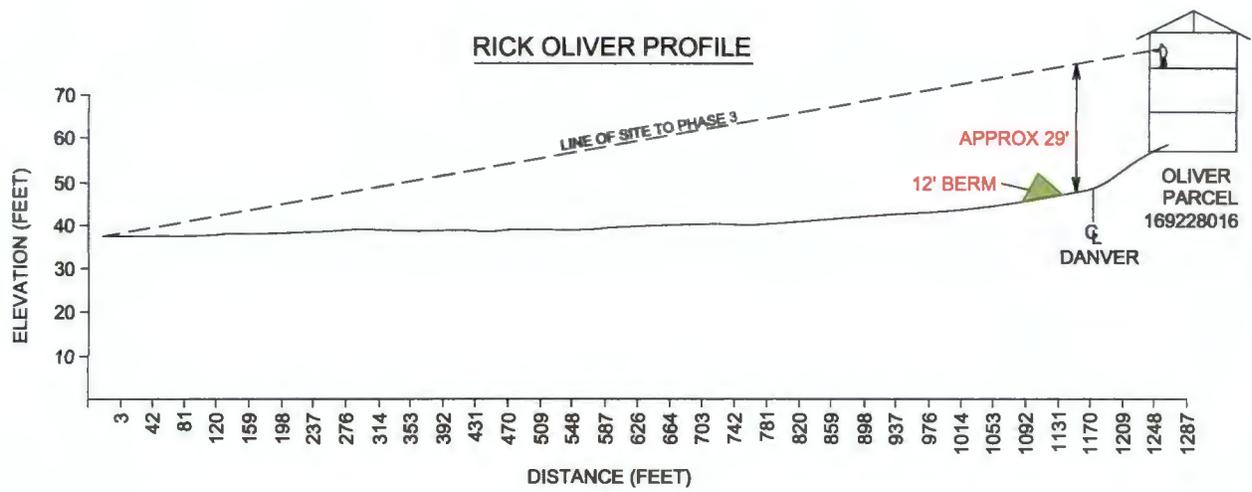
Wisconsin

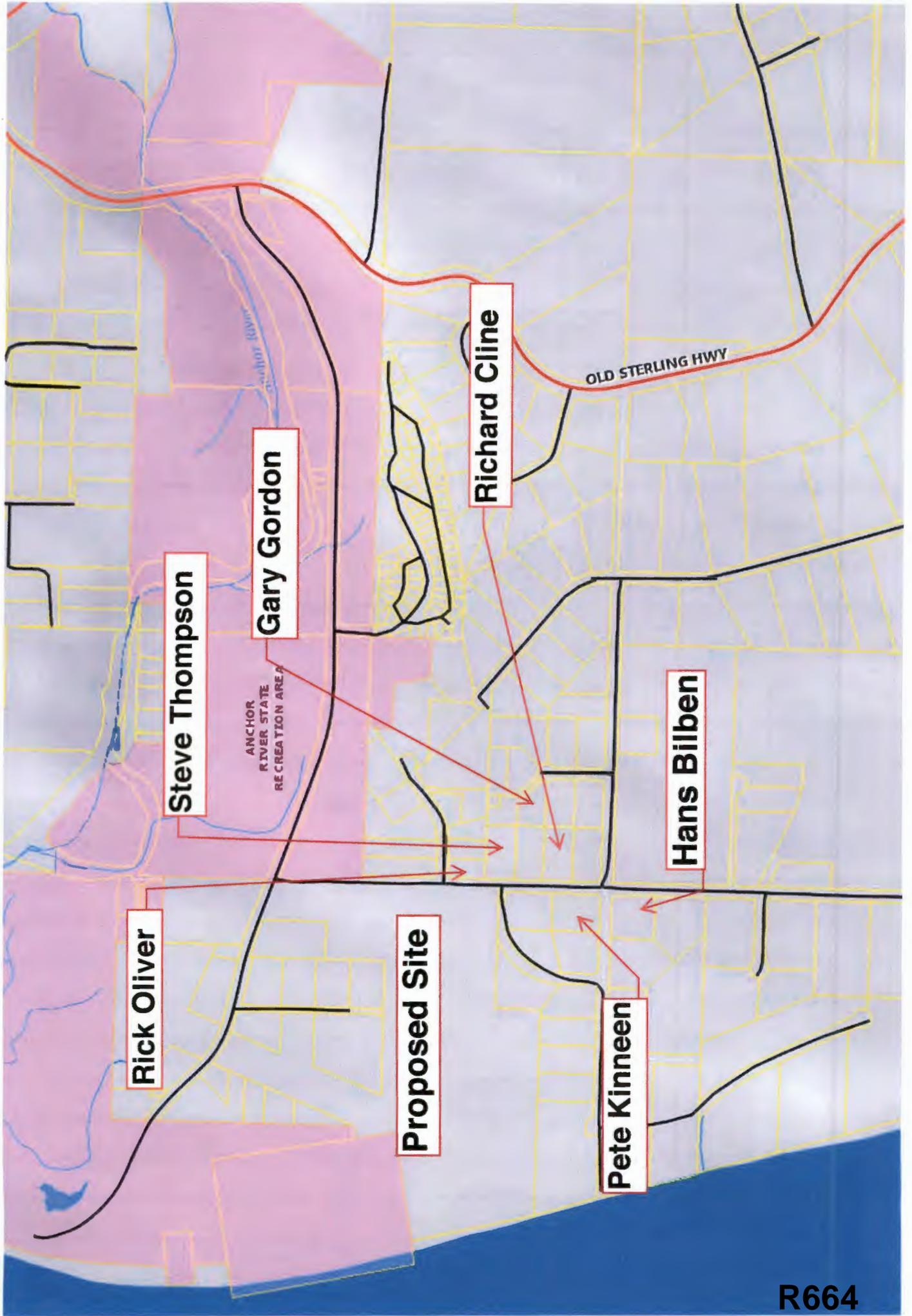
The town of Westport has adopted a historic preservation ordinance that addresses viewshed protection (Code of Ordinances § 10-7-1 *et seq.*). One of the ordinance's stated purposes is to protect landscapes that reflect elements of the town's history and to enhance the town's visual and aesthetic character. Alteration or visual impairment of any historic resource with the town's historic district requires a certificate of appropriateness from the town Historic Preservation Commission. Historic resources can include viewsheds, as well as historic buildings. Among the factors, the commission must consider in granting a certificate is whether the proposed construction diminishes the aesthetic

values or scenic qualities of a landscape or viewshed.

KM:ts







Rick Oliver

Steve Thompson

Gary Gordon

Richard Cline

Pete Kinneen

Hans Bilben

Proposed Site

OLD STERLING HWY

ANCHOR STATE RIVER STATE RECREATION AREA

Anchor River

ATTACHMENT II



Anchor River Rd-1



Anchor River Rd-2



Anchor River Rd-3



Anchor River Rd-4



Anchor River Rd-5



Anchor River Rd-6



Anchor River Rd-7



Anchor River Rd-8



Anchor River Rd-9

ATTACHMENT II



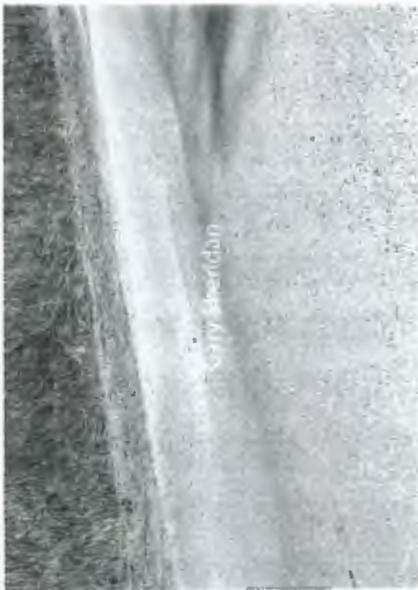
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Anchor River Rd-11



Anchor River Rd-12



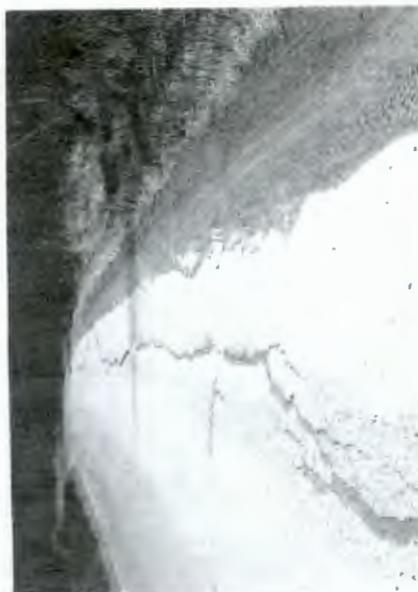
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Anchor River Rd-28



Anchor River Rd-29



Anchor River Rd-30



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Anchor River Rd-32



Anchor River Rd-33



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Anchor River Rd-35



Anchor River Rd-36



Anchor River Rd-37



Anchor River Rd-38



Anchor River Rd-39



Anchor River Rd-40



Anchor River Rd-41



Anchor River Rd-42



Anchor River Rd-43



Anchor River Rd-44



Anchor River Rd-45



Anchor River Rd-46



Anchor River Rd-47



Anchor River Rd-48



Anchor River Rd-49



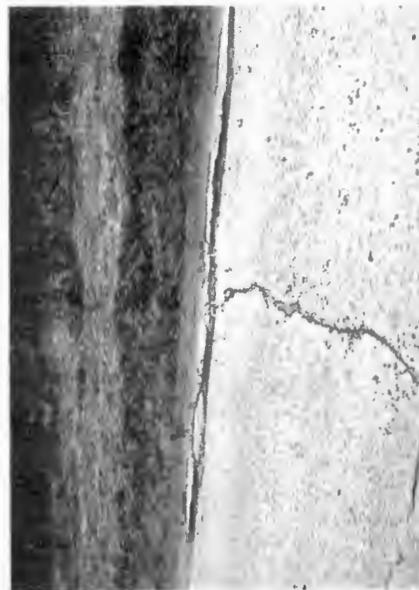
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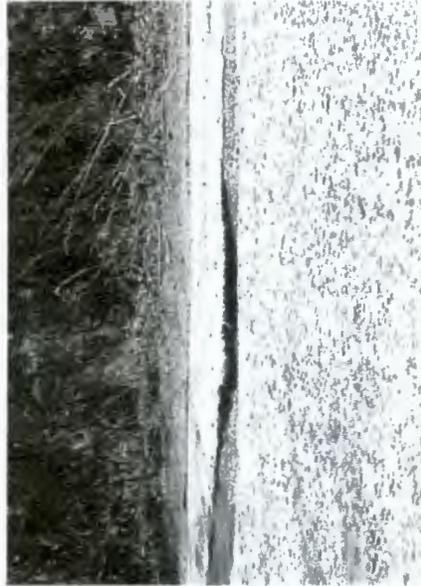
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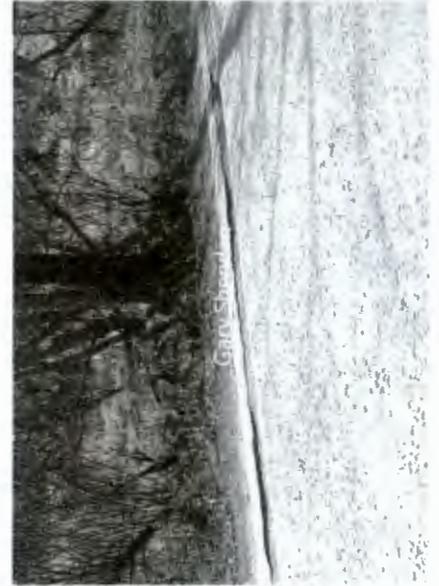
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Anchor River Rd-66



Anchor River Rd-67



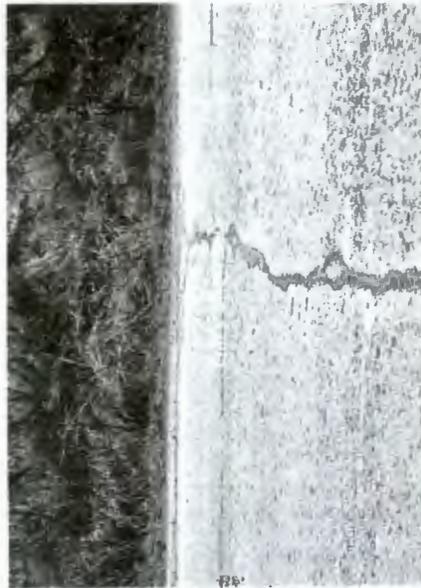
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Anchor River Rd-70



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Anchor River Rd-73



Anchor River Rd-74



Anchor River Rd-75



Anchor River Rd-76



Anchor River Rd-77



Anchor River Rd-78



Anchor River Rd-79



Anchor River Rd-80



Anchor River Rd-81



Anchor River Rd-82



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CosKit-85



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Anchor River Rd-90



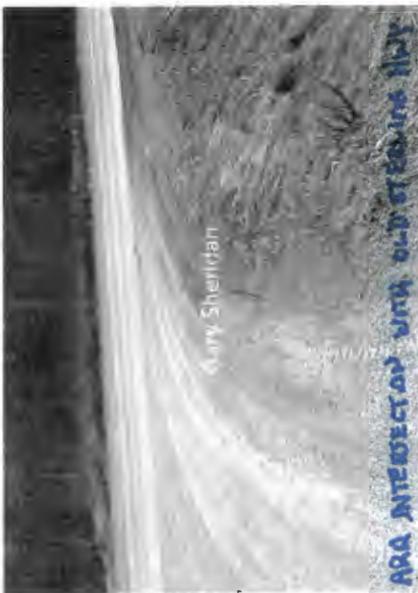
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Anchor River Rd-92



Anchor River Rd-93



Anchor River Rd-94



Anchor River Rd-95



Anchor River Rd-96

PLANNING COMMISSION

MINUTES

JUNE 10, 2019



Planning Commission

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

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

**June 10, 2019
7:30 P.M.**

APPROVED MINUTES

CALL TO ORDER

Chairman Martin called the meeting to order at 7:30 p.m.

ROLL CALL

Commissioners Present

Syverine Abrahamson-Bentz, Anchor Point / Ninilchik
Jeremy Brantley, Sterling
Paulette Bokenko-Carluccio, City of Seldovia
Cindy Ecklund, City of Seward
Robert F. Ernst, Northwest Borough
Diane Fikes, City of Kenai
Rick Foster, Southwest Borough
Blair Martin, Kalifornsky Beach
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna

With 10 members of a 13-member Commission in attendance, a quorum was present.

Staff Present

Julie Hindman, Administrative Assistant
Scott Huff, Platting Manager
Jordan Reif, Platting Technician
Bruce Wall, Planner
Dan Conetta, Land Management Agent
Charlie Pierce, Kenai Peninsula Borough Mayor

Others Present

Emmitt Trimble
Mary Trimble
Stacey Stone
Paul Morino
Judy Aaron
Linda Bruce
Mark Claypool
Christina Elmaleh
Teresa Jacobson
Pete Kinneen
Lynn Whitmore
Allison Trimble Paparoa
Gary Sheridan
Richard Carlton
Todd Bareman
Ryan Muzzarelli
Ed Martin III
Vickey Hodnik
Rick Oliver

Richard Cline
 Charity Jacobson
 Jim Reid
 Roger McCampbell
 Larry Smith
 Chris Crum
 Hans Bilben
 Ann Cline
 Lauren Isenhour
 Buzz Kyllonen
 Tom Clark
 Angela Roland
 Josh Elmaleh
 Katie Elsner

APPROVAL OF REGULAR AGENDA AND ADOPTION OF THE CONSENT AGENDA

AGENDA ITEM C. CONSENT AGENDA

- *7. Commissioner Excused Absences
 - a. Virginia Morgan, East Peninsula
 - b. Robert Ruffner, Kasilof / Clam Gulch
 - c. Vacant, Ridgeway

****Approved with the adoption of the consent agenda.***

AGENDA ITEM C. CONSENT AGENDA

- *8. Minutes
 - a. May 28, 2019 Planning Commission Minutes

****Approved with the adoption of the consent agenda.***

MOTION: Commissioner Carluccio moved, seconded by Commissioner Bentz to approve the consent and regular agendas.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

PUBLIC COMMENT / PRESENTATIONS / COMMISSIONERS

Chairman Martin opened the meeting for public comment for items not on the agenda. Seeing and hearing no one public comment was closed and meeting continued.

PUBLIC HEARINGS

AGENDA ITEM F. PUBLIC HEARINGS

- 1. Ordinance 2019-13; An Ordinance Authorizing Retention or Sale of Certain Real Property Obtained by the Kenai Peninsula Borough Through Tax Foreclosure Proceedings.

Staff Report given by Dan Conetta

PC Meeting: 6/10/19

There are two lists for this Ordinance. Exhibit A contains about 10 parcels which is being recommended for retention for various purposes. Some are sub-standard lots, have wetlands, etc. Exhibit B contains about 40 parcels that are being recommended to be sold at auction. This auction is about every 2 years when there are enough parcels to justify the sale.

END OF STAFF REPORT

Seeing and hearing no one wishing to comment, Chairman Martin closed public comment and discussion was opened among the Commission.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to forward Ordinance 2019-13 to the Assembly for approval.

MOTION PASSED: Seeing and hearing no discussion or objection the motion passed by unanimous consent.

AGENDA ITEM F PUBLIC HEARINGS

2. Ordinance 2019-12; An Ordinance Authorizing the Sale of Certain Real Property Obtained by the Kenai Peninsula Borough Through Tax Foreclosure Proceedings which was Previously Retained for a Public Purpose.

Staff Report given by Dan Conetta

PC MEETING 6/10/19

About six years ago this parcel was retained for a public purpose because it was considered a sub-standard lot. Land Management reviews the platting code for a minimum lot size of 40,000 square feet. This lot is less so it was retained. It appears that this lot does have a functioning well and septic on site even though it is less than 40,000 square feet. Land Management is recommending that the lot be put in the tax foreclosure sale and be sold at auction along with other parcels.

END OF STAFF REPORT

Chairman Martin opened public comment. Seeing and hearing no one wishing to comment, Chairman Martin closed public comment and discussion was opened among the Commission.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to forward Ordinance 2019-12 on to the Assembly for approval.

MOTION PASSED: Seeing and hearing no discussion or objection the motion passed by unanimous consent.

AGENDA ITEM F PUBLIC HEARINGS

Commissioner Brantley reminded the Commission that he previously recused himself from the next item and removed himself.

3. Continuance of the March 25, 2019 public hearing on a conditional land use permit application for material extraction on a parcel in the Anchor Point area that has been remanded on appeal to the Planning Commission.

Staff Report given by Bruce Wall

PC MEETING 6/10/19

Applicant / Landowner: Beachcomber LLC

Parcel Number: 169-010-67

Legal Description: Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District.

Location: 74185 Anchor Point Road

Proposed Land Use: The applicant wishes to obtain a permit for sand, gravel and peat extraction on a portion of the parcel listed above.

This application was heard by the Planning Commission on July 16, 2018, where the application was denied approval. This decision was appealed and was reviewed by a Hearing Officer. The Hearing Officer remanded the application to the Planning Commission. A hearing was conducted on March 25, 2019 and continued to this date. Excerpts from the Hearing Officer's decision is included in the staff report and copies of the decision is contained in Volume 2 of the meeting packet beginning on page 2.

Mr. Wall noted that the next page numbers he would be referencing were contained in Volume 1 of the packet. Since this is a continuation of the March meeting there is not a new staff report. The staff report from the March 25, 2019 meeting begins on page 222, Volume 1. The Resolution begins on page 77 and has been updated to reflect tonight's meeting. The draft Resolution contains staff recommended buffers. Those buffers are illustrated on a map found on page 238, Volume 1. Staff is recommending different buffers than what is shown on the applicant's site plan and different from staff's recommendations in July 2018.

A waiver is being requested for the 300 foot processing distance requirement from the property line. Staff does not recommend approval of the processing distance waiver request. There is room elsewhere on the property for processing that meets the 300 foot setback requirement. The draft findings in the Resolution support the denial of the waiver.

Mr. Wall let the Commission know that Ms. Hindman prepared an index to help them locate various items throughout the two volumes of the desk packet. He did ask the Commission to let him know if they have difficulty locating an item during the meeting to please ask for help to locate the item since this is a large volume of information.

New comments that have come in since the March meeting begin on page 84, Volume 1 of the packet. There are several letters in the desk packet, including a letter from an adjacent property owner requesting that his previous objections to the proposal be disregarded. There are also three letters that were laid down that were received after the desk packet was published.

The Planning Commission should review the application, site plan, staff report, and comments received and determine if the mandatory conditions contained in KPB 21.29.050 will be met. The Planning Department recommends that the Planning Commission deny the processing distance waiver request, approve the conditional land use permit with listed conditions, and adopt the findings of fact subject to the requirements contained in the staff report.

END OF STAFF REPORT

Chairman Martin read the rules by which public hearings are conducted.

MOTION: Commissioner Venuti moved, seconded by Commissioner Foster to limit testimony to new information only.

Commissioner Whitney objected to the motion. He noted that at the previous meeting everyone that testified was told they would be able to testify again at the next hearing with no limitations or curtailment of their testimony. He then asked staff if the change in the height requirements is different than the recommendations at the March 25, 2019 meeting. If so that is a change to the process. Mr. Wall replied that staff recommendations have remained the same from the March 25, 2019 meeting. One of the neighbors has proposed alternative buffers but staff recommendations have not changed.

Commissioner Carluccio added that she would not support the motion. One thing that was brought up at the last meeting was that there would be a number of people in attendance tonight that were unable to attend the previous meeting. They may not know what was given in testimony. The Commission would be

trying to tell them they cannot repeat information that they don't know and she felt it was beyond what the Commission should do.

MOTION FAILED BY UNANIMOUS VOTE: 0 Yes, 9 No, 2 Absent, 1 Recused

Yes: --
No: Bentz, Carluccio, Ecklund, Ernst, Fikes, Foster, Martin, Venuti, Whitney
Absent: Morgan, Ruffner
Recused: Brantley

Chairman Martin opened public comment.

1. Emmitt Trimble, PO Box 193, Anchor Point

Mr. Trimble introduced his attorney Stacey Stone. He let the Commission know that they had some videos they wanted to play. He knows that it is difficult for the Commission to go to the various sites. There have been a lot of pictures seen but they have videos that may be helpful.

He wanted to leave with a few thoughts before starting the videos. Some phrases that are very relevant: substantial evidence and finding of fact.

2. Stacey Stone, 701 W. 8th Ave, Ste. 700, Anchorage, AK 99501

Ms. Stone is an attorney at Holmes Weddle & Barcott. The Hearing Officer's remand is before the Commission. Within that remand the Hearing Officer identified the charge that is before this Commission as set forth in the Kenai Peninsula Borough Code. The charge of the Commission is very limited in scope and is set forth in the code. It sets forth what this Commission has the authority to do and what the Commission has the authority not to do. It also helps to extrapolate on the purpose of a conditional land use permit within the Kenai Peninsula Borough. This is not a standard permit. As referenced this isn't a case where there is a residential property that is looking for a conditional land use permit for an exemption to have a daycare in a residential area. This is something that is allowable and the Borough Assembly has chosen to codify how it can be done legally. Essentially, someone has the authority to do this on the land. If the government is going to come in with a restriction, then that restriction has to be limited by law. The law set forth provides very specific conditions. If the applicant checks all of the boxes that are set forth within the code, which her client has done, then it is up to this Commission to look and see if there are appropriate conditions that need to be placed. If there are appropriate conditions they need to be instituted and the permit needs to be approved unless it is lacking. They maintain that on the permit every box has been checked, appropriate conditions have been set forth, and therefore tonight the Commission should approve the permit for the conditional land use.

Mr. Trimble asked if they could show the videos. He noted that if the audio was not working that his daughter would narrate. Chairman Martin agreed to allow the videos to be played.

Allison Trimble Papparoa played the videos for the Commission. Below is some discussion and audio heard during the videos.

Video 1 – This is one of the access point to the property off the beach road. This is a road built with gravel from the property. This is an area that has been reclaimed and reseeded. This is the access to the beach portion of the property.

Video 2 – This is the access point to the property at the beach, built with gravel from this property. This is the Kyllonen Homestead, which is being preserved as a historical site by Beachcomber. This is the area at the beach and the beach access. Our family is hoping to build a retirement home. As you can see this property has been well maintained and hydro seeded.

Video 3 – I am now standing on the bed of the six wheeler looking across the third phase. As you can see over in the distance that is my sister's house. Here is the acreage that we use to house our horses. This is in phase two and some in phase three. As you can see this property is very well

maintained. Over in the distance you can see the Kyllonen Drive sign where we have just recently purchased our home. That is our home you can see in the distance. As you can see this is heavily treed. Over in the distance somewhere behind those trees is Danver and the home of the opposition. What you can see is that this property is heavily treed and the areas that are not heavily treed are well maintained as all of Emmitt and Mary's properties are.

Video 4 – I am standing again on the six wheeler bed looking directly at the gravel pit from the corner of Kyllonen and Danver.

Chairman Martin asked for the video to be paused. Commissioner Ecklund wanted to know when saying looking across which direction is that. Ms. Paparoa responded that in this video it is Northwest from the Danver side if in the upper portion. Mr. Trimble helped clarify by saying she was standing at the intersection of Kyllonen and Danver and looking to the West. Commissioner Ecklund wanted to know when she stated she was looking towards her sister's house what direction that was. Ms. Paparoa noted where she was standing on the image up and said she was looking North – Northwest.

Mr. Trimble added directions as the video played. (His comments are italic). Video resumed – This is our property and how it is maintained. Here we see a home of the opposition. (*This is looking south*). This is Kyllonen Drive and in the distance you will see the home we just purchased. Not the cabin right in front of us but behind it in the trees. Paying full price. Below you see the previous existing use gravel pit that Mr. Kyllonen had used to develop much of this area. (*Looking north*). Off in the distance there is the area of the gravel pit that has been active for over a year at this point. You can almost see the rolling berm.

Video 5 – There is the beach road. Here is the area that was reclaimed and done to the standards asked by the Borough and this is the start of the existing gravel pit that has been here for over a year.

Video 6 – There is the entrance to the existing gravel pit. The beach road is down over there somewhere in the distance behind the trees. (*North*). Here is the rolling berm. I am standing on top of the six wheeler bed. I am approximately 9 feet in the air. This is the rolling berm. This is the top of the gravel pit and you can only see the very top of those houses. The work would be going on approximately 25 feet below where I am now standing.

Video 7 – I am parked in the center of the road at Danver and the beach road. You can barely see the entrance to the gravel pit from here. As I come across this is the neighboring property that claims that they would be negatively impacted.

Chairman Martin asked that video 7 be stopped.

Video 8 – This is the backside of my sister's home and property coming onto what would potentially be phase 3. This is where we keep our horses. This gravel pad was made with gravel from this property. There are some of the homes off in the distance that overlook this property. You can see it is heavily vegetated. The amount of alder on those properties is substantial. One of things that has not been discussed is if this property was developed in some other way, for example 27 home sites, the amount of work that would be done over 15 years at 2 homes per year would be substantial and in the end this property would not be reclaimed. This property would have 27 new homes with 27 families and 27 barking dogs, 27 four wheelers, 27 boats, and all of the work that would need to be done to develop those properties.

Mr. Trimble thanked the Commission for their consideration.

Commissioner Ecklund had a few questions for Mr. Trimble. She noted that one of the videos it stated that the road was the beach road. On the permit maps that are in the packet it does not show the beach road. She wanted to know how far his property line is to the beach, from Cook

Inlet and the water. Mr. Trimble responded that from the western boundary of Phase 3 of this permit it will be about 700 feet to the beach line. Commissioner Ecklund wanted to clarify that he meant mean high water. Mr. Trimble said yes.

Commissioner Ecklund noted that on the permit application there was a spot for listing voluntary permit conditions. One thing that the Commission has been asking of past gravel pit applicants or material site applicants was to voluntarily use the white noise backup alarms. She stated it had been discussed but it is not added into the new application, which is the original, if he would be willing to add the white noise backup alarms to his equipment. Mr. Trimble said he would and as long as it is his equipment he can control that. The people that have been hired have had their backup beepers disabled. He has no problem with that condition.

Commissioner Ecklund referred to the map on page 71, Volume 1 of the packet. It shows an existing stripped area, which she thought was all that Mr. Trimble had done at the time he first applied. She wanted to know since receiving the counter permit if the stripped area was bigger. Mr. Trimble wanted to clarify that when he first started, before he considered a conditional land use permit because they were under one acre, he had moved into what appeared to be uplands. He had a delineation done and it is in fact uplands. Mr. Wall pointed out that the area he had built a substantial gravel pad on was so that trucks could get in and turn around on his property. Mr. Wall pointed out that the counter permit required that the applicant stay 100 feet away from the lines on the 100 year flood plain map and the riparian wetlands map, whether or not they are accurate. Mr. Trimble agreed and asked for the coordinates and Mr. Wall provided them. Mr. Trimble said that the one berm was to close and they put down 4 inches of top soil down and reseeded the area.

Commissioner Ecklund said that staff is recommending the Commission deny the waiver for the processing area to be less than 300 feet from the property line. It is marked on the permit map and it is 300 feet from the center of Denver Road. She wanted to know if he would be willing to move the processing area to be within the 300 feet from his property boundary. Mr. Trimble said he had no issue with the waiver being denied. It was something the engineer recommended. It is 200 feet from Mr. Brna's property and he understands the issue. As pointed out in the staff report there are many other areas to the west in Phase 2 and Phase 3 where the need to be 300 feet away is possible. He is willing but the application has not been changed.

Commissioner Whitney said there was indication in the materials received that there were some plans to do rock crushing. He wanted to know if that was indeed a fact. Mr. Trimble said there are no plans to do that now. It is something that would be permissible with the permit. It just needs to have a processing location that meets conditions that he is willing to agree to. Commissioner Whitney asked if it could happen. Mr. Trimble said it could possibly happen but is not planned. Normally in a pit this size if something could happen that a screen or crusher is needed. He does not have a lot experience with it. There will be some people testifying later that can may be answer better than he. He sees maybe two weeks out of the year in a very limited situation. This is not a major industrial pit.

Mr. Wall wanted to ask some questions to clarify some information. He wanted to discuss the rolling or moving berm that was discussed at the last meeting. The way the condition is written in the staff report and in the resolution it would require a 50-foot vegetative buffer with a 12-foot-high berm between the buffer and the excavation site. That would allow the moving berm but it doesn't require it the way it is written. He wanted to know if Mr. Trimble is volunteering a condition to have a rolling, moving berm. Mr. Trimble said absolutely. He feels that it is the best way to minimize any effects of any kind. Have the berm close to the work. This is a small scale operation, the area that has been stripped is a half-acre and that will take a long time. Selling 10,000 or 15,000 yards of gravel a year is monumental for something this size. They had the opportunity to do that but it was taken away. The rolling berm, looking at the LIDAR drawing, they saw it needs to be 50 feet if it is over here but it is not going to be there. It will be next to the area they are working. Then they will be 25 feet below the base of that 12-foot berm.

Commissioner Ecklund said part of the permit process is that the haul route be designated. The permit says the haul route will be Danver St. but from there where will the route go. Mr. Trimble said anyone that is hauling from the site, unless they are going north up Danver to a location, will go south a few hundred feet to the intersection, turn right and go towards the Old Sterling Highway. At this time, they cannot go across the bridge. If going to Homer they will go on the Sterling Highway. That is one of the issues. The opposition caused HilCorp to pull out of a deal he had. Instead of running two miles on the beach road and then the Old Sterling Highway, they had to go 22 miles one way on the beach road, the Old Sterling Highway, the new Sterling Highway, and North Fork Road. He was not sure that it was as safe as the other option. Commissioner Ecklund wanted to clarify that the route would be if going to the Sterling Highway, use the Old Sterling Highway and not the Anchor Point Road. Mr. Trimble agreed. The crowd began making noise and Chairman Martin reminded them that the meeting must be kept in order. Mr. Wall wanted to clarify that Mr. Trimble may have misunderstood. In order to get to the Old Sterling Highway from Danver Street you have to go onto the Anchor Point Road. Mr. Trimble agreed he misunderstand. He said the route would be to turn right off of Danver onto Anchor Point Road to the Old Sterling Highway. Commissioner Ecklund followed up with wanting to know how many miles or feet would the trucks be on Anchor Point Road to get to the Old Sterling Highway. Mr. Trimble responded less than a mile.

3. Paul Morino, Silver King RV Village, Anchor Point

Mr. Morino said he resided in the RV Village which is at the corner of Ann Street and Anchor Point Road. He is one of at least 70 residents that reside on Anchor Point Road within that one mile from Danver Street to the Old Sterling Highway. Silver King RV Village incorporates 88 individual lots with approximately 70 residential owners. Many of them live there throughout the entire summer and into late September and April. He was not able to be at the last meeting. The noise concerns were probably discussed. He wanted to bring up something that the applicant's daughter pointed out regarding 27 four wheelers going up and down the road. One truck going up and down that road equals the noise of 32 cars. That is from a study done in 2000 by the Canadian government. They may not have 27 four wheelers but for each truck going down that road the noise level will be equivalent to 32 cars. One thing he is concerned about is a statement by the applicant, just the facts. There is also the amount of people involved just on the one mile of the Anchor Point Road. He doesn't know how many tourist and tourist dollars are spent on that one mile of road alone with three or four state campgrounds on the other side of Silver King RV Village. If not over a thousand, then it has to be close to a thousand tourists camping and residing there during the entire summer. Again, how big of an issue is the noise in the scheme of things but for anybody that resides right there on that road the trucks and the truck noise is going to be pretty loud. How many trucks are there going to be? The applicant says it is going to be a small operation but what is a small operation, how many trucks will be going up and down the road? His major concern is the amount of traffic on that roadway and the amount of noise on the roadway and what it will do to all the people that visit that area.

Commissioner Ecklund wanted the title of the 2000 study that was referenced. Mr. Morino said there was a US DOT 1995 noise report that stated 1 truck traveling 55 mph equals 28 cars. The speed limit on that road is 25 mph. The other study was a Transit Canada 2000.

4. Judy Aaron, 73691 Ann Ct., Anchor Point

Ms. Aaron she lives in the Silver King RV Park. She was not able to attend any previous meetings. She shares the same concerns about the amount of noise especially when talking about the buffer zones, the noise on the road, the amount of trucks going up and down a very small road.

Commissioner Whitney wanted to know from where she is located in the RV park can she hear any operations that is going on in the current gravel site. Ms. Aaron responded that she didn't think they were really operating right now but she can hear the road traffic. She currently does not see trucks going back and forth for the gravel operation.

5. Linda Bruce, PO Box 39004, Ninilchik

Ms. Bruce have not been in attendance to any previous meetings. They own property in Anchor Point that is practically adjacent to the gravel pit. They bought the property from Emmitt and Mary Trimble a long time ago. She wanted to discuss the videos. She was not sure of the specific point of the video but if it is to show the gravel pit or to demonstrate the pristine and lovely nature of the area it did that. The gravel pit will be right in the middle of that pristine and lovely area. She wanted to touch on the newspaper article that recently came out that talked about the forty-year trust relationship with the people of Anchor Point. Her parents being two, herself and her husband also being some of those people, selling and buying property. Her feeling now is that Mr. Trimble has broken that trust. In the newspaper he talked about the property and the gravel pit being in unincorporated and an unzoned area. She thought that was interesting because that is the very reason that most of the people bought there. They bought there because it is outside the city. It is outside all the craziness that is in Anchorage, Wasilla, Girdwood, or elsewhere. It is outside all of that. It is outside Soldotna and Kenai. They have had an apartment building for years in Kenai and Ninilchik is a lot quieter than Kenai. She understands the unincorporated unzoned area but then to play that card to ask for a permit for a gravel pit in that pristine area is really an insult. At that critical point in Anchor Point it is an insult to all of those that put their trust in Mr. Trimble and then to have a gravel pit in their backyard. He says that in 15 years they will rebuild and they make it all great. Some of the gravel pits, like one in Ninilchik has been going on for 40 years. 15 years is a really aggressive target. She said if she may not live long enough to see that gravel pit reconstituted to something really great. She does not want to wait 15 years to see Anchor Point rebuilt to something really great. She objects to this. Her question to the Commission is if there is a point to public input? Mr. Trimble's attorney said they meet all the conditions and should be granted the permit. So does public input, the letters, does it really have any bearing on this process? She wanted to know if it had any bearing or if they were just wasting their time because the permit is going to be granted because conditions have been met.

6. Mark Claypool, Kenai

Mr. Claypool is the President of the Silver King RV Village Association. He had two things. He addressed Commissioner Whitney's question about the noise. They hear the surf from where they are at. There is no doubt in his mind that they will hear what comes from the gravel pit. Also, if the haul road, meaning Anchor Point River Road, cannot be safe with these trucks running up and down that permission not be granted. He is surprised that Mr. Trimble did not mention the road.

7. Christina Elmaleh, PO Box 542, Anchor Point

Ms. Elmaleh she lives at 34885 Seabury Ct. which is up and above the gravel pit. She wanted to testify to the noise. She quit her job about a year ago to stay home with their two month old and they have a couple of kids. She can hear the noise from the operations of the gravel pit throughout the day. So much so that anytime her dog hears it she freaks out and barks which just added to the noise. They can definitely hear the noise from where they are. It is bit like an amphitheater that magnifies it up to their house. The reason they bought where they did was to be away from gravel pits. They didn't look at anything near a gravel pit at the time to keep that kind of noise away from their two young kids and to be in a safe open area. She wanted to testify that they can hear it from their house and that she is against the gravel pit.

Commissioner Whitney wanted to know how far away she is from the pit. Ms. Elmaleh said it is about a quarter mile.

8. Teresa Jacobson Gregory, PO Box 904, Anchor Point

Ms. Gregory had a poster that was a picture of her neighborhood.



On page 343 of the Packet there is a map with the red area that shows a small portion of this picture and it also shows where the full gravel pit will be. She thanked the Commission for serving and being members of the Planning Commission for each of the communities in the Kenai Peninsula Borough. Also, for being willing and already willing to deny this conditional use permit and hearing everyone again after the appeal. She questions the fact that a conditional land use permit was denied and then the Director and Planner approved the 2 ½

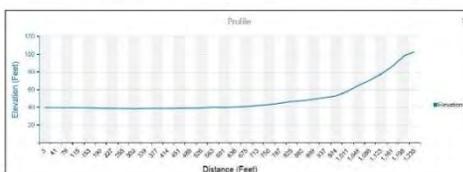
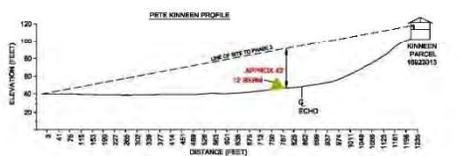
acre over the counter gravel permit for Beachcomber LLC immediately after the denial and it does not require public comment. At the March 25, 2019 Planning Commission meeting Mary Trimble stated "The staff is recommending approval. The Planning Director, Bruce, and the Borough Attorney have all visited the site and saw no issue with our plan. The Borough Attorney has in her briefs interpreted the code and stated case law to back up her position that the permit should be granted. These are professional, educated people who represent the borough interest who interpret and enforce the code." In another letter addressed to the Planning Commission for this meeting from Allison Trimble, their daughter, "When the Planning Commission denied the application last year you did so against the recommendation of the staff and in direct violation of your duties." She looked up the Planning Commission administration codes. KPB 2.4.005 (2.40.050) and 2.4.007 (2.40.070), as Planning Commissioners you have investigation and recommendation authority. Also, the Commission can approve or reject and have that authority. So when they tell the Commission that they do not have any rights according to these borough codes that is not so. She knows they can only act on certain codes. In the borough there is minimizing off site dust movement. If someone looks at her car right now they will see it is yellow from Anchor Point. Minimize noise disturbance to other properties, minimize visual impacts and the first one is protect against physical damage. She believes there will be physical damage to their property as far as value. The definition of minimize is to reduce something, especially something unwanted or unpleasant, to the smallest possible amount or degree. The codes are set up as guidelines of all of the Kenai Peninsula Borough residents. She lives about 100 feet above the area for the conditional land permit and there is no way it is possible to minimize the noise disturbance. She called and invited Mr. Wall to sit on her deck and listen when operations first started back in August after the 2 ½ acre permit was received but she mainly wanted him to hear the quiet. The sounds of the ocean and then the racket of the cats and trucks moving dirt. He did not come. She invited any of the Commissioners to come to her deck and listen. She hopes that they have seen the area for themselves. In the picture there is no gravel pit. She quoted from Mary Trimble's statement on March 25, 2019 at the Planning Commission meeting "Emmitt and I believe in rights and responsibilities. This is a situation where we are agreeing to take on responsibilities in exchange for the right to excavate gravel on our property. The opposition says quote "Has the right to protect their property but unwilling to accept the fact that they have responsibility to do what they can to minimize visual and noise. If it is bothersome by building a fence or berm on their property or installing blinds that rise up from the bottom so that they will still have an inlet view. They do not have right to our land so we should not bear all the responsibility for mitigating their perceived discomfort." Mary and Emmitt do not live on that property. They live 5 miles north from this property. It has been said many times that this is their legacy property which no body lives on the land right now. They bought it three and half years ago. Us residents live on our properties and it is truly our legacy that we moved there. They bought there and there were no gravel pits. This gravel pit is located in their neighborhood which is beautiful and pristine. Right on the end of Danver Road, where the dump trucks will exit, it takes 29 seconds to get to the first campground on the left of Anchor Point Road and today she saw a tent from her to the Commissioners. She and her husband have lived there for 23 years and during that time they have meet people from all over the world on

the Anchor River and the Anchor Point Beach. Finland, Sweden, Germany, China, Japan and many others and Alaskans and people from the lower 48. She asked that they please don't let their names go on record that they approved this conditional land use permit and it stays with this property and will not go away.

9. Pete Kinneen, 34969 Danver St., Anchor Point

Mr. Kinneen agrees with the speaker before him. This whole thing is a head on collision. He wanted to define it quickly, the tension is between the interpretation of the existing law. The ordinance is very clear and there has been a lot of effort to mesmerize the Commission into believing that the laws, that the ordinance, says something that it doesn't. The Planning Commission is the higher authority, and is the judge and jury not the department. They are here to support the Commission not to impose. The default position, this is extremely important and almost nothing else really matters everything else is the details, but the clear legal default position here is denial. There is a lot of silliness and nonsense about land owners having rights to extract gravel. That is absolutely not true. Land owners have rights to do certain things. They have rights to do everything that is not excluded. A land owner, including this land owner, could put in an automotive junk yard, raise pigs, there are all kinds of different things they can do. Under the Borough ordinance, living outside a zoned area is not living in the old west. It is not living in an unrestricted area. The whole reason the Commission is here for the conditional land use permit is the people voting through the Assembly tell the Commission that there are certain things that are not a right but are a privilege if certain conditions are met and the Commission agrees that the conditions meet the standards. Then a permit is authorized to be granted. It is not a default position. The exclusion anywhere in the borough, including in the zoned or out zoned areas, is it is not a right to extract gravel. A person must come in and go through this process. The Commission is charged with looking at the very clear standards, written in plain English, that start with the intent. The intent is to protect the existing neighborhood and if the applicant can meet certain conditions to meet those standards then the Commission is authorized to possibly grant the permit. Otherwise, default position is denial. That is where we are right now. The standards cannot be met on this particular site for all the reasons that have been given because of the topography and the unique geography. The Commission knows that this is not the right place for a gravel mining operation and has been quoted as saying

that. There has been a lot of confusion about the Commission having to approve this because, as the first speaker said, the application has been made and the boxes have been checked. They have been checked but they do not meet the conditions. They cannot meet the conditions under the borough ordinance and the definitions of the conditions. There is some great information tonight using the Borough's own technology which will demonstrate that this application cannot meet the conditions or the standards. It must be denied. The first attorney that spoke tonight made a bad conclusion, it is a misstatement of the law, read it.



Commissioner Carluccio wanted to know if the graph being displayed was part of his speech. Mr. Kinneen said that it shows when he wakes up in the morning and looks out his bedroom window. The graphic shows a 12-foot berm and he is 70 feet above it and will look right over it as if it isn't there. This is the amphitheater effect. This is the equivalent of living in a 7, 8, 10, or 12 story building and there is something going on downstairs. A berm cannot be put up. Under the regulations the berm would have to be 43 feet tall to meet the conditions and standards. If they want to build that then the Commission can authorize it but a 6, 12 or 14-foot berm does not do anything at all. Commissioner Carluccio noted that Mr. Trimble stated that from where it is now it is going to go down potentially another 25 foot. She wanted to know

what difference that made to the graph. Mr. Kinneen said it would not make any difference. Commissioner Carluccio asked if it drops down 25 feet. Mr. Kinneen said to imagine he is in a 7th floor apartment and just a few hundred feet out he will be watching him dig down for over 15 years. Digging down from that elevation to 25 feet deeper, the noise will be horrendous and also the dust. In the pictures shown Mr. Trimble hasn't vegetated anything, hasn't thrown down any grass seeds and every time the wind blows it blows the dust off of that up into the hills and into his and everyone else's houses. Commissioner Carluccio wanted to know how far he is from the gravel pit. Mr. Kinneen said he is across the street on Danver, so how ever wide the road is. Commissioner Carluccio asked if he was 30 or 50 feet. Mr. Kinneen agreed about 50 feet.

Commissioner Foster said he did not want to be disrespectful but if he wanted an unobstructed view of the ocean the only way to get that was to buy it right on the bank. It was mentioned by Mr. Kinneen or somebody else that there is no zoning against a junk yard or car lot. That instead of a gravel pit acres of pigs could be brought in. There is going to be a smell, there will be nothing good to look at but there is nothing that can be done. Here there are some little bits of things that the Commission can try to do. He asked that everyone be aware that the Commission is trying to do everything they can but there is not much that can be done with this grand view. Mr. Kinneen responded that the discussion is not about the grand view. The ordinance is clear that it is not about the grand view or taking someone's view or their view shed. The ordinance speaks entirely to shielding from seeing the actual operation. That is what the fence is about. At a junk yard they put up a fence. The only view consideration is to shield neighbors from the ugliness of this open pit mine. This has nothing to do with the rest of the view which is there. Addressing valid concerns, the owner could put in a pig farm and he is not so why not just take the gravel. He is not cutting off my left arm so it is okay to cut off my right arm.

Mr. Wall wanted to clarify Mr. Kinneen's location to the pit. He asked him how many lots are between his residence and the proposed gravel pit. Mr. Kinneen answered a single lot.

Commissioner Whitney wanted to know who prepared the diagram. Mr. Kinneen responded that Mr. Whitmore who has experience in dealing with this. This is the Borough's technology. They have taken the information right from the borough. It demonstrates that this mine cannot be permitted under the existing law. It is very clear.

10. Lynn Whitmore

Mr. Whitmore explained the graphs. This utilizes the Borough's GIS LIDAR. There will be more to show throughout the night. He gave some history. He worked with Chris Clough when the GIS first started. He has worked with the Borough's GIS system for many years in the professional engineering business. He demonstrated how he obtained and used the information. Going into the Borough's information a transect is ran from a starting location to a certain point. After clicking a button, a side elevation view is shown of that area. Mr. Whitmore then converted that elevation view into AutoCAD where he then put it to scale. He could then measure things and put it in the proper perspective. Each house floor is about 10 feet in height. Everything should be pretty much to scale. He is able to demonstrate the moving berm. To be fair he offered the applicant the option to use this to demonstrate his plans and to be able to move berms around as well.

Chairman Martin wanted to know if that was Mr. Whitmore's presentation and if he was planning on staying to help support other testifiers. Mr. Whitmore said that it was not his presentation but just an explanation of what was being shown.

11. Allison Trimble Paparoa, 3020 Upland Way, Ferndale, WA

Ms. Paparoa recently purchased a home on Kyllonen Drive. She is a multiple decade property owner within the borough. She wanted to speak on a few things she believes she is qualified to speak to and that more is in her letter in the packet. First, on June 1st they opened up the property to the entire public to be there to ask questions, to look at the site, to talk to the family and have a good BBQ. Three people from the opposition took advantage of that. None of those three people are in the room. Of the three parties, two have since changed their position after being there and

the third didn't really have a strong position. What she wants to read is from a letter submitted by Lee and Mark Yale. It says "My wife, Lee and I would like to withdraw our objections to the proposed gravel pit which includes all oral and written correspondence. Per our conversations we are satisfied that the KPB will protect our interests as tax paying property owners. We also have had several conversations with Mr. and Mrs. Trimble and took advantage of the Trimble's hospitality of the open house on June 1st. The current berm on the 2 ½ acre displays the type of berm in use and cannot see the surrounding homes out of the pit as it is now. Our only other concern was the reclamation of the property as this could affect surrounding property values. Upon our tour of the property Mr. Trimble showed us where he has reseeded and reclaimed an area which was done very well. We also realize to not reclaim this property upon termination of mining activity would be a mistake as the property would not have the value as it is in a pristine location." She wanted to extend a thank you to those that did show up with an open mind, asked questions, and were there in the spirit of compromise because that was the intent. They rolled open the doors and invited everyone to come. She thinks that everyone that came felt well received.

She owns a real estate brokerage in Washington state. She is the President elect of the Whatcom County Association of Realtors and her job is to deal with land use and loss of private property rights. At her brokerage she works largely on rural areas, outside of the city limits, trying to help property owners navigate the mounting regulations in order to utilize their properties even for residential purposes. What they love about Alaska is the ability to live and let live and actually own the property and the bundles of rights attached and intact. This is a slippery slope with the next step being Borough wide zoning with restrictions on all properties including residential. One of the scare tactics that has been brought up is that there will be a devaluation of property values around the gravel pit. The Borough Assessor claims that they do not devalue properties or change the assessments based on property being located near a gravel pit. Further practical use shows that there have been two sales recently at full asking price in the area and there is third one that is pending. She called and spoke to the listing agent and asked if he believed there was any impact on his sale from the adjoining properties. He asked if she had the property that has the old conex butted up against it. She told him no the gravel pit down below and he said it was never mentioned and did not seem to have an effect on the sale and it was a solid sale price. A letter was also provided from Marjolein Cardon, a realtor at the Kachemak Group, stating that she was solicited by a complainant to get a CMA on their property because they were intending to sell it. They lead her to believe that she would be listing the property but on her arrival they only talked about the gravel pit, twisting it to fit the narrative and did not list the property. She referred to their tactic as panic peddling and shared her experience with property values next to gravel pits. She just wanted to state that there is no truth to the fact that it will devalue the properties. As property owners themselves that would be the last thing they would try to do in that area. They have not made a living as gravel pit owners. They made it as property owners. It was pointed out very clearly that they have sold a lot of the properties in this area, are very proud of it, and have done a good job of being good stewards of the land. She struggled with what to say because it is really easy to get caught up in trying to respond to the inaccuracies, misinformation, and defamation from the opposition. What it comes down to is that the Commission's duty and charge is to deal with what is set forth in the CLUP. The superseding code to be met is set forth in this Ordinance. In all three recommendations from staff, her parents have voluntarily met or exceeded the required standards. The Planning Commission is a thankless and difficult position especially faced with these sort of antics however, what the Commission is charged with is to follow the code and ordinances that are set for everyone through legislation. In this situation it is simple. The conditions have been met and the permit must be issued. It is also time that this decision is made to stop unnecessary use of tax payer's dollars and to end the damages being done to the applicant.

Commissioner Whitney wanted to know about Yale's property and what level their property is to the gravel pit. Ms. Paparao said they are on the same level and would be bordering Phase 3. They would have direct impact from Phase 3. Commissioner Whitney asked that since they are on the same level they would just be looking at the berm. Ms. Paparao said yes since they adjoin.

12. Gary Sheridan, 34860 Seabury Ct., Anchor Point

Mr. Sheridan he is a secondary, a lot away from the view down into the gravel pit. There has been a lot of back and forth about statement of fact. He would like to provide some statement of fact that can be looked at. Earlier he had a packet handed out of photos that show the Anchor River Road. Some of those photos are in the other packets but he wanted to submit all the photos he took. The Anchor River Road, which is proposed by the gravel pit owner to be part of the haul route, is in terrible condition. In a letter to Bruce Wall, KPB Planning Department dated March 21, 2019 from the State of Alaska Department of Transportation, Joselyn Biloan, Area Planner, stated Anchor River Road is in extremely poor condition and additional heavy truck travel will only hasten further deterioration. That letter is in the packet. The Beachcomber LLC gravel pit application states that they plan to haul 50,000 cubic yards of gravel each year for 15 years from the proposed pit on Danver Road. The only access to other destinations from Danver Road is the Anchor River Road. If estimating the pit operations have a 5-month season, moving 50,000 cubic yards of gravel would equal approximately 5,000 cubic yards per day assuming a 100-day season. Gravel truck will carry in excess of 10 cubic yards per load which means the pit operation under the proposed gravel pit application will haul about 50 gravel truck loads on the Anchor River Road per day. In addition, there would be 50 empty trucks returning. That is a lot of gravel trucks. Gary (?), a long time highway construction contractor in Anchorage has stated that the present condition of the Anchor River Road simply will not hold up to this kind of heavy gravel truck traffic. In a recent public hearing at a Material Site Work Group meeting the owner of the proposed gravel pit stated that they decided to limit their annual production to 10,000 cubic yards per season. This is rather curious as their gravel pit application states that they plan to haul up to 50,000 cubic yards. 10,000 cubic yards of gravel being hauled over the Anchor River Road means that 10 heavily loaded gravel trucks will travel the Anchor River Road one way each day and return empty for a total of 20 gravel truck trips per day. He spoke with Mr. (?) about the lesser hauling and he stated that even 20 gravel trucks per day will seriously further damage the Anchor River Road. It has been stated in written testimony by Mary Trimble that Beachcomber LLC in a letter dated May 31, 2019, "The Anchor River Road is not in horrible condition any more than most paved roads in our local area, Homer or the road to Anchorage." He asked if the pictures he submitted look anything like the road from here to Anchorage. He took 95 photos of the Anchor River Road, documenting its present condition. He found serious deterioration the complete length of the road. Pavement slumping along the sides of the road is evident nearly the whole length. The slumping in the worst case is about 6 inches deep by about 2 feet wide. Concrete slumping is a result of heavy traffic causing the road bed to depress below the concrete. Concrete is broken in many locations. Significant cracking is noted throughout the roadway which will further deteriorate with increased heavy truck traffic. Further in the letter from DOT to Bruce Wall, March 21, 2019 it states "We request the Kenai Peninsula Borough item 4 require pavement repair on the Anchor River Road by the Kenai Peninsula Borough in the event truck hauling creates obvious pit holes, rutting or pavement damage." The fact that DOT will hold the Kenai Peninsula Borough responsible for any damage to the Anchor River Road is a sobering fact. They consulted with a highway construction owner that estimates the rebuilding of the Anchor River Road could cost KPB between \$175,000 to \$300,000. As a side the Department of Transportation recently did some ditching along the sides of the Anchor River Road and ended up with a shoulder from 12 to 15 inches wide so those people concerned about safety have serious reasons to be concerned.

13. Richard Carlton, 73500 Seabury Road, Anchor Point

Mr. Carlton wanted to speak for his wife who was unable to attend. The road Gary was talking about is 1.2 miles. There are 5 campgrounds, 212 campsites in there and that is not including the Silver King RV Resort on the side of the hill. The density of people in that area can really be high especially around holidays. That little 12 to 15 inches on the side is truly a hazard because a lot of people use it to walk and get to the beach. Gravel is something we need. We need gravel. The ground around Anchor Point, his area, is up on the hill and things move around. It is like a peat, mud. It is just now drying out to where people can do things. Last July the Planning Department presented the Commission an application that was grossly incomplete due to buffers and berms and were designed using only subjective guess work. The Commission correctly denied the application. Tonight is a replay of that submission because the application again indicates berms that are totally subjective, arbitrary, and unable to provide the protections that are mandatory

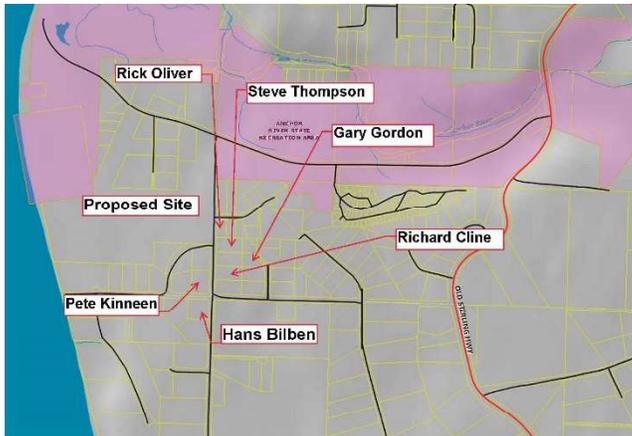
conditions and standards spelled out in the KPB code. By using the KPB GIS technology they have produced substantial evidence to prove that once again the Commission is being pressured by staff to approve an incomplete application. Staff seems to be of the opinion that the obvious be ignored. The large percentage of neighboring property owners will have little or no screening from the noise and visual impact but vote to approve the permit. The Commission's function is to act as the judge in this case and insure that meager protections afforded the residents in the Kenai Peninsula are guarded and upheld. (He attempted to play a recording but it did not play.) He stated it was Mr. Trimble talking about what was previously stated in print. That it is really up to the people that live around there to protect themselves from the offensive things they find about a gravel pit. That includes building a fence, or buying nice blinds that come up from the bottom to block out the gravel pit and still see the view.

14. Todd Barman, 73300 Tryagain Ave., Anchor Point

Mr. Barman referred to page 79 and 80 in Volume 1 of the packet, under findings of fact number 15. It is about buffer zones and he had questions. The following items mentioned the word adjacent, letters B., C., D., E., H., I., and Q. He wanted to know why the code would require that all property owners within ½ mile of a proposed material site be notified when the findings of fact written by the Planning Department make it appear that only adjacent property owners will be afforded any of the mandatory protections. The only reference to adjacent in KPB 21.29.040 is the protection against physical damage to adjacent properties. He wanted to know if it was the intent of the application to only provide visual and noise protections to adjacent properties when the code in 21.29.040 and the six standards specifically say other properties. These findings of fact seem to indicate that the Planning Department has taken it upon themselves to change the code and ignore the other property owners. In this neighborhood there are many other properties that will be severely impacted if buffers and berms are not of sufficient height and density to provide visual and noise screening as required in KPB 21.29.050. Letter Q. in the same section states that each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the material site, the distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site. He wanted to know where it says in the code that only some of the neighboring properties need to be protected by buffers and berms of sufficient height and density. The applicant has publically declared that neighbors that do not like what they see and hear coming from his mine should be utilizing window shades, hearing protection and fences. He wanted to know who makes the decision as to who gets sufficient visual and noise screening as is required in the code and who gets to pull their shades and wear earplugs in their own homes for the next 15 years. Everything that is spelled out in fact Q. is the exact reason that this particular material site application needs to be denied. If mandatory conditions cannot be met then the Commission is required in KPB 21.25.050 to deny the permit, not just disregard the obvious deficiencies in this application and allow an industrial gravel mine of this magnitude in the center of a residential and recreational neighborhood. Vacation time is precious to everyone. He asked if you were camping and at any time of the day had to listen to gravel being processed whether it be screening, crushing or loading trucks, would you ever come back to that campground or RV park? There are 100 campsites, 100 RV sites within ear shot of this proposed site. Not trying to take away potential income from one man but trying to save a recreation area that thousands of people use. Unfortunately, this doesn't seem to matter.

15. Ryan Muzzarelli, PO Box 170, Anchor Point

Mr. Muzzarelli lives on Kyllonen Drive, behind Rick Oliver. He then referenced the map on the display.



He wanted to testify in favor of private property rights and his neighbor's rights to make a living. He has spoken to the Trimble's on multiple occasions and they are incredibly proud of their property. He is confident that they will not only maintain the property but provide a lot of value to the community.

16. Ed Martin III, 37200 Thomas St., Sterling

Mr. Martin is the President of the Kenai Peninsula Aggregate and Contractors Association. It is comprised of almost 60 professional contractors all doing business in the KPBA. Over the past year they have been involved and scrutinizing the material site regulations for the Borough. He personally has put in hundreds of man hours in researching all the facets that make up the current code. Tonight he would like to speak about one in particular, which is the view. View shed, the regulation of and the right pertaining to it, are commonly misunderstood. Also, commonly thought of as an entitlement. A good part of his weeks of research was dedicated to just this debate. What he found was probably not what many people want to hear but it is fact. There are only three ways a right of a view can be regulated, taken from or given to an individual across this nation. One, the federal government holds view shed rights for our national parks. Two, some cities and first class governments regulate view shed of large areas by way of zoning, including all lots or parcels within that area. Finally, view shed rights may be given from one entity to another by way of purchase or contract. There is not precedence of regulation on an individual parcel of land. None of these options can apply to our second class borough. He has in his possession a copy of the OLR report, which was provided to the Commission. After hours of research it is the most complete explanation of the precedence of these rights. He would like for all of the Commission to read it. Also, as this issue goes beyond what is in front of them today he would encourage them to not take his word for it but do their own research. He asks that they rule in favor of the applicant tonight as the vast majority of the opposition is opposed to the application because they just don't want to see it. He has heard hours of their testimony stating that sentiment. It doesn't change the fact that they just don't have the right to the view over their neighbor's property. It also doesn't change the fact that our current governing body can grant that right. He is encouraged the KPBA Planning Commission and Assembly to strike any language of view, visual impact, or view shed from their current and future ordinances.

17. Vicky Hodnick, 35031 Moffit Lane.

Ms. Hodnick let the Commission know that she appreciates them being there and allowing them to present. She takes exception to Mr. Martin's remarks. She has been a resident on the Peninsula for 30 years and she was assessed on her view property down in Homer. The majority of the people, other than the visitors that come during the summer to camp and fish, are senior citizens. This is their final home. Something that is kind of disturbing is that they will spend their final retirement years being entertained by Caterpillars and gravel trucks and all the other things involved. They cannot send the grandkids out to ride their bike during the time they are visiting. They believe that the Commission delivered the correct conclusion on July 16, 2018. Although it was remanded back to for adequate findings of fact they feel the same evidence prevails today. They are here to remind the Commission that they love their homes and community. There are many legitimate reasons to deny this permit which are not presently covered in the code. Some of these things should be covered in the code because there are very few things they can find that actual protect them as law abiding citizens of the Borough. Kenai Peninsula Code 21.29.040 states

the standard for the material sites. These material site regulations are intended to protect against aquifer disturbances, road damage, physical damage to adjacent properties, dust, noise and visual impact. Only the conditions set forth in the code 21.29.050 may be used or imposed to meet the standards. However, the prelude to these standards is clarified which is to protect the existing surrounding land uses against the negative impact of material site operations. A standard is added for providing consistency with the Borough Comprehensive Plan which they have heard nothing about. In other planning documents as land use regulations are required by the Alaska State Law to be consistent with the Borough Comprehensive Plan. A simple rule of thumb would be if there is a house don't start a gravel pit, if there is a gravel pit don't build a house. Most of them in their neighborhood spent the last winter going to the material site meetings as they were developing new restrictions and regulations for gravel mining. There was a gentleman that came from the valley and said just because there is gravel it doesn't mean it has to be dug. She thinks just because there is a history in the community of a former gravel pit does not mean that everyone is entitled to have a gravel pit thereafter. Things change, communities change and when families move in and create settlements even in a rural residential area she thinks it needs to be considered. This community hosts 5 state campgrounds, 3 private campgrounds, 70 or 80 units in a summer residential park, and 50 to 60 permanent private homes close to the proposed site. A tractor launch and a road that has been determined as tsunami exit route. There are moose, fish, nesting eagles, a rickety bridge, and a narrow road. DNR recognizes that this site hosts archeological and historic artifacts and cemeteries. The proposed mine site has established homes located on three sides of it and on the fourth side is Cook Inlet itself. A 15 year permit for this gravel pit will drop property values and disrupt the quality life for hundreds if not thousands of people due to noise, dust, traffic issues and visual blithe. The impact of the health of the Anchor River is potentially devastating and could damage the fish population in the future. Please note that none of these concerns are really noted in the code. The mandate to the Planning Commission as spelled out in the Kenai Peninsula Code 21.25.050 is to approve, deny or modify the application. Approval is only allowed when the minimum requirements of the code are met. Anything short of that would allow the Commission to modify the application to a state to meet the requirements or to deny the application for the fact it would be considered an incomplete application. In July of last year this Commission rightly denied an obvious incomplete application and failed design of a buffer zone that complied with conditions that are set forth in code 21.29.050. As a result, it failed to meet the mandatory standards of 21.29.040. Tonight the neighboring property owners are here to prove once again that the arbitrary numbers to design the buffer zones in this application are totally inadequate resulting in this application being declared incomplete and therefore should be denied once again.

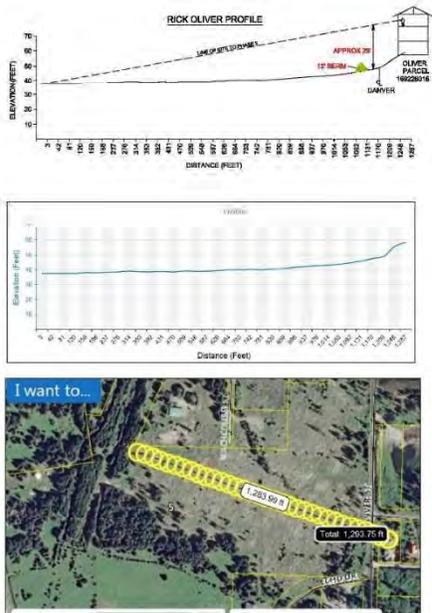
Commissioner Fikes said Ms. Hodnik stated her view was assessed by the borough. She wanted to know how many lots away from the property she was. Ms. Hodnik said they are on four acres now but when she was in Homer she had 30 acres. Commissioner Fikes asked if it was waterfront view. Ms. Hodnik said it was. Commissioner Fikes asked if what she was referencing was waterfront view. Ms. Hodnik said yes. Commissioner Fikes followed by asking how many lots are between her property and the proposed pit. Ms. Hodnik said they are about 1,000 feet away and on the same level.

Commissioner Ecklund noted that she mentioned the archeological site and cemetery possibility which had been heard in prior testimony. She wanted to know if anyone was contacted to look into that, research and determine if it is so. Ms. Hodnick said she has and it is recorded and most of the people thought she was looking for some kind of grant in order to save that particular site. She told them it was on private property and the response from the State and National level is a little interesting. Going back to thinking about what we want to keep and the history we want to maintain in the state itself these are important things to think about before being dug up and become part of a gravel pit.

18. Rick Oliver, 34880 Danver St., Anchor Point

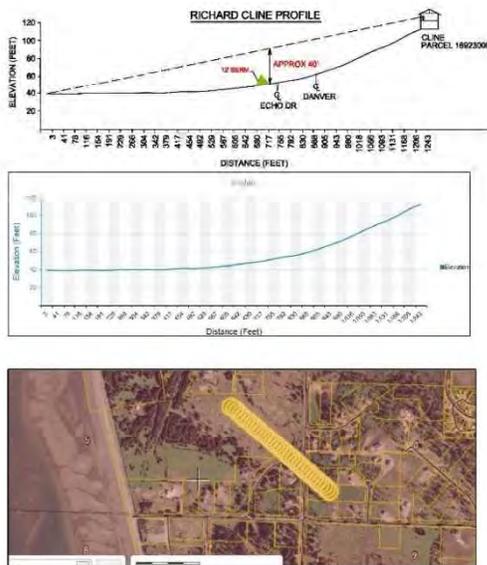
Mr. Oliver stated that they have spoken many times as to who can see what from where, what the setbacks should and could be, and how high the berms need to be. This has been considered a

subjective subject and no one other than Mr. Wall has come to look. It appears the borough's idea of minimizing the view, dust and noise is a random tree here and there. What they wanted to show is hard evidence from the data provided by the Borough's own technology. They have several profiles, one of which is from his house. All the other profiles and most of the affected neighboring properties are at a much higher elevation than his. They have a visual presentation to show the Commission profile from the effected home sites to areas within the proposed mining site. This will also help to dispel the effectiveness of the ludicrous moving berms as site levels can be shown from all appropriate angles. Hopefully this can minimize the subjectivity and provide clear and indisputable evidence showing this application can never meet all the borough standards. Speaking on the presentation by Mr. Trimble. it amazes him to think that this lovely property beautifully maintained, Mr. Trimble has done a fantastic job at presenting all of the lovely trees but where are all these lovely trees going to go when they start mining gravel. He is going to be 25 feet below a berm. Where does the 25-foot hole come from?

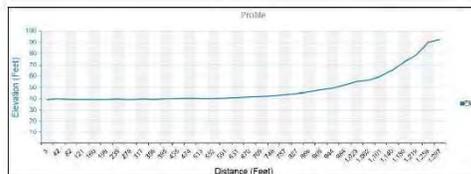
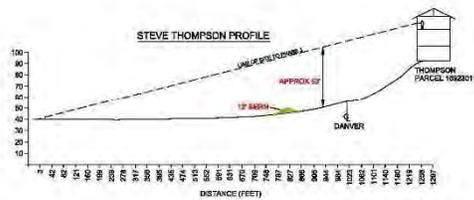


19. Richard Cline, 34926 Danver, Anchor Point

Mr. Cline thanked the Commission for their time and service. Their time and effort is appreciated. He likes to learn something every day and today he learned that putting a gravel pit in a neighborhood does not decrease property values. They directly overlook the material site even though not adjacent. When Todd brought up adjacent versus the other it is a very meaningful thing to him. They will always be able to see Mt. Redoubt and Mt. Iliamna which is the view shed, but their view will have a negative visual impact, which is the wording of the code. Negative visual impact not the view shed. We don't have to worry about the National Parks interfering with anything they are going to do. He has some questions and they are hypothetical. Why does everybody in the borough that he has talked to, in the Planning Department and elsewhere, say the permit is going to be granted? That was from day one when he got notified last year that this is in the works. He called to know more about this and they said it doesn't matter what you think, what you do, how much money, time or effort you put into it just take it for granted that it will be approved. Why is that an automatic thing? Which leads to something that is curious to him and they may want to think about. If that is true, why does the Borough, the Commission, the Assembly allow them to waste their time, effort and money in this process at all? He thinks they are just opening themselves up to a liability in that regards. They have put a lot of time, money and effort into this. He again asked if this would make them susceptible to some kind of liability. No one denies the need for gravel. That has been heard from everybody, the gravel guys of course and them as well. They know what it has built they just deny that it has to come from the middle of their well established and ecologically fragile neighborhood. Referring to the presentation he noted that with Lynn's help the Commission can see from his deck, he knows that Emmitt and Mary are very familiar with this because his security cameras caught them on his deck taking movies and making snide comments when they were not there. They can see over the top of the berm. They would basically need a 43-foot berm to conceal and minimize



the visual impact of just one portion of the pit. While he is not an earth mover he is pretty sure a 43-foot berm in an unworkable berm. He likes the idea of a 43-foot berm on the far end with a 25-foot hole behind it and be able to watch as they move it towards his house in the rolling berm deal. Another problem with the topography of this location is that the entire area acts like a megaphone.



Everything blasts up the hills. Steve needs a 53-foot berm because he is a little bit closer. That is just some of the houses that are up the hill from the site. This is the Borough's technology. This is not smoking mirrors. This is math. His cabin sits a bit higher than Rick's. Rick is right across the street from it. The argument that there is no way a berm could ever work is not true. They can build a berm high enough; it is physically possible it is just unrealistic. If the Commission wants to put the limitations or some type of modification to the requirements of the mandatory conditions, then say a 43 foot or 53-foot berm is wanted. Would that satisfy him, no obviously, but if it keeps the pit from being built then it would satisfy him. Just saying no berm will ever do it is not really true but it is true in reality. The permit submitted is flawed, it is incomplete at the least and is truly unacceptable on its own. They respectfully ask the Commission to act on behalf of not only the small group facing the total destruction of their neighborhood but the countless other citizens of the borough that could soon see the same thing in their front yard. He asked that they deny this permit on the grounds that the true findings of fact supported by overwhelming substantial evidence shows that the mandatory standards will not be satisfied in the permit's

application.

20. Charity Jacobson, 72150 Griner Ave., Anchor Point

Ms. Jacobson is about 3 miles from the proposed gravel pit. It may not be to relevant but they can hear a rock crusher that is 7 miles away from on the other side off North Fork Road. If this proposed pit goes in they will be right between and it will be twice as loud. Also, in the ordinances for a gravel pit it is not a one size fits all for each area and location and this should be looked into as far as residential areas, recreational areas, or state land. If this was out in the middle of nowhere it would not apply to some of these regulations. Also, it has been stated that a gravel pit does not have any physical damage on the adjacent properties. She asked if any of them would knowingly purchase a retirement home with an active gravel pit between 100 to 1000 feet away for the next foreseeable future.

21. Jim Reid, 73820 Seaward Ave., Anchor Point

Mr. Reid had a few questions. What is a natural berm, what does it consist of? What is the definition of a natural berm? Mr. Wall was not sure exactly what he was looking for. The code does not discuss a natural berm. Mr. Reid said there are a bunch of logs and debris from a lot clearing stacked up about 15 to 20 feet along Denver. He wanted to know if a natural berm consists of live trees growing if so they could all go home because it will be 30 years before he gets 25 foot trees. Mr. Wall said the code requires earthen berm with a 2:1 slope. Mr. Reid asked if that is a bunch of logs and debris that gets covered over with dirt. Chairman Martin said it is an earthen berm not a natural berm. Mr. Reid said he was told it was a natural berm. He asked if it is an earthen berm does it have to be dirt and not a bunch of logs and stuff stacked with dirt over it. Chairman Martin said it is within reason. They will not limit it to every last piece of wood. Mr. Reid knows we have to have rock and gravel but he doesn't understand the part when you bring the gravel in. They have a gravel pit within 2 miles of their house on Old Seaward (should be Sterling) but he didn't move next to gravel pit. If someone moves next to a gravel pit or airport don't cry, but when a whole

residential area is there and the pit moves next to you that is a different situation. All gravel pits cannot be under the same rules they are all different. Go where nobody cares because there are no houses or people. Here is a situation that all these people live and use this area and now a gravel pit is moving in.

22. Roger McCampbell, 73450 Seabury Road, Anchor Point

Mr. McCampbell played audio of birds chirping. About a year ago he bought his piece of property, after looking all over Homer and he could have bought anywhere he wanted in this state. He lived in Homer for 31 years and he has loved the Anchor River valley since he moved to the area. He spent the night on his front porch for the peace and quiet on Memorial Day weekend knowing that would be the weekend of the most noise and disturbance. The reason he knows that is he was a district supervisor park ranger for the Southern Kenai Peninsula for 31 years and knows the area very well. He knows Emmitt very well and has a great deal of respect for him and his family but this is the wrong gravel pit in the wrong place. He does not see it from his place. He lives 4/10 of a mile away from it. He can hear the waves breaking on the ocean at night or in the morning when it is peaceful and quiet. He likes his peace and quiet and that is why he moved there. He retired 5 years ago. It is not about the scene. He doesn't see it but does drive by it. He doesn't particularly like to look at gravel pits and he doesn't know who does unless they turn into giant swimming and fishing holes later. He owns a lot of heavy equipment himself and runs a cattle ranch in Northern California. People say don't Californicate Alaska and that is exactly what is being done. His neighboring ranch has a rock crusher and he can hear it when sitting around his campfire and it is 15 miles away. He can hear the rocks and gravel trucks. He owns two gravel trucks and a couple of bulldozers. He is not opposed and doesn't think anyone is opposed to gravel pits. He was looking at several lots around him to buy and develop for rental units. He has been in the business long enough to know that when people come and stay in an Air BNB they want peace and quiet. Most of those campgrounds, Halibut and Slidehole, were developed for family camping. Memorial Day weekend is crazy. After that it calms down. There is always a someone on a dirt bike with a muffler off or a 4 wheeler. The Anchor Point Beach Road is an ominous road. It is state park land at the edge of the pavement. State Parks allowed DOT to dig out those culverts this year because of drainage issues and the saturation underneath the road was causing it to buckle even more. If anyone is thinking they have an excuse to widen that road and make it safer they will have to battle with DNR and State Parks because that easement is pavement to pavement. It is not an extended easement off that. Since Todd was permitted years ago and long before him when they permitted the tractor launch operation, it increased the visitation on the beach area. A lot more charters and they are not little charter boats, they are a wide load. Trying to pass on that road, trying to have kids ride their bikes, walk up and down that road, it would be nice to get the pedestrian and bike path the Anchor Point community has been fighting for. His point is he doesn't want to hear it. There is more to visual but he doesn't care about views. He owns view property and he never looks at it because he is busy. Referring to the Resolution, item 15. and E. says these parcels are less impacted by the material site then the adjacent to the site as sound dissipates over distance. He is 4/10 of a mile not 15 miles. If he can hear waves breaking and seagulls down on the beach. The Old Sterling is behind him so he will hear the gravel trucks going up and down the Beach Road and then behind him on the Old Sterling. It is a noise issue for him.

23. Larry Smith, 320 Artifact St., Soldotna

Mr. Smith noted that Mr. McCampbell mentioned the Slidehole campground. He constructed the campground in 1992 back before the Anchor Point Road, was paved. It was a narrow, nasty little gravel road back then. They bought their gravel from Mr. Kyllonen at the gravel pit at the top of the hill. They constructed the campground and they didn't hear a lot of opposition back then about the gravel trucks traveling down the Anchor Point Road or Anchor Beach Road. He is there to support Emmitt and Mary Trimble in their request for this gravel material site application. He has spent a great deal of time the last year or so studying the Kenai Peninsula Borough gravel ordinances and got a real education. He thought he knew something about gravel. He owns a construction company and owns three gravel pits. He has bought gravel from many of the gravel owners throughout the borough including the State of Alaska, US Forest Service, and the Kenai Peninsula Borough. He was born in Seward and raised in Cooper Landing. Back when he was a young man

gravel was not a dirty word. It seems to have become a dirty word now. Even though everyone is in a building built of concrete that has gravel, traveled on paved roads that the asphalt is made out of gravel. The foundations of our houses, our driveways are made out of gravel. There is no doubt that gravel is important to all of our lives. It always has been and always will be. But he doesn't think Mr. and Mrs. Trimble should be penalized for asking for a gravel pit on their property. He agrees with Mr. Martin that view shed and visual impact is some language within the Borough Ordinance and it is a feel good term but there is very little case law having to do with view shed and visual impact. He asked Mr. Kinneen at a meeting earlier this year if he had a right to the view shed over his neighbor's property and he said he did, it was an absolute right. Mr. Smith does not believe that. He empathizes with those who don't want to look at a gravel pit and this is not going to be a popular comment but if you don't want to look at the gravel pit then buy the land. Offer Emmitt and Mary Trimble some money for their property and then it can become your property and you can turn it into a pig farm, junk yard, or car junk yard. Last thing to comment on is if you don't like the Ordinance then change the Ordinance. The Ordinance as it exists today, the requirements for the material site application have been met. He believes it is the duty of the Planning Commission to approve the application. He is a realist and the Commission has a thankless job. He believes that no matter what the Commission does this is going to end up in litigation. He urges that they support the application.

Commissioner Whitney wanted to make sure he heard something correctly. He asked if he built the campground in 1992. Mr. Smith said he believes it was 1992. They had a contract with DNR Parks and built the Slidehole with an addition to the campground. Commissioner Whitney asked if they used Anchor Point gravel. Mr. Smith said they used gravel from Mr. Kyllonen who had a gravel pit right up the Anchor River Road, across the bridge, and above the bridge. They bought gravel from him and built the campground. Commissioner Whitney wanted to know if the area was built up as it is now. Mr. Smith said pretty much. The crowd responded and he said he guessed not. He said there has been talk about safety on this road. These 40-foot diesel powered land yachts that people come up with from the lower 48 are on the road. Anchor Point Road is a dangerous road but it is not going to be any more dangerous with the gravel trucks then it is with all the tourist traffic that is going on today. The crowd responded again. Chairman Martin reminded the crowd to keep a polite meeting decorum must be maintained and everyone deserves respect.

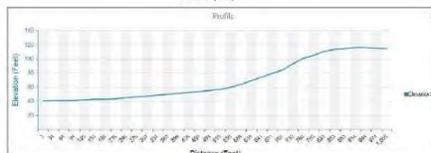
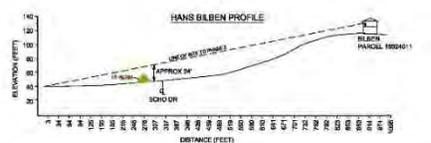
24. Chris Crum, 72485 Ester Ave., Anchor Point

Ms. Crum, her husband and five children have lived in Anchor Point since 1987. She taught at Chapman School for 25 years and has since retired. All of their children went to Chapman school, graduated from Homer High School, went outside to college and came back to Alaska. She and her husband have done 9 transactions with Emmitt and Mary through Coastal Realty over the last 25 years and she wanted to say that they were very professional and everyone got what they wanted. She sat through two hearings and she came to the realization that this is not really about a permit. She has read all of the regulations and codes and Emmitt and Mary have done everything that is required of them and beyond. This is about not in my back yard. She understands that. It is also about private property rights. One of the meeting it was said there was a rock crusher, a D9 dozer, Grizzly and a big operation which was not factual. Every day she goes down to feed her horses on that property. So she goes down Beachcomber Road and passes Danver and there has never been anything like that down there. The road is in bad shape. They have lived in Anchor Point for 30 plus years. It has always been a dangerous road for kids, moms pushing strollers, there is no sidewalk. The road started to deteriorate 15 or 20 years ago when the tractors came in and took over the beach. There are huge charter boats traveling on that road every single day of the summer, starting in May and ending around Labor Day. Some of them should not be going across the bridge because they are big. People are concerned about trucks on the road and the bridge. The bridge is rated for 11 tons. Loaded gravel trucks should not be on that bridge they will have to turn right and go around on the Old Seward (Sterling) Highway. That is what they are going to be doing. So that's a fact. She also wanted to give a shout out to the truck drivers in Anchor Point. The majority of the business, the majority of the employment in Anchor Point, meaning over 50 %, is trucking, hauling dirt, gravel and gravel pits. The area needs the business and the money. She wanted to say that the Trimble's have done what the Commission required of them. Gravel pits

are regulated by the Kenai Peninsula Borough statutes, the State of Alaska and MSHA which is Mine Safety and Health Administration. They have good policing abilities. The noise, the dust, and the safety all have to be complied with in a gravel pit. She knows it is going to be a hard decision. The Commission has the ordinances and the regulations. They also have the application for the permit and she is asking to weigh heavy on how it has been written, how it is being followed, what has been done and do the right thing.

25. Hans Bilben, 35039 Danver Rd., Anchor Point

Mr. Bilben played the audio that Mr. Carlton had tried to play earlier. It was a recording played from his phone of Mr. Trimble speaking. "You are looking to the operator or the gravel pit owner to solve the other person's problem on their property with their money instead of them solving their problem. Build a fence, get some blinds, get some ear plugs. So in answer to your question about responsibility if it is an unzoned area no." That was the applicant telling them how to protect themselves from his gravel pit. He said he didn't want have blinds closed, wear hearing protection in his own home or have to build a fence to protect himself. He wanted to make a couple of corrections. The applicant talked about a 25-foot-deep hole but the application calls for an 18-foot excavation. 20 feet to water and you have to stay 2 feet above it. The applicant has checked all the boxes but he hasn't met the conditions of the code. What is trying to be decided tonight is if he has met the conditions of the code. Talking about a charter boat going across the bridge. He ran a charter boat for 16 years. A heavy charter boat is about 10,000 pounds versus an empty dump truck at about 22,000 pounds and double that for a loaded dump truck. Last July the Commission correctly voted to deny this application and made the findings of fact that the noise would not be sufficiently reduced with any buffer or berm that could be added. The word any is the key. While the intent of these findings is abundantly clear they are lacking any reference to specific sections of the code that define the mandatory conditions and their lacking supporting evidence. The hearing officer on appeal ruled that the commission exceeded the scope of their authority in denying this permit based upon its determination that the conditions would not afford adequate protection from noise and visual blithe. He agrees with the hearing office. The findings of fact had some problems. The planning department seems to be of the opinion because the hearing officer said this that this is proof positive that the Commission must approve this application. To the contrary the hearing officer did not rule that the Commission lacked the authority to deny the application to do so would be counter to the code. KPB 21.25.050 says the Commission has three possible outcomes, approve, deny or modify an application. A very important point here is that she did in fact affirm that the denial. She did not say give them the permit. She affirmed the denial. The authority granted to the Commission in 21.29.050 is to ensure that buffers and berms are of

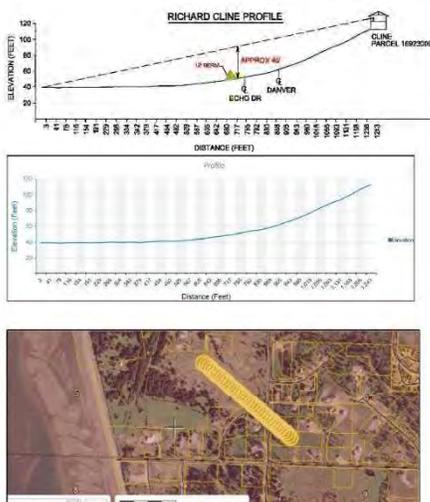


sufficient height and density to provide visual and noise screening of the proposed use. That is what needs to be determined tonight, if they are of sufficient height and density to provide visual and noise screening of the proposed use. If it can't do that then it can't be approved. Buffers and berms are the industry standard and if properly designed they should protect neighboring properties from noise and visual blithe. The key words here are properly designed. That is what the GIS technology is about. The Commission can have a hard time trying to determine what the buffers and berms are all about and what they do when used together. With this Borough technology it is easy to look at it and see what works or doesn't work. He doesn't know why the Borough is so hesitant to get into that. Yes, the Commission probably exceeded the scope of its authority by saying that there would not be any buffers and berms that could screen the proposed use but did not exceed the scope of its authority by the denial. A better finding of fact might have been that the application was not of sufficient height or density to provide visual and noise screening. The Commission needs to tie findings of fact to the code. The hearing officer sent everyone back here tonight and this is what she wanted us to do. List findings of fact referencing the mandatory conditions listed in

KPB 21.29.050 and detail the substantial evidence that supports those findings. The findings of fact are in the packet and another person will speak to that. Obviously, we feel that putting this large scale mining operation in the heart of a recreational and residential area should be denied for a multitude of legitimate reasons but more important it must be denied because it does not meet the mandatory conditions of the code. In KPB finding of fact 15. Q. it states all of the reasons that this can't meet the code. One of the previous speakers talked about 15. Q. and the findings of fact from the staff. They are basically saying a large percentage of the neighbors in that area cannot be protected but yet they want to issue this permit anyway. In closing, the applicant claims that this is just a mom and pop operation and that they are going to maybe move 10,000 yards a year. What they say or may not say is irrelevant. What is relevant is that if this permit is approved it will allow for mining of up to 50,000 cubic yards per year for 15 years on 27 acres of commercial mining that cannot be sufficiently screened from neighboring properties. They are claiming that this is a legacy property. Most of us in this room, our home property, quality of life is our legacy and we would like to protect it.

26. Ann Cline, 34926 Danver, Anchor Point

Ms. Cline and her husband purchased two lots from the Trimble's in order to build a cabin for their grandchildren. They created a trust for their decedents to enjoy the peace and serenity that is there. She wrote a detailed letter based on her research of mining operations in the United States and Canada. She addressed the finding of fact, in particular the noise decibel research that has



been conducted both in Canada and United States regarding mining operations and excavations. Regarding one of the previous speakers some of us, herself included, are not financial able to offer the Trimble's enough money to satisfy them in order to buy that land so that they could keep it as a park land or campground. They are not able to do it. That is why they need the Commission's help in controlling the use of the property. Regarding the freedom of decision as a previous testify said, and she agrees, if you want to have peace and quiet then don't buy a home next to a gravel pit. If you want to have a gravel pit don't put it in the middle of an existing neighborhood. She implores the Commission to please help them, the Anchor Point community, which is all of them in attendance. Not all are speaking out of respect for time but they would really humbly request that the Commission consider thoughtfully and uphold and affirm their denial of this permit.

27. Lauren Isenhour, 34737 Beachcomber St., Anchor Point

Ms. Isenhour wanted to talk about sound. She wanted to talk about sound and the claim from the opposition that hearing sounds from the gravel pit activity will destroy the value of their property. Private property rights in their area are very important to all of the that chose to live in Anchor Point. Many of them utilize their acreage for activities that are not allowed within the city ordinances of Homer and the like. ATVs, snowmachines, chainsaws for firewood, free range dogs, livestock, home improvement projects and the mowing of their lawns. ATV sounds range from 90 to 100 decibels. Snowmachines and motorcycles are around 100 decibels. Chainsaws are around 110 decibels and riding lawn mowers are around 100 decibels. From her research construction tools such as chopsaws, sanders, drills, etc. operate between 90 and 100 decibels. Her diesel truck is over 90 decibels at 50 feet away. These are all activities and machines that are routinely operated in her neighborhood and are acknowledged as socially acceptable by everyone. None of these activities or machines are restricted by Borough regulations to only operate during particular hours and are not required to mitigate the sound created by their usage. After researching decibel levels of these common activities she was surprised to learn that the sounds created from gravel equipment is notably less than the items she spoke of. A backhoe from 50 feet is 80 decibels, 100 feet is 74 and 300 feet is 65 decibels. A bulldozer from 50 feet is 85 decibels, from 100 feet is 79 decibels and 300 feet is 70 decibels. A dump truck from 50 feet is 84 decibels, from 100 feet is 78

and from 300 feet away is 69 decibels. Gravel equipment ranges from 64-85 decibels while her common use home tools range between 90 to 110 decibels. Her family camped over Memorial Day weekend on the Anchor River and she was generally surprised at the high level of sounds created by the campers. ATVs, motorcycles, and dirt bikes ripped up and down the beach road late into the night. Trailers running generators in the campground which operate around 68 decibels. Lots of dogs and music and general camper noise. Regular vehicle traffic on the Beach Access Road is quite noisy since virtually all the campsites are right along the road. She needed earplugs to be able to sleep at night. There was zero gravel pit activity during those three days she was camping. It was not quiet or tranquil but the campground was full of people having a lot of good family fun. The Beachcomber gravel pit has now been operational for about 1 year. Prior to that the prior existing use gravel pit on Danver Street across from the Beachcomber pit was operational for around 15 years. Anyone that has recreated on the Anchor River or camped in that campground within the last 15 years has done so in conjunction with an operational pit. We can and have been coexisting there. The opposition has noted that they would rather this property be developed into a subdivision than a gravel pit. She finds this very curious. If these 27 acres was divided into 27 new home sites, the amount of sound created would surpass the sound of sporadic seasonal gravel activity. The access roads to develop 27 new lots would be extensive and require a lot of gravel and equipment. Building roughly 2 houses a year would take nearly 15 years to develop and the sound from cement, dump, and delivery trucks as well as drilling rigs and general construction tools as mentioned before would operate 5 to 7 days a week for the life of the development. At the end of that subdivision project the property would not be reclaimed as it would be for a gravel development. After 15 years of construction sounds we would now have sounds from 27 new neighbors with loud trucks, barking dogs, lawnmowers and chainsaws and all the other sounds that come from a rural neighborhood. She read all the letters submitted and would like to comment on Phil Brna's statement to the Planning Commission claiming that sounds generated from the gravel pit would destroy both his ability to enjoy his property and well as the general value of his property. Her neighbor is separated by Beachcomber Street and a line of trees and there is nothing to regulate her from mowing her lawn at 100 decibels or operating her chainsaw at 110 decibels or running any number of her power tools, ATVs or snowmachines as they often do at any time day or night. Despite her best efforts, as all her neighbors know, her dogs bark a lot during the night. There are no regulations in Anchor Point to stop or control any of these activities that she routinely does on her property. Phil has never complained to her that her activities jeopardized his property value or enjoyment. There are too many inconsistencies with argument about sound being a detriment to the neighborhood for it to be considered a viable argument. She can create more sound at higher decibels for longer durations on her private property without having to abide to any regulations. If an individual feels so strongly that the value of their property can be destroyed by the activity of their neighbors, then that individual needs to purchase a parcel larger than an acre to be able to personally ensure adequate distance from neighborly activities that they might find displeasing or move to an area with ordinances and zoning that control all residence activity.

28. Buzz Kyllonen, 74200 Seaward Ave., Anchor Point

Mr. Kyllonen was there in support of the Trimble's right to extract gravel from their property. He is actually a property rights person. His real fear is what is going to happen to the Borough. The ordinance as it is drafted, the protective conditions that are there, are for the most part unfounded and what it is doing is inviting people to band together against neighbors. If this continues, he can't imagine anybody wanting to file an application for a material site permit. No one wants to go through the expense and what comes from a mob type reaction to a legitimate activity. He would like to think he is an expert but he doesn't know what the definition is. He began developing property in Anchor Point 40 years ago. Over 30 subdivisions, 500 lots, about \$50 million in assessed value, none of which he would have been able to do under the current ordinance. He owned and operated 12 gravel pits or more within Anchor Point, within shouting distance of almost everyone here. Almost everyone here is a beneficiary of one of his subdivisions. That is what he does and that is what he did for a living. When the ordinance was enacted it put him out of business. He explained why. According to the ordinance if someone exports material from their property A to their property B and it enhances the value of property B an application for a material site permit must be filed. There is precedence set for that. He is here to acknowledge that. Without the permit Mr. Trimble

has he would not be able to transport material to any of his other properties. He has no choice. He has to apply for this material site in order to use the material that he currently owns. As far as the harm and the catastrophic effects of having a gravel pit are totally unfounded. No one has complained about the 12 gravel pits that he had in Anchor Point. At least no one has looked him in the eye and said so. What Mr. Trimble is doing is basically a developer gravel pit. That is the difference between industrial and developer use. There is an industrial use pit in the heart of Soldotna and it is a huge facility. They produce asphalt. They have been there a long time and everyone is still alive and no one has died from respiratory diseases. Anchorage Sand and Gravel is in the middle of Anchorage. They function, life goes on. There is an industrial site in Anchor Point. Homer was built with Anchor Point gravel. Gravel is where mother nature put it not where people want it to be. Everyone should be supporting the Trimble's for opening up some priceless resource like gravel so that it is available. He is a support and no one should have more to complain about this than him. He owns property on both sides. Substantial property that borders this property. More important he is the original Anchor Pointer. No one alive in Anchor Point has been there longer than him. He dates back to 1945. The homestead property is the property that Mr. Trimble owns and is where the material site will be.

Commissioner Ecklund thanked him for being present since he has the longest history in that area. She wanted to know when he had the gravel pit that was operating in that area how many campgrounds or campsites were in the area. Mr. Kyllonen said he developed all the campsites. The State campsites used his gravel. Commissioner Ecklund said that it was stated that there are 5 state campgrounds and 3 private ones and 200 campsites and the Silver King sites. She asked if he built all of them except the state campgrounds. Mr. Kyllonen said he developed over 30 subdivisions on both sides of the road. Commissioner Ecklund wanted to know how many people lived in the area when he was operating his gravel pit. Mr. Kyllonen answered that it has evolved over the years. It was extremely busy in the mid 80's. There was a depression and property sales slowed. The reason he went out of the development business was because of the ordinance. He was issued a cease and desist when he used material from the golf course he created to develop what is now the trooper building. The code compliance officer from the Borough came down and told him he must get a material site permit to build the golf course. He had no choice. He had a half a million into the golf course so he couldn't afford not to apply for the permit to be able to continue. That put him in the category of a gravel pit. He was then fined by the Borough \$20,000 and paid \$10,000 in attorney fees because he exceeded the artificial boundary the Borough imposed. He has a major heartburn about the ordinance and would like to see it scraped and see it rewritten focusing on what should be the intent of reclamation and prudent and proper extraction.

Commissioner Fikes wanted to know with his history of the area and the operation of a pit in the area what his experience of the reclamation was and how much of it did he perform during his operation. Mr. Kyllonen said it would be hard to find where he had a gravel pit. They have all been reclaimed. Commissioner Fikes wanted to know if he ever had complaints about water table contamination during his time. Mr. Kyllonen said it is an unfounded allegation. It is not possible to have happen, evaporation maybe. Digging in the water table was one of his key things. He has several lakes where he dug in the water table and that was one element of this ordinance he would like to see revisited because it does virtually no harm to the environment and offers a place for the moose and ducks. There were two moose yesterday learning how to swim in his golf course lake. Commissioner Fikes asked if during his operations if there were ever any complaints for noise. Mr. Kyllonen said not to him directly. Out of the 500 properties, 499 are close friends. Commissioner Fikes wanted to know if any agencies contacted him with a direct complaint due to his specific operations. He said no. He wanted to add one more comment about the Beach Road. Anchor Point Road, no one has driven a dump truck over that road more than him. Thousands of times prior to when it was paved. When he was on the Assembly he helped get it paved. The State said if \$200,00 could be received from the Mayor they would paint the road black. \$200,000 transferred from the Borough to DOT and they painted it black. He didn't know what that meant at the time. They literally painted it black. That is why the road is in the condition it is because they didn't have any money to improve the subsurface. He added that it was on the state agenda to revisit it in 2020. If it hadn't been for his efforts on the Assembly everyone would still be waiting for the state to do an

assessment. Chairman Martin reminded him of the time. Commissioner Fikes had another question, switching gears to safety, she wanted to know in his experience and with living in that specific area if there were any school activity disruptions with school buses or children waiting for buses. People have spoken or testified tonight and previously about the activity and the trucks passing and going. She wanted to know in his experiences if he ever heard or received any written complaints that would speak to that matter. Mr. Kyllonen responded that three of his gravel pits are within a rock throwing distance of the existing school in Anchor Point. He received and heard none. Truck drivers are professional. Someone was referencing motorhomes. School is not required to drive motorhomes but truck drivers do have to go to school and it is not easy to get that license.

Mr. Kinneen approached and said he already testified. Chairman Martin said he had not been recognized by the chair. Everyone gets one chance to speak. Mr. Kinneen said his testimony was slandered and if agreeing his testimony has some effect here he should be entitled to address it. Chairman Martin said the meeting must proceed.

29. Lynn Whitmore, Anchor Point

Mr. Whitmore used his presentation to discuss the moving berms. The question is what will the neighbors be looking at as the berm moves closer to the homes. The homes are situated roughly at 90 degree angles looking down so it seems that the berms need to cover the full 90 degrees from the people on the one side of the hill and the others wrapping to the other side of the hill. That is something to keep in mind when talking about berms. He hears a developer gravel pit being stated and it will just be one of those but as near as he can tell from everything he has read that the moment that they get a permit they can sell it and somebody else in a larger capacity could come along and mine the entire 27 acres. A developer gravel pit changes immediately upon sales and the permit goes with the property as he understands it. He offered to walk them through any berm questions if the Commission had any.

Chairman Martin wanted to clarify if the berm ordinance intended to obscure the view 100% or is the ordinance written to minimize impact. Not to bring it to zero but minimize. Mr. Whitmore using his presentation moved the berm to show the varying views. As the 12-foot-high berm moves closer to the houses that are up high the remaining pit behind that berm becomes more visible the further the berm moves towards those homes. He doesn't know that a 12-foot berm doesn't work because he hasn't heard from the other side on how they intend for it to work. He would work with them if they want. Chairman Martin asked what the definition of work means. He thinks the ordinance means mitigate not eliminate. Mr. Whitmore agreed.

30. Tom Clark, PO Box 962, Anchor Point

Mr. Clark sat on the Commission for 6 years and the Board of Adjustment for 7 years. Most of those that were appealed were sent to the Assembly that acted as the Board of Adjustment at that time. All the decisions in the affirmative were upheld. Any of those that were rejected by the Planning Commission were denied by the BOA at that time. Our BOA listened to several appeals, some that the Commission had affirmed and some that were rejected. All of those passed this ordinance in full. There were two lawsuits and the judge ruled in favor of the Borough and the way the Borough handled their buffers, the sound and how everything was handled. This is not in his best interest. It is in his best interest that this pit goes away and the price of his gravel goes up. But, as it is today the applicant has a legal right and it is allowable and it has been proven in court.

31. Angela Roland, 17337 Thurmond Dr., Anchor Point

Ms. Roland owns property at the Silver King Fish Camp as well as property on Thurmond Avenue. Today she spoke with the Parks Department about their concerns since they are property owners and run the state recreation area. They said they sent a letter on May 1st and their concerns were dust, safety and noise. She did some research into dust as well as a letter already submitted about crystalline silica and it is as fine as asbestos. This is a particulate that is emitted whenever rock is crushed or screened and excavated. It also travels a great distance and it can reach the school. It builds up in buildings and get clogged into ventilation systems and it does cause respiratory

diseases. This can be verified with the EPA as well as other OSHA websites. She said EPA but met OSHA. She doesn't know what size dust masks need to be worn to eliminate it. There have been statistics showing that heavy truck accidents have gone up. The last year the information was available was 2016-2017. On this narrow road with boats, RVs, kids on bikes, and also tourist that don't know where they are going. There are also a lot of people looking down on their cell phones wandering around. She supposes that going as fast as they can to deliver a haul and get back and deliver more but she hopes the truck drivers are as careful as they can be. When talking about noise we've been talking about decibels. It is true that some sounds sound simply worse than others. Imagine your favorite song at 100 decibels and that would be fine but your least favorite song at 100 decibels would be misery. It would also be misery at a lower decibel if you really didn't like the song. As far as a Trimble family member living next to it. To their ears, she guesses it sounds like a cash register running. It just so happens that her father owned an excavation business, built a golf course, and he ran heavy equipment as well. She knows the dust. It is a dangerous business. There is also the potential for all kinds of accidents to occur. From the spilling of fuel, oil and all those kind of problems. One of the things that hasn't been talked about is the health of the community. It has been talked about that Anchor Point has gravel pits everywhere but is it a healthy community. There is a school right there. Even though this has been the way things have been done for a long time there is also science and technology that that particulates, small ones can harm and cause respiratory problems. She did contact the EPA and on their website it says this portion of the Kenai Peninsula does have one endangered species, the Steller's Eider. If we are harvesting gravel and using it on our State and Borough roads that comes from an area that may contain Eiders we will destroy their habitat. Federal law is opposed to that and has laws against it. If the gravel is taken and put on our roads she felt the supply chain is questionable and should not be.

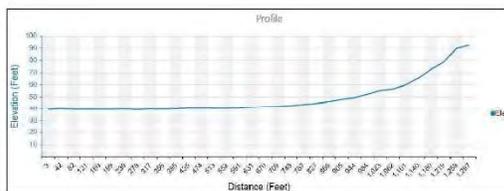
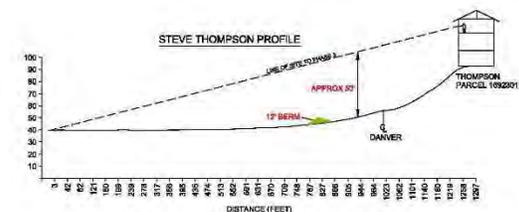
32. Josh Elmaleh, 34885 Seabury Ct, Anchor Point

Mr. Elmaleh said he is about a ¼ mile from the site and just recently there has been road construction to improve the drainage for the sides of Anchor Point Road. They have been hearing the construction noises a lot. Normally his dogs are peaceful and quiet and let him know when there are animals there and help keep his kids safe. They hear things. When the equipment is running his dogs go crazy. They have been barking nonstop. They tell them to be quiet and encourage them when they are quiet but they continue. There isn't anything he can do about that. In the event that the Trimble's have their pit, he is going to be faced with that whenever they decide to excavate gravel. Maybe its daily, weekly, or every once in a while. He is here to say he doesn't agree with it and doesn't want it there. He advised the Commission to go check the site. It is an amphitheater. They hear the wave and the birds. His dad came up last year and he walked to the beach and saw the eagles. His father said it is the million-dollar view. He may not believe that but it is a view not to be messed with. They have the right for their own property just as he does for his and he agrees with that. If they don't get the permit and develop, then they develop. They don't want a gravel pit. He and his wife bought their place two years ago not knowing about this. They looked at another place that was twice the size and only about \$20,000 more than their current house. It would have fit their family better but it was right next to a gravel pit. The sound is not going to be improved and doesn't matter how big the berm is. He can hear a half mile, mile away. he can hear dump trucks going on the Old Sterling Highway.

33. Katie Elsner, 215 Fidalgo Ave., Suite 201, Kenai

Ms. Elsner has been helping several of the neighbors that are opposed to the gravel pit. She wanted to address Chairman Martin's question. The borough code uses two words in defining what to do with this, both minimize and sufficient. She googled the definition of minimize which is to reduce something to the smallest possible amount or degree. So the code doesn't call for the Commission to make sure that there is some separation or some barrier or some reduction in the visual impact. It calls to actually reduce it to the smallest possible amount or degree and to ensure that the reduction is sufficient to address the visual impact. When it comes to Mr. Whitmore's presentation, as far as she can tell with the rolling berm, that proposing of one of two options is going to come into play. (Mr. Whitmore began using a profile to demonstrate) Either the berm is going to start closer to the property at which point there is more or greater visual impact. It would have to be taller

in order to negate it because you are getting closer to the higher elevation. Then it moves back leaving all of the excavated property in its wake. It could start in that position where it could potentially cause some kind of reduction in visual impact because at that point, furthest away the angle or elevation allows it to be sufficiently tall. As it moves closer and closer to the impacted and affected properties the same height berm becomes less effective and all that can be seen in the background is the excavated pit. Where the GIS LIDAR profile mapping is set by Mr. Whitmore is at the most likely proposed site for it and she did propose findings of fact. Those findings of fact are based on that spot in geography and what berm would be sufficient there. When it comes to the rolling berms that makes the Commission's job more difficult because the rolling berms will have to vary in height in order to minimize or sufficiently address the visual impact as they move in geography proximity to the subject parcels. As mentioned, they did propose findings of fact for the Commission to consider in the event that they are assistive to them. There are two alternative proposed findings of fact. They can be found on pages 89 and 92 of Volume 1 of the packet. They present under two separate factual scenarios. The first one is if the Commission were interested in an outright denial of the application. The second one is proposing a modification to the buffer and berms that are submitted in the application that are based on the GIS LIDAR profiling that would be required to minimize and interfere that visual impact. Mr. Wall had a change to the



resolution. On page 92 finding of fact 15 will need to be replaced not 14. This is addressing the buffer and berming. Their position is that these findings of fact are sufficiently detailed and follow and track the law. She would like to remind the Planning Commission that nowhere in the code does it say that they are not allowed to deny an application. Regardless and without any consideration of how it impacts and whether or not that question of the Commission's discretion as to what is sufficiently minimized plays out in reality. It is not enough in this scenario that the applicant states the minimum requirements of the code. The question for the Commission is whether or not it is sufficient. The code does expressly grants and in fact mandates authority to the body to either approve the permit if found that those berms represent as proposed in the application sufficient visual and noise barriers or the Commission can modify it and in fact based on the objective evidence significantly higher berms are going to be required to minimize that impact or it can be denied. In this instance we would urge the Commission to exercise that authority to either deny or modify it based on the fact that this is a gravel site in a depressed elevation surrounded by neighboring communities in a recreational area.

Mr. Wall wanted to get some clarification on some findings Ms. Elsner drafted. He had some concerns with some of the language so he wanted her feedback. In the denial finding she had that it should be denied because it is incomplete because they have not provided a vegetation and fencing plan that is of sufficient height and so forth. Mr. Wall struggles with that idea that the application is incomplete because the applicant can't know at the time of the application submittal what the Planning Commission will deem as appropriate because the code specifically says that the Planning Commission gets to determine what is sufficient height and density for the vegetation and fence. He wanted her to elaborate on how that would be an incomplete application if the applicant doesn't know up front what the Planning Commission would want. Ms. Elsner responded that an application in order to be approved must meet the standards and the standards are complied with by meeting the conditions. In this instance one of the conditions for a complete application is that the berms and buffers are of sufficient height and density in order to mitigate and sufficiently

minimize the visual and noise impact. Mr. Wall stated as deemed by the Planning Commission. Ms. Elsner said the Planning Commission makes that determination. In the event that determination is made in the negative then the application is almost necessarily incomplete because a complete application, an approvable application, requires compliance with those conditions. Mr. Wall asked if she is saying the application be incomplete after the fact. Ms. Elsner said the application is not complete and approvable until this body says and deems it so. Mr. Wall said the other thing she pointed out in her findings that the code also provides for the applicant to submit an alternate buffer plan. So could that not be construed as an alternate buffer plan and therefore the application is complete? Ms. Elsner said in the event, as she understands it, there is often some degree of back and forth between the applicant and the Planning Commission and she thinks the code does allow for that type of flexibility and that type of working through as the process goes on. However, that does not change the fact that in the event that an application or scenario after the back and forth, after the voluntary conditions, that the Commission is tasked to rule on this decision but it does not meet the mandatory condition, cannot be found to sufficiently minimize the visual and noise impact. The way she reads the code says that it is incomplete at that point and time. It doesn't meet the mandatory and required conditions. Never the less, even if not viewed that way it still must be denied because the Planning Commission must deny applications, must deny these material site permits when they don't comply with the minimum standards. Mr. Wall noted that the code talks about the vegetation of fencing needs to be sufficient height and density but it doesn't talk about that in regards to berms but yet she seems to be applying it to berms as well. Ms. Elsner said she does because it is in the same paragraph, same section, and read together it seems clear to her in her interpretation that it refers to the same types of impact, mitigating tools or mechanisms that are available to the Planning Commission and applicants. Mr. Wall wanted to switch to the other set of findings she drafted. She proposed a 43-foot berm and a 53-foot berm and one of the testifies basically came to the same conclusion as him, would that not be in effect a denial in that a 43-foot berm and a 53-foot berm would not pass any reasonable test or reasonable standard. Ms. Elsner said she does not believe that there is a reasonable test or standard written in the code. The proposition that an application has to be denied despite its ineffectual conditions to meet the standards in the code is not consistent with the language of the code, the intent of the code, with the fact that there is a material site ordinance in the first place. There has to be a mechanism to address ineffective conditions. It is certainly not by imposing a world of conditions that exist outside of the ones allowable in the code. So what the code allows is for the Planning Commission to modify until they think it is sufficient height and density. In the event that someone wants to build a gravel site in a place where visual impact mitigation or minimization requires a 43-foot berm that is the decision of the applicant. She doesn't think it is the Planning Commission's determination to decide whether or not the applicant ultimately goes forward. The question is whether or not they can approve a permit that complies with both the conditions in so far that it allows the conditions to meet the standards.

Seeing and hearing no one else wishing to comment, Chairman Martin closed public comment but was reminded the applicant has a right to give a rebuttal as long as not providing any new information.

Stacy Stone returned to speak on behalf of the applicant. She noted that Ms. Elsner spoke and said that the application is incomplete. That is incorrect because referring to 21.25.050, which provides for permit considerations and when a public hearing is required, it is up to the Planning Director and the designee to review and determine completeness of an application. The application is not forwarded to this body until such time as the Planning Director has said to this body that this is a complete application or this is an incomplete application. At such time if there is an incomplete application the Planning Director can go back to the applicant and say this is not complete and they can try to fix it or it can go straight to this body for a hearing and the body can then determine if they agree with the staff that it is incomplete and can deny it. Hence the reason the Commission has the ability to deny an application. There have been several comments today why public testimony matters and why is there a public process involved in this. When reading through the code provisions, the code has to be read in total, there are several words and we have heard today. The important thing is public comment does matter because it informs the Commission of what conditions need attention. If there was no public comment for instance a person could apply the Planning Director could approve, and say this is a complete application, pass it on to the Planning

Commission and it could be approved. But the neighbors and the residents have brought concerns about noise and there is a provision in the code that allows for voluntary conditions to be imposed by this body. Earlier today discussions were had about white noise machines being added to heavy equipment to help reduce the sound impacts and her client testified that he would do so voluntarily. These are the types of things that all of these people here informing the Commission that noise is a concern of theirs allows the Commission to thread this needle and try to find a balance. The Commission is a government entity and is imposing a restriction on the free enjoyment of someone's land and in order to do so it must be narrowly tailored. The Assembly has taken great steps to ensure that this fine balance between government intervention and the public being able to freely exercise on their private property has been struck. There are standards in the code, we heard a lot about the standards just a few moments ago, and how they set to minimize impact. What does it mean to minimize impact? Well the code itself helps us define what we can do to minimize the impact. It says only the conditions set forth in 21.29.050 may be imposed to meet these standards. When looking further at the standards they further guide the Commission's deliberation. There are words such as buffer zone, provide and retain a basic buffer, and that buffer is to be maintained around the excavation perimeter or parcel boundaries. We have heard a lot about the rolling berm today but that meets exactly with the code and it is a compliance to try to make sure that the excavation perimeter is as protected as possible to minimize the impact to meet with that definition of the code. As stated at the beginning of the day before we heard all the public testimony, her client submitted an application. It was reviewed by the Planning Director, there was a site visit, there were recommendations to revise the application. The application was revised it was forwarded to this body as complete. This body has heard public testimony. It has heard the concerns. It has the ability to institute certain conditions and modify that application in order to approve it but again we maintain that there is no reason for this body to deny this permit but rather institute those conditions that have been agreed to and that this body is to find that strict balance between someone's right to enjoy their own property and government intervention. We ask that you respectfully approve the permit.

MOTION: Commission Carluccio moved, seconded by Commissioner Foster to suspend the rules and allow a 30-minute continuation of the meeting.

Commissioner Ecklund said we were in this same place last time this application was heard and was accused of hurriedly denying it without adequate discussion. She wants to make sure they are not accused of that again. She didn't know if they wanted thirty minutes. She has the longest drive and it might take longer. Chairman Martin said there was no point in rushing to the finish line. He said they should take it at 30 minutes at a time.

MOTION PASSED: Seeing and hearing no discussion or objection the motion passed by unanimous consent.

Chairman Martin opened discussion among the Commission.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to approve a conditional land use permit application for Beachcomber LLC, Resolution 2018-23.

Commissioner Ecklund addressed the crowd through the chair. We work for you, all of you. We work for the Assembly. The main goal for all residents of the Kenai Peninsula is balance development. A balance between economy and residents living here, their life values. It is sad to say that people want to put a gravel pit in a residential area. If you knew it was there, the size of it, a number of you that purchased property there wouldn't have purchased that property if you knew it was coming. Several things have been brought up tonight that this ordinance does not address. It does not really say that they can do anything if it is not safe. She has brought that up several times in past gravel pit permits. The safety, sight triangles, school bus stops, traffic at the egress and ingress but that does not allow the Commission to say it is not safe. She has been given reasons that school bus stops always change. They had hope to have a material site extraction ordinance done a year ago. It has been in committee and is coming out of committee soon and there has been some discussions of it. She has questions for Mr. Wall. She believes that the permit that is in the packet is not correct anymore. She has heard through public testimony that now instead of 50,000 cubic yards he is only going to extract 10,000 cubic yards a year. Also, it says that the one test hole that

has been dug says the ground water is at 20 feet and he was only going to dig to 18 feet. In the applicant's testimony he said is going to dig 25 feet down. She wanted to know if a new application was needed. Mr. Wall explained that the decision needs to be based on the application that was submitted. Only volunteered conditions have changed the application has not changed. Chairman Martin wanted to clarify that the 50,000 is a threshold so he can do less than 50,000 without changing the application. Mr. Wall said yes. What he intends to do in the foreseeable future and what he puts on the application are two different things. What you are approving is what is on the application. Commissioner Ecklund wanted to know if they approve the gravel pit permit and the applicant does want to dig into the water table if they would have to come back and ask for permission to do so. Mr. Wall said yes, the code specifically requires that. Commissioner Ecklund wanted to know if they would be seeing him come back if they approve this if he is planning on digging 25 feet now. Mr. Wall responded he will not be able to excavate within 2 feet of the water table without coming back to the Commission. Commissioner Ecklund sees only one test hole and groundwater was at 20 feet. She wanted to make sure she was reading the application correctly. Mr. Wall said yes.

Commissioner Bentz commented on the letter from DOT about requiring KPB to repair any impairments in the road, the letter is on page 172 of the packet. She asked staff to confirm that it would be the Borough's responsibility for any repairs needed to that road. Mr. Wall said that road is under the jurisdiction of the state and they are responsible for maintenance. The Borough has no intention of doing any maintenance on that road. Commissioner Bentz followed up by asking if that statement from DOT will be erroneous as far as their concerns about this application. Mr. Wall said he believes that the point they were trying to emphasize is that they also have no intentions of doing repairs on that road.

Commissioner Carluccio noted there had been some information regarding State Parks. She wanted to know if anything in writing had been received from DNR Division of Parks and Outdoor Recreation and if they are in favor or opposed to this. Mr. Wall stated he has talked to State Parks several times and they have talked about getting a letter to him but he has not seen one. Commissioner Carluccio wanted to know in his conversations with them what were they saying. Mr. Wall they just mentioned they may have some concerns due to the proximity of the parks. They were not specific as they were talking more about the deadlines for getting the comment letter to him. Commissioner Carluccio said they must have missed the deadlines. Mr. Wall said several, he has not seen a comment letter from them.

Commissioner Ecklund wanted to follow up on the letter from the Department of Transportation and Public Facilities. They listed 5 things in the letter. Number 1 was that they wanted someone to verify the sight triangles at the Danver Street stop sign either by an engineer, surveyor or borough public works official. KPB Public Works can coordinate with DOT Public Facilities and Maintenance and Operations when reviewing sight triangles. She wanted to know if that was accomplished. Mr. Wall said it has not or if it was the information was not passed on to him. He did talk to the roads department and they were not able to connect and get out there. He didn't pursue it further because there are no conditions or standards in the code that would relate to that. Commissioner Ecklund said it is another one of those safety issues she was hoping to see in the new ordinance. She was concerned that a state organization is asking the Borough to verify something and we are not. She thought more could be done than the state asks for but not do less. She wondered if they would have had to reference a statute to make us act. Mr. Wall said there is no state requirement that we check sight triangles on approaches to state roads.

Commissioner Ernst needed some clarification. Looking at the findings of fact on page 80, item 15. Q. He needs to understand this better because when looking at the GIS information it doesn't seem that there is anyway. It says each piece of real estate is uniquely situated in a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. This unique situation is a pit that is in the low lands surrounded by affected properties. He wanted to know if there is any possible buffer that can be reasonably used to protect the noise levels and visual impact of this pit. Mr. Wall said one thing that was asked earlier during public testimony was about adjacent parcels versus other parcels in the vicinity and the code does state that the buffer requirement shall be made in consideration of and in accordance with existing uses of adjacent property. That is in the conditions of 21.29.050 and that is why in the staff report he put particular emphasis on the adjacent parcels because that is what the decision needs to be based on concerning buffers. 15. Q. is saying that some parcels are going to get better screening than others. It is not a matter of eliminating the visual or noise impact it is a matter of minimizing. Commissioner Ernst

followed up by asking if equal protection does not apply. Mr. Wall said the way he is reading the ordinance is all impacts need to be minimized for adjacent properties. Commissioner Ernst said so some properties are more minimized than others. Mr. Wall said yes he would agree with that statement.

Commissioner Foster has a concern with adjacent and adjoining. He remembered back when he was with Homer that it came up that adjoining means next to and touching. Adjacent means nearby. Mr. Wall said he did spend some time looking at various definitions and as it relates to property. Generally, it means adjacent or just separated by a road way. It seems to be more specific than just nearby. Although elsewhere in the code the word adjacent is used and it appears to be referring to nearby in that it talks about wells within 300 feet on adjacent property. Not all wells within 300 feet are on adjacent property. In that context it appears to be referencing nearby or close proximity. He took it as adjacent properties being immediately adjacent or separated by a roadway which is a common definition he read as it relates to property.

Commissioner Ecklund noted the code at 21.29.050 and that permit conditions 2. C. It says that 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. She does not see where it says adjacent on that or on the buffer zone above it. Mr. Wall said it was located in 2. E. Commissioner Ecklund read that at its digression the Planning Commission may waive buffer requirements where the topography of the property or the placement of natural barriers makes screening not visible or not necessary. Buffer requirements shall be made in consideration of and accordance with existing uses of adjacent properties at the time of the approval of the permit. There is no requirement to buffer the material site from use that would commence after the approval of the permit. So it is existing uses of adjacent property and this has residential and recreational as adjacent properties. Mr. Wall said yes. Commissioner Ecklund said 14 of 20.21.050, permit conditions reads that "it's at the best interest of the borough and the surrounding property owners." There are references to existing uses of adjacent properties, the surrounding area, and the surrounding property owners. We have let them all come and talk but we have no meat to help them in this ordinance because we can put buffers, we can put vegetation and we can put fences. Who are we going to ask to put in a 53 high earthen berm.

Chairman Martin asked Mr. Wall if he was wrong but the buffer is vegetative, or a fence, or a six-foot berm unless the Commission wants to make the berm taller. Mr. Wall said yes, the code says minimum six-foot-high fence and a minimum 6-foot-high berm or a 50-foot vegetative butter. Commissioner Carluccio added that it also says a combination so a buffer, berm and a fence could be required. Under C, designate one or a combination of the above as it deems appropriate. Chairman Martin added if it can be justified with findings. Commissioner Carluccio said she also sees that the minimum is a 6-foot earthen berm so the berm could be taller. Mr. Wall said that staff did propose a 12-foot berm in most locations. Commissioner Carluccio followed up by asking if a 12-foot berm was enough to minimize visual and noise effects. Chairman Martin responded that it depends on your definition of minimize. It will bring it less and Mr. Whitmore can show a picture of a 6-foot berm or a 12-foot berm and it will reduce the area of the triangle in the line of sight but will it be adequate.

Commissioner Ecklund she asked the Planning staff earlier in the day if they could share some information about how many gravel pits they have actually denied in the 10 years she has been on the commission. She wanted to confirm with Mr. Wall that they denied a couple over the last 10 years. Mr. Wall confirmed that there have been 2 denials done by the Planning Commission. Commissioner Ecklund asked if the hearing officer overturned both of them. Mr. Wall said one was overturned by the hearing officer and the other was overturned by the Board of Adjustments. There were a few other cases where a modification to a permit was denied and in one of those cases he remembers it being upheld. Commissioner Ecklund wanted to know how many they approved. They are not against gravel pits. It has been put upon them that they are against them. Her dad was an operating engineer for 40 years. She lived at a gravel pit. She had a CDL, she knows the drivers are safe. The Commission is not against gravel pits but in the middle of a recreational and residential area it just doesn't seem right. Over the last year or two she has looked at how much the borough actually gains from gravel pits and there are other economic entities and industries within the Borough that make a lot more money. She knows we need gravel. She drives to Anchorage twice a week and drives to these meetings twice a month. There is a lot of construction and there is a lot of

gravel and rocks going on the roads. We need material sites but not in the middle of a recreational and residential area.

Commissioner Whitney said this is one of the more unique gravel pit permits the Commission has looked at. It seems that most of them, that he can recall over the last 5 or 6 years that he has been on the commission, are usually more in the flat land area. Where a 6-foot berm or 10-foot berm removes the visual impact. This is unique. It sits down low and there are adjoining or adjacent properties that are close by that are looking down into that area. He doesn't think the berms that are proposed with are adequate to control the visual impact that the adjoining property owners are going to suffer. As far as noise, we have heard that lawnmowers make more noise than the equipment and hand drills, etc. The difference is that they don't run for 10 or 12 hours a day. Lawnmowers will go for a couple of hours. We all listen to that even in the city. The heavy equipment, he thinks they will be able to hear it because most of the wind direction is coming off the water and that has an effect on noise. It makes it travel. He lives 2 miles away from Fred Meyer and he can hear trucks coming down the hill. He thinks those people that are living above it are going to continue hearing the noise no matter what. Right now after listening to many hours of testimony, after reading hundreds and hundreds of pages, he still thinks his decision is going to be the same as it was in July 2018 and vote against this.

Commissioner Venuti feels fortunate to live in a community that has planning and zoning. If nothing comes out of this, he hopes the argument for local option zoning will. He hopes no matter what comes out of this that this community, it is really great that this has brought everyone together, but they should consider Local Option Zoning so that something like this won't happen in the future. He knows that gravel is an important commodity and he knows it is a big industry in Anchor Point. He is a member of the construction industry and every project he works on has gravel and all of it comes from Anchor Point. There is real value but he is glad there is not a gravel pit next to him and he understands what everyone is concerned about. The idea that we can deny an individual the right to develop their property does not sit well him. He knows that if he wants to control what is happening on the property next to him he better buy it. He is uncomfortable with the way this has transpired. Like Mr. Whitney he has read of hundreds of pages of testimony, heard a lot of concerns. He hopes that the community will consider Local Option Zoning.

Commissioner Bentz wanted to either ask staff or point out an observation about the idea of a rolling 12-foot berm. This goes back to some discussion that was had at the Material Site Code revision Work Group and some of what they talked about is alternative post mining land uses and when does a pit stop being a pit and when does it start being a reclaimed area, which is a pasture or meadow. Looking at these profiles that have been drawn using the LIDAR of the area, thinking about the reclamation plan that is outlined in the packet, the idea of a rolling berm, and if extraction could be pursued in a way that the rolling berm was basically minimizing visual impacts from a narrow swath of land that was currently being excavated. Annual or every couple of years the applicant would reclaiming in its path. So it would be marching along through the site reclaiming as they go. That is what they plan to do based on the application, and leave behind a reclaimed natural area that was topsoil and seeded and reclaimed similar to the images that were shown earlier tonight. She was trying to figure out how this rolling berm could be an effective way to minimize visual impacts to adjacent properties. The question for staff is looking at the reclamation plan and this idea of a rolling 12-foot berm is if it would that be feasible. Will that provide greater reduction of impact for at least visual screening for neighboring properties if extraction was pursued in that manner? Mr. Wall said yes and that what she is referring to was in some comments earlier about if that berm moves then all that is seen is the scar on the land but no the applicant would be required to reclaim as he goes for the exhausted areas of the material site. Commissioner Bentz said she did not see a schedule for reclamation in the packet or wondered if she just missed it. She knows it is annually 50, 000 yards but she was not sure if there was an area plan to reclaim every year. Mr. Wall said it mentions 2 to 5 years but it depends on how much material is extracted. The intent is to reclaim a significant amount. If more than 2 to 5 acres are excavated there will be some reclamation done. Commissioner Bentz wanted to follow up in the way of explanation. Looking at the profiles the whole pit area wouldn't be an active excavation area as far as line of sight goes. It would be the line of sight only within the currently excavated area which would hopefully be protected by that 12-foot berm.

Commissioner Ecklund wanted to follow up on the rolling berm and the line of sight. As she understands it, most of the visual impact is along the east side and south side of this site where the topography goes up. In Phase 1, 2 and 3 and the processing area are going the other direction. She felt like they would almost need to start on Phase 3 and roll back towards the hillside for that to work. It is a good thought and maybe they could start on the west side of Phase 1 and go that direction if this is going to be approved.

Chairman Martin noted that the 30 minutes was about to expire.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to continue the discussion for a maximum of another 30 minutes.

Chairman Martin asked if that meant that there would be a count down so they could deliberate and vote precisely. Mr. Wall said that there was nothing that stated a decision had to be made tonight. The hearing has been closed, deliberations can continue at the next meeting. Chairman Martin asked if anyone felt at this hour that the human factor is weakening the ability to make a decision.

MOTION PASSED: Seeing and hearing no discussion or objection the motion passed by unanimous consent.

Commissioner Carluccio said it had been a lot of information to read over and understand and there are a number of things that she has read over that originally she thought she understood but when reading again it is not matching up to her first impressions She would not be unhappy with continuing the deliberation at the next meeting. No more public testimony, just deliberation and then findings of fact.

Commissioner Foster said he was ready to vote when he got there but now he took down seven pages of notes and he would not be opposed to continuing this so he could review the information.

Commissioner Bentz asked if the original motion on the floor had staff recommendations and findings or voluntary conditions added. She wanted to know as a point of order if they wanted to attach those today. Chairman Martin said the maker of the motion and the second could come to an agreement on the motion.

Commissioner Whitney wanted to know what the agenda looked like for the next meeting. Ms. Hindman advised that the agenda is still tentative and asked for a moment to pull up the proposed agenda.

Chairman Martin noted he would benefit from reviewing the notes and collecting his thoughts.

Commissioner Carluccio wanted to know if where they are now if they would have to do an up or down on what they have so far whereas, if they are interested in asking the applicant to voluntarily add some things to his application. Chairman Martin asked if she had anything in mind. Commissioner Carluccio said not at this time. Chairman Martin said it could be handled and if a great idea is thought of in the interim it could be passed on to staff and they could discuss it with the applicant so it would be prepared.

Ms. Hindman advised Chairman Martin that the June 24th meeting had a right-of-way vacation, the ordinance for the material site and then the review of a plat committee approval. Chairman Martin felt that it was a light agenda.

Commissioner Ecklund wanted to make sure the findings are on the resolution and asked if she should attach them to the main motion. That way there is a complete motion and then decide if they will postpone. Ms. Hindman noted that when Commissioner Ecklund made the motion she did reference the Resolution.

Chairman Martin noted that the voluntary conditions were only discussed. The applicant was questioned and Commissioner Ecklund asked if he agreed to a term and he said he did. Mr. Wall added for clarification that those volunteered conditions needed to be excepted by the Commission and there needs to be findings that those conditions are in the best interest of the borough and the surrounding properties.

Commissioner Ecklund noted that the voluntary condition that she brought forward was the white noise backup alarm and Mr. Trimble agreed to that for his vehicles not for any contractor that is in the pit. Mr. Wall noted the other was the rolling berms. Commissioner Ecklund said the finding is that the white noise backup alarms would minimize noise impact. the rolling berm would minimize visual impact. She wanted to know if she need to quote code verbatim. Mr. Wall felt that it was sufficient.

Ms. Hindman asked if they could explain if they are making a new motion or amending their motion. Commissioner Ecklund wanted to get the voluntary conditions to the main motion so that they would be in the record. They are for the white noise back up alarms and the rolling berm. Commissioner Carluccio agreed to the addition to the motion. Commissioner Whitney thought he also agreed to change the processing area. Chairman Martin said that was an exception and staff recommended denial. The applicant said he doesn't have a problem with that denial.

MOTION: Commissioner Carluccio moved, seconded by Commissioner Bentz to postpone deliberation and final vote on Kenai Peninsula Borough Planning Commission Resolution 2018-23 to the next meeting.

Commissioner Whitney asked if it could be the first thing on the agenda. Chairman Martin asked staff if a motion was needed to do so. Ms. Hindman told them a motion was not needed and it would be first on the agenda.

MOTION PASSED: Seeing and hearing no discussion or objection the motion passed by unanimous consent.

Motion on floor: to approve a conditional land use permit application for Beachcomber LLC, Resolution 2018-23, with voluntary conditions for white noise backup alarms for the applicant's vehicles and a rolling berm, citing findings of fact that the white noise alarms will minimize noise impact and the rolling berm will minimize visual impact.

Chairman Martin thanked the public for their participation in the process. It has been a unique process for everyone.

SUBDIVISION PLAT PUBLIC HEARINGS

1. Commissioner Carluccio reported that the Plat Committee heard and approved 4 preliminary plats.

ADJOURNMENT

MOTION: Commissioner Carluccio moved to adjourn the meeting at 11:41 p.m.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

Julie Hindman
Administrative Assistant

MEETING PACKET

&

DESK / LAY DOWN PACKET

JUNE 24, 2019

(Please note that some information has been dispersed throughout the record so that there was not duplicate information.)

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2018-23
HOMER RECORDING DISTRICT**

A resolution granting a conditional land use permit to operate a sand, gravel, or material site for a parcel described as Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

- WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS,** KPB 21.25.040 provides that a permit is required for a sand, gravel or material site; and
- WHEREAS,** on June 4, 2018 the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district; and
- WHEREAS,** public notice of the application was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS,** public notice of the application was published in the July 5, 2018 & July 12, 2018 issues of the Homer News; and
- WHEREAS,** a public hearing of the Planning Commission was held on July 16, 2018 where public comment was taken and the Commission denied the approval of the conditional land use permit; and
- WHEREAS,** the denial was appealed, a subsequent appeal hearing was held, and the hearing officer remanded the application to the Planning Commission; and
- WHEREAS,** a public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News; and
- WHEREAS,** at the March 25, 2019 meeting, the Planning Commission continued the hearing to May 28, 2019, which was later rescheduled for June 10, 2019. Public notice of the hearing was mailed on April 30, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the May 30, 2019 and June 6, 2019 issues of the Homer News; and
- WHEREAS,** a public hearing of the Planning Commission was held on Jun 10, 2019 where public comment was taken;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On June 4, 2018, the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. Land use in the rural district is unrestricted except as otherwise provided in KPB Title 21.
5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres and provides regulations for material extraction.
6. The proposed disturbed area is approximately 27.7 acres.

7. Consistent with KPB 21.25.050(A) on June 21, 2018, the applicant submitted a revised site plan and application to the Planning Department that addressed issues raised by staff with the initial review of the application.
8. The submitted application with its associated documents was reviewed by staff for compliance with the application requirements of KPB 21.29.030. Staff determined that the application was complete and scheduled the application for a public hearing.
9. A public hearing of the Planning Commission was held on July 16, 2018. Public notice of the hearing was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the July 5, 2018 & July 12, 2018 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
10. Testimony was filed and heard regarding issues that are not addressed by the KPB 21.29.040 standards or 21.29.050 conditions. Staff and the Planning Commission in reviewing the application are not authorized by the code to consider those issues such as property values, water quality, wildlife preservation, a material site quota, and traffic safety.
11. A public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
12. A public hearing of the Planning Commission was held on June 10, 2019. Public notice of the hearing was mailed on April 30, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the May 30, 2019 and June 6, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
13. At the June 10, 2019 hearing, the applicant volunteered to utilize a moving, or rolling, berm rather than a stationary berm. The berms will be placed near the active excavation area to be moved as the extraction area and reclaimed areas expand.
14. At the June 10, 2019 hearing, the applicant volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
15. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
16. *Parcel boundaries.* All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. The submitted site plan indicates the location of each of the parcel boundary stakes.
 - B. Planning staff has visited the site several times and has observed that the boundary stakes are in place.
17. *Buffer zone.* A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
 - B. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
 - C. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.
 - D. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.
 - E. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
 - F. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
 - G. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
 - H. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that can provide visual and noise screening of the material site for some of the adjacent uses.
 - I. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent properties.
 - J. A 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening

- of the proposed use beyond that of a six-foot berm along those boundaries.
- K. The total buffer width, as recommended by staff, along the southern and eastern property boundaries is 98-feet.
 - L. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
 - M. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
 - N. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - O. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
 - P. There has been testimony that the material site will mar the view of Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.
 - Q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.
 - R. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.
18. *Processing.* Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
- A. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the north property line.
 - B. The applicant proposed the following justifications for waiving the processing setback: "Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant's daughter & 169-022-08 is not developed."
 - C. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
 - D. The portion of the proposed processing area greater than 300 feet from the property line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.
 - E. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.
19. *Water source separation.* All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.
- A. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
 - C. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.
20. *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.
- A. This permit approval does not allow excavation in the water table.
21. *Waterbodies.* An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
- A. The Cook Inlet lies about 600 feet west of the proposed material extraction.
 - B. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
 - C. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast corner of the property.
 - D. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.

- E. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - F. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the floodplain is an existing stripped area.
 - G. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.
 - H. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
 - I. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
22. *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.
- A. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.20.050(A)(7).
23. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads.
- A. The submitted site plan indicates that the material site haul route will be Denver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - B. There was a significant number of public comments concerning the condition of Anchor Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
 - C. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
24. *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.
- A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
25. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
- A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
26. *Hours of operation.* Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - B. This condition reduces off-site noise impacts of the material site.
27. *Reclamation.* Reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
- A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.
 - C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission
 - D. The application states that less than 50,000 cubic yards will be mined annually therefore the material site qualifies for a small quantity exception from bonding.
28. *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.
- A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
29. *Voluntary permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
- A. The applicant has volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
 - B. The volunteered condition concerning back-up alarms is in the best interest of the Borough and the surrounding property owners because the multi-frequency alarms

- better minimizes the noise impacts of the material site.
 - C. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.
 - D. The volunteered condition to place the berm near the active excavation area is in the best interest of the Borough and the surrounding property owners because this placement of the berm will better minimize the visual impacts of the material site.
30. *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.
- A. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm placed near the active extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm placed near the active extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 12-foot high berm placed near the active extraction area.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.
 These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
10. The permittee shall ensure that fuel storage 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.
11. The permittee shall conduct operations 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.
16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
 19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
 20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.
 21. The permittee shall operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS _____ DAY OF _____, 2019.

Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Julie Hindman
Administrative Assistant

PLEASE RETURN
Kenai Peninsula Borough
Planning Department
144 North Binkley St.
Soldotna, AK 99669

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2018-23
HOMER RECORDING DISTRICT**

A resolution granting a conditional land use permit to operate a sand, gravel, or material site for a parcel described as Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

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- WHEREAS,** public notice of the application was published in the July 5, 2018 & July 12, 2018 issues of the Homer News; and
- WHEREAS,** a public hearing of the Planning Commission was held on July 16, 2018 where public comment was taken and the Commission denied the approval of the conditional land use permit; and
- WHEREAS,** the denial was appealed, a subsequent appeal hearing was held, and the hearing officer remanded the application to the Planning Commission; and
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Findings of Fact

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5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres and provides regulations for material extraction.
6. The proposed disturbed area is approximately 27.7 acres.
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8. The submitted application with its associated documents was reviewed by staff for compliance with the application requirements of KPB 21.29.030. Staff determined that the application was complete and scheduled the application for a public hearing.
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- ~~15.~~ Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB

21.29.040.

44-16. *Parcel boundaries.* All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.

- A. The submitted site plan indicates the location of each of the parcel boundary stakes.
- B. Planning staff has visited the site several times and has observed that the boundary stakes are in place.

45-17. *Buffer zone.* A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.

- A. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
- B. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
- C. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.
- D. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.
- E. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
- F. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
- G. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
- H. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that can provide visual and noise screening of the material site for some of the adjacent uses.
- I. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent properties.
- J. A 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
- K. The total buffer width, as recommended by staff, along the southern and eastern property boundaries is 98-feet.
- L. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
- M. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
- N. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
- O. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
- P. There has been testimony that the material site will mar the view of Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.

Q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.

R. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.

Q.

46-18. *Processing.* Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.

- A. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the north property line.
- B. The applicant proposed the following justifications for waiving the processing setback: "Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant's daughter & 169-022-08 is not developed."
- C. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
- D. The portion of the proposed processing area greater than 300 feet from the property line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.
- E. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.

47-19. *Water source separation.* All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.

- A. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
- B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
- C. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.

48-20. *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.

- A. This permit approval does not allow excavation in the water table.

49-21. *Waterbodies.* An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.

- A. The Cook Inlet lies about 600 feet west of the proposed material extraction.
- B. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
- C. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast corner of the property.

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- D. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.
 - E. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - F. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the floodplain is an existing stripped area.
 - G. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.
 - H. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
 - I. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
- 20-22. *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.
- A. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.20.050(A)(7).
- 24-23. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads.
- A. The submitted site plan indicates that the material site haul route will be Denver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - B. There was a significant number of public comments concerning the condition of Anchor Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
 - C. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
- 22-24. *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.
- A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
- 23-25. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
- A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
- 24-26. *Hours of operation.* Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
- A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - B. This condition reduces off-site noise impacts of the material site.
- 25-27. *Reclamation.* Reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
- A. The submitted application contains a reclamation plan as required by KPB 21.29.060.

- B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.
- C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission
- D. The application states that less than 50,000 cubic yards will be mined annually therefore the material site qualifies for a small quantity exception from bonding.

26-28. *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.

- A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.

27-29. *Voluntary permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.

A. ~~The applicant has volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms. No additional conditions have been volunteered by the applicant.~~

B. ~~The volunteered condition concerning back-up alarms is in the best interest of the Borough and the surrounding property owners because the multi-frequency alarms better minimizes the noise impacts of the material site.~~

C. ~~The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.~~

A-D. ~~The volunteered condition to place the berm near the active excavation area is in the best interest of the Borough and the surrounding property owners because this placement of the berm will better minimize the visual impacts of the material site.~~

28-30. *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.

- A. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm ~~placed near the active between the vegetated buffer and the~~ extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm ~~placed near the active between the vegetated buffer and the~~ extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary with a 12-foot high berm ~~placed near the active between the vegetated buffer and the~~ extraction area.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.

These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
 5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
 8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
 9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
 10. The permittee shall ensure that fuel storage 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.
 11. The permittee shall conduct operations 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.
 12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
 13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
 14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
 15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.
 16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
 17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
 18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
 19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
 20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in

accordance with KP.B 21.29.070.
~~20-21.~~ The permittee shall operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 2019.

Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Julie Hindman
Administrative Assistant

PLEASE RETURN
Kenai Peninsula Borough
Planning Department
144 North Binkley St.
Soldotna, AK 99669



THE STATE
of **ALASKA**

GOVERNOR MICHAEL J. DUNLEAVY

Department of Natural Resources

DIVISION OF PARKS & OUTDOOR RECREATION
KENAI/PRINCE WILLIAM SOUND REGION

P.O. Box 1247
Soldotna, AK 99669
Main: 907.262.5581
Fax: 907.262.3717

May 1, 2019

Mr. Bruce Wall
Planner
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, AK 99669

Re: Beachcomber LLC Conditional Use Permit Application

Dear Mr. Wall:

The Alaska Division of Parks & Outdoor Recreation (DPOR) received notice from the Kenai Peninsula Borough about the public hearing scheduled for June 10, 2019 to address Beachcomber LLC's conditional land use permit application for sand, gravel, and peat extraction near Anchor Point. DPOR manages the Anchor River State Recreation Area which is a popular state park near the proposed gravel pit. As a nearby land manager, DPOR is neutral on the conditional use permit application. However, DPOR suggests that the Planning Commission consider the following potential impacts to the nearby recreation area while evaluating this application:

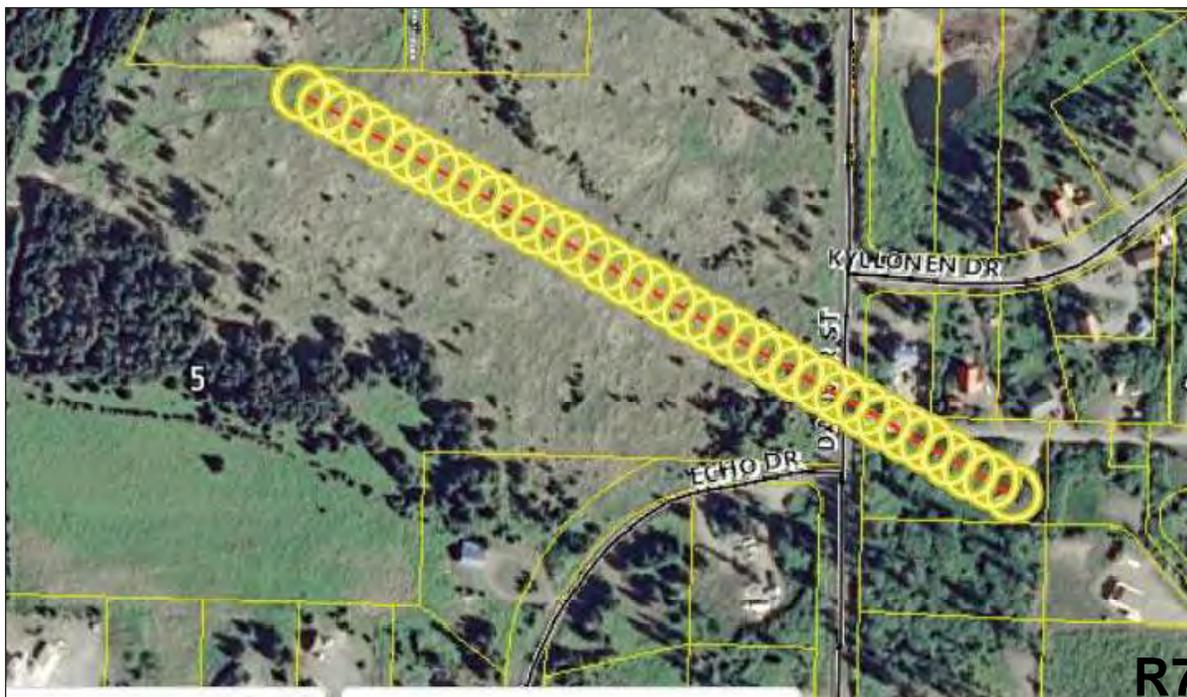
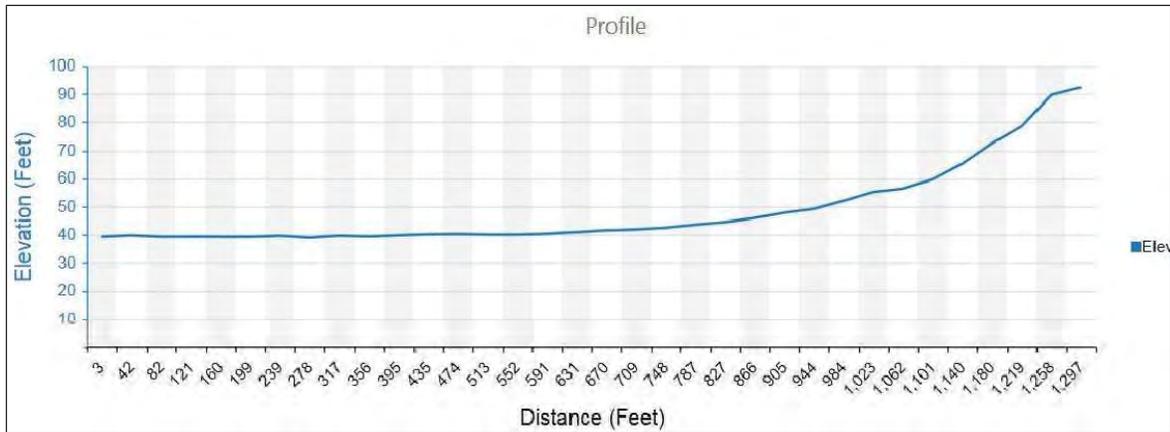
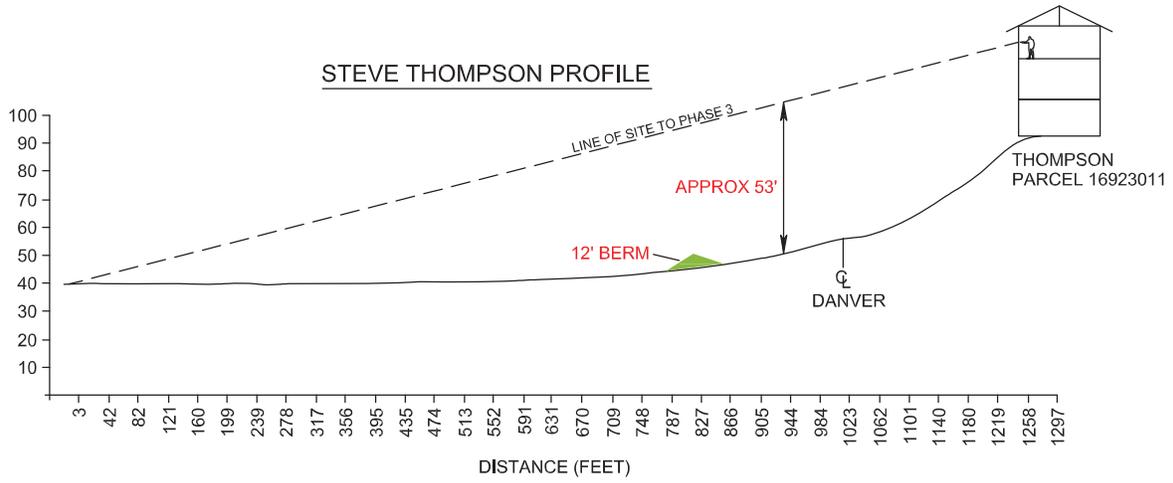
1. Noise from gravel pit and trucks hauling gravel. Consider potential hours of operation to reduce impact on campers and visitors in the recreation area.
2. Dust from gravel pit and trucks hauling gravel.
3. Safety along the beach access road. The road is narrow with minimal shoulders for pedestrians. Traffic along the narrow road increases during peak times during the freshwater and saltwater fisheries. The road provides access for people that tow trailered boats to the tractor launch along Cook Inlet.

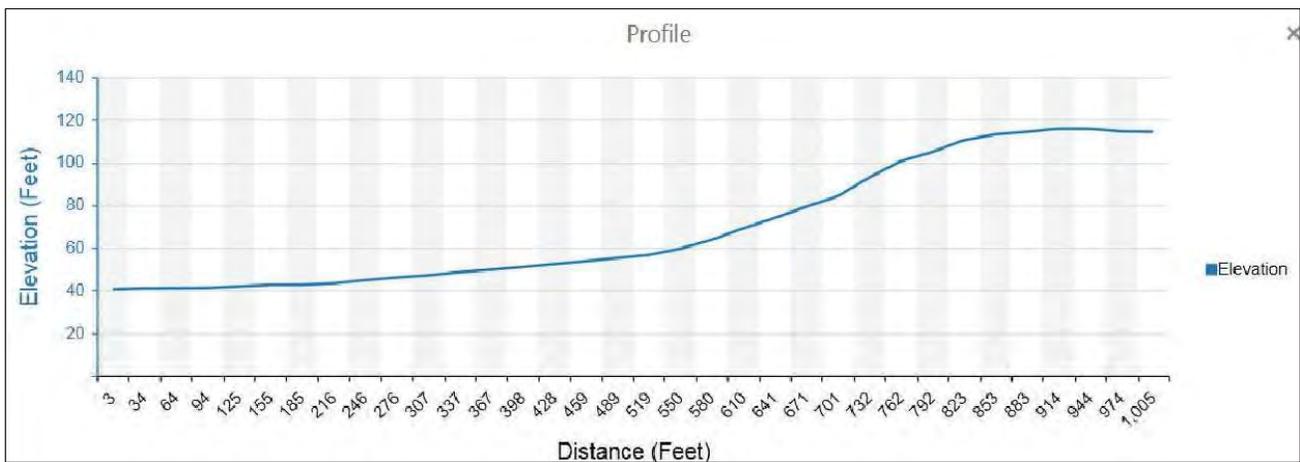
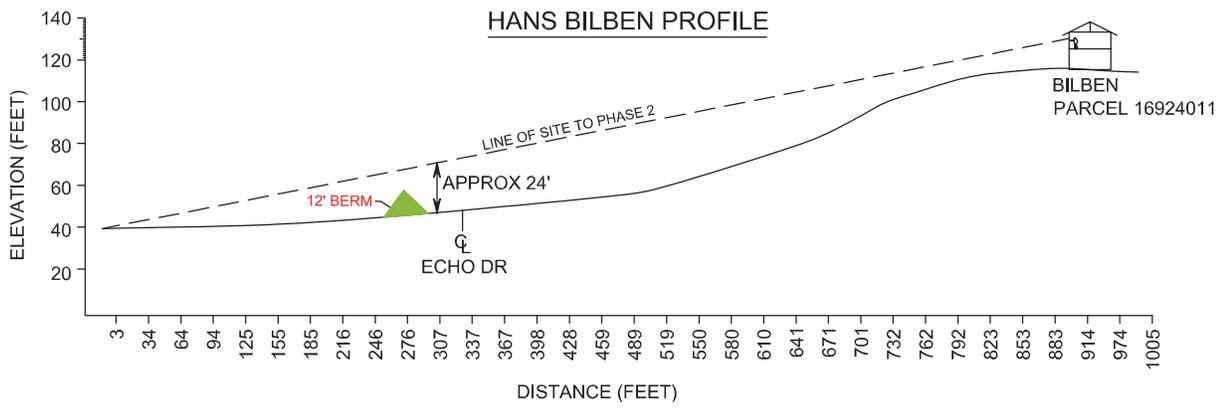
Thank you for considering these concerns. Please contact me if you have any questions.

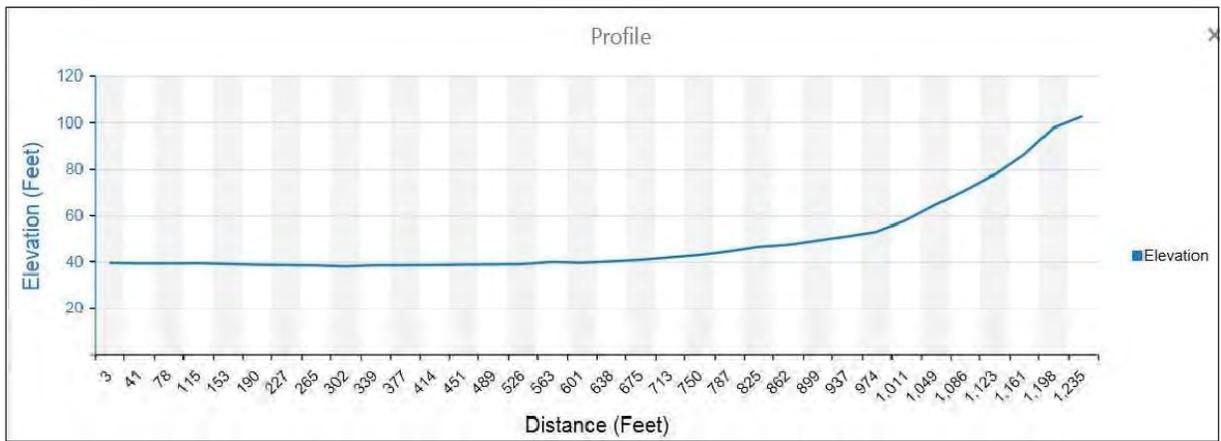
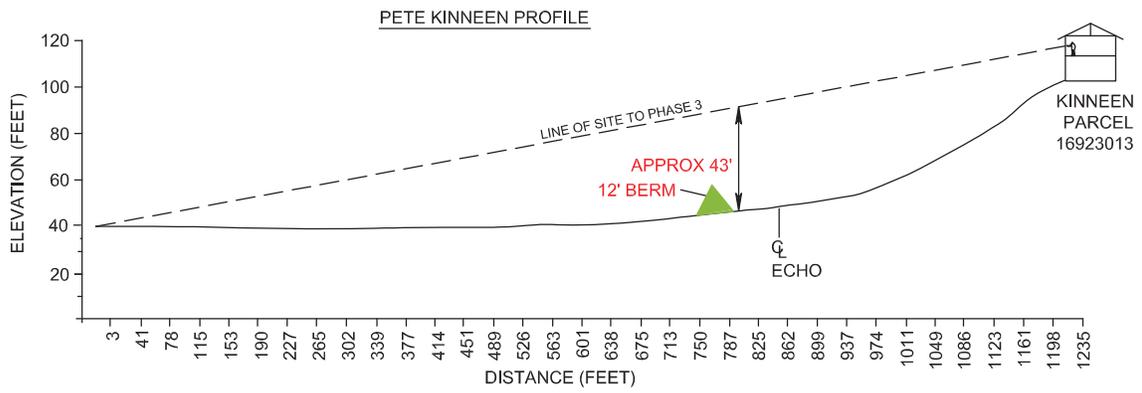
Sincerely,

A handwritten signature in black ink, appearing to read "Jack D. Blackwell".

Jack D. Blackwell
Superintendent







AGENDA ITEM E. UNFINISHED BUSINESS

E. Conditional Land Use Permit for a Material Site; Anchor Point Area

STAFF REPORT

PC MEETING: June 24, 2019

Applicant: Beachcomber LLC
Landowner: Beachcomber LLC
Parcel Number: 169-010-67
Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.
Location: 74185 Anchor Point Road

The resolution has been updated to reflect the volunteered conditions that were accepted at the last meeting.

At the June 10, 2019 meeting the Planning Commission asked staff to work with the applicant on additional volunteered conditions. The applicant also wanted a clarification to the buffer along the eastern boundary. Along the northern 200 feet of the buffer along Danver Road, he is requesting a 50-foot vegetated buffer without the 12-foot high berm. This was discussed at previous meetings but not in detail and it was not incorporated into the conditions. Staff is in support of this because there is significant vegetation in this area, Danver Road is at a lower elevation than the material site at this location, and the adjacent property is a Prior Existing Use material site.

2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm placed near the active extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain.
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm placed near the active extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary; and a 12-foot high berm placed near the active extraction area except along the northern 200 feet of the proposed excavation boundary with a 12-foot high berm placed near the active extraction area.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.These buffers shall not overlap an easement.

The applicant has also volunteered this additional condition:

22. The permittee shall not operate the material site or haul material from the site on Memorial Day weekend (Saturday through Monday), Labor Day weekend (Saturday through Monday), and the 4th of July holiday to include:

- Saturday and Sunday if July 4th is on a Saturday, Sunday, Monday, or Friday
- Saturday, Sunday, and Monday if July 4th is on a Tuesday
- Saturday, Sunday, and Friday if July 4th is on a Thursday

If the Planning Commission accepts this condition, staff recommends adding the following findings:

29. ...

E. The applicant has volunteered a condition a condition that prohibits material site operations on holiday weekends during the summer months.

F. The volunteered condition, to not operate on holidays, is consistent with the standard to reduce noise

disturbance to adjacent properties.

G. The volunteered condition, to not operate on holidays, is in the best interest of the Borough and the surrounding property owners because the Anchor River State Recreational Area has a significantly greater number of visitors on holidays and several of the neighbors and Alaska State Parks has expressed concern about the noise impacts to the recreational area.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A “party of record” is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT

June 18th 2019

Dear Miss Bokenko-Carluccio

It is with great respect and appreciation that I write to you today, I appreciate you sitting through all the public testimony, and taking additional time to really consider the CLUP for Beachcomber LLC. I am grateful to know that you hesitate on approving this permit.

Therefore, I want to reassure you that the authority that is granted to the commission is very clear, even though the attorneys, the KPB hearing officer on appeal, and prior commissioners would like you to believe otherwise. BUT....the planning commission does have **Discretion**.

The KPB Code 21.29.050, Sect A Paragraph 2 c, and I quote -

"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."

As a commissioner, you can add, modify the permit as it is presented, and you do not have to approve the minimum, (the minimum is just the starting point) or the planning department modifications as being sufficient. The permit can only be presented to you as complete, but that does not necessarily mean the conditions are adequate.

As a commissioner, you can adjust the submitted permit and approve it based on additional conditions, those that appear during the public hearing, as well as the request for voluntary conditions.

The code continues with, KPB Code 21.29.050, Sect A Paragraph 2 e,

"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."

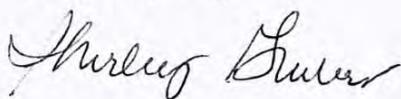
Yes, it is certain these conditions are all subjective in nature, but logic and reason hopefully will prevail. One commissioner has stated, the illogical sense of placing a gravel pit in a State Park area and residential neighborhood, with the grade school being barely 1 mile away. Plus, not to mention, what the permit applicant deems as reclamation.

But as another commissioner also noted, these gravel pits bring very little to the Borough, and by the way, there are already 6 plus pits in the area, when would it be enough?

As stated earlier, you do not have to deny it to prevent it. As a commissioner, adding the needed buffers that were calculated by the KPB GIS System, increasing the vegetation buffer, and enforcing earthen buffers (those that actually contain dirt not just old growth forest pushed on a pile....) with that.. the permit could then be approved. It then would be up to the applicant to follow through with those conditions. Placing conditions on the permit for what is needed, it is not injuring the applicant's rites, it is protecting all peoples rites. Even the applicant and some of the applicant's family do not live by the proposed pit, but it might happen to them one day.

Please continue to consider preventing this permit and perhaps influence others to really consider what this gravel pit would do to the community, both socially and economically, heck even the eagle would have to move it's nest.

Respectfully



Shirley Gruber
Twin Peaks loop
Anchor Point

PLANNING COMMISSION

MINUTES

JUNE 24, 2019



Planning Commission

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

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

**June 24, 2019
7:30 P.M.**

APPROVED MINUTES

CALL TO ORDER

Chairman Martin called the meeting to order at 7:36 p.m.

ROLL CALL

Commissioners Present

Syverine Abrahamson-Bentz, Anchor Point / Ninilchik
Jeremy Brantley, Sterling
Paulette Bokenko-Carluccio, City of Seldovia
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Rick Foster, Southwest Borough
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof / Clam Gulch
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna

With 11 members of a 13-member Commission in attendance, a quorum was present.

Staff Present

Julie Hindman, Administrative Assistant
Scott Huff, Planning Manager
Bruce Wall, Planner
Charlie Pierce, Kenai Peninsula Borough Mayor
Max Best, Planning Director
Holly Montague, Deputy Borough Attorney

Others Present

Eric Neely
Pete Arno
Pete Kinneen
Teresa Jacobson Gregory
Mary Trimble
Emmitt Trimble
Hans Bilben
Richard Carlton
James Hall
Jamie Ross
Richard Koskovich
Peter Zuyus
Blaine Gilman
Buzz Kyllonen
Wayne Ogle

APPROVAL OF REGULAR AGENDA AND ADOPTION OF THE CONSENT AGENDA

***Approved with the adoption of the consent agenda.**

AGENDA ITEM C. CONSENT AGENDA

- *3. Plats Granted Administrative Approval
 - a. Basin View Subdivision Pettey-Daniel Replat; KPB File 2019-033
 - b. Foothills Subdivision Sunset View Estates Addition No. 3; KPB File 2017-086R1
 - c. Inlet Woods 2019 Replat; KPB File 2019-042
 - d. Katama Subdivision Buncak Replat; KPB File 2018-130
 - e. Seward Original Townsite Petersen Replat; KPB File 2019-011
 - f. Thompson Park Donaghe Replat; KPB File 2019-007

***Approved with the adoption of the consent agenda.**

AGENDA ITEM C. CONSENT AGENDA

- *7. Commissioner Excused Absences
 - a. Vacant, Ridgeway

***Approved with the adoption of the consent agenda.**

AGENDA ITEM C. CONSENT AGENDA

- *8. Minutes
 - a. June 10, 2019 Planning Commission Minutes

***Approved with the adoption of the consent agenda.**

MOTION: Commissioner Carluccio moved, seconded by Commissioner Ecklund to approve the consent and regular agendas.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

PUBLIC COMMENT / PRESENTATIONS / COMMISSIONERS

Chairman Martin opened the meeting for public comment for items not on the agenda. Seeing and hearing no one public comment was closed and meeting continued.

PUBLIC HEARINGS

AGENDA ITEM E. UNFINISHED BUSINESS

E. Conditional Land Use Permit for a Material Site; Anchor Point Area
Motion on floor: to approve a conditional land use permit application for Beachcomber LLC, Resolution 2018-23, with voluntary conditions for white noise backup alarms for the applicant's vehicles and a rolling berm, citing findings of fact that the white noise alarms will minimize noise impact and the rolling berm will minimize visual impact.

Staff Report given by Bruce Wall

PC MEETING: June 24, 2019

Applicant: Beachcomber LLC

Landowner: Beachcomber LLC
Parcel Number: 169-010-67
Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.
Location: 74185 Anchor Point Road

The resolution has been updated to reflect the volunteered conditions that were accepted at the last meeting.

At the June 10, 2019 meeting the Planning Commission asked staff to work with the applicant on additional volunteered conditions. The applicant also wanted a clarification to the buffer along the eastern boundary. Along the northern 200 feet of the buffer along Denver Road, he is requesting a 50-foot vegetated buffer without the 12-foot high berm. This was discussed at previous meetings but not in detail and it was not incorporated into the conditions. Staff is in support of this because there is significant vegetation in this area, Denver Road is at a lower elevation than the material site at this location, and the adjacent property is a Prior Existing Use material site.

2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm placed near the active extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain.
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm placed near the active extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary; and a 12-foot high berm placed near the active extraction area except along the northern 200 feet of the proposed excavation boundary with a 12-foot high berm placed near the active extraction area.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.These buffers shall not overlap an easement.

The applicant has also volunteered this additional condition:

22. The permittee shall not operate the material site or haul material from the site on Memorial Day weekend (Saturday through Monday), Labor Day weekend (Saturday through Monday), and the 4th of July holiday to include:

- Saturday and Sunday if July 4th is on a Saturday, Sunday, Monday, or Friday
- Saturday, Sunday, and Monday if July 4th is on a Tuesday
- Saturday, Sunday, and Friday if July 4th is on a Thursday

If the Planning Commission accepts this condition, staff recommends adding the following findings:

29. ...

E. The applicant has volunteered a condition a condition that prohibits material site operations on holiday weekends during the summer months.

F. The volunteered condition, to not operate on holidays, is consistent with the standard to reduce noise disturbance to adjacent properties.

G. The volunteered condition, to not operate on holidays, is in the best interest of the Borough and the surrounding property owners because the Anchor River State Recreational Area has a significantly greater number of visitors on holidays and several of the neighbors and Alaska State Parks has expressed concern about the noise impacts to the recreational area.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A “party of record” is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT

Mr. Wall noted that the public hearing was closed at the last meeting. The packet contains the resolution that has been updated to reflect the volunteered conditions that were accepted at the last meeting. The packet also includes, on page 30, a letter dated May 1, 2019 from Alaska State Parks. At the last meeting it was mentioned by a testifier that State Parks had submitted a letter. Mr. Wall had informed the Commission that the letter had not been received. Since then Mr. Wall spoke with State Parks and they provided a copy of the letter that was evidently lost in the mail. On pages 32 through 61 of the packet there are materials that were passed out at the last meeting. In the desk packet are two letters from Shirley Gruber that were mailed directly to Commissioner Carluccio and Commissioner Whitney after the hearing was closed. The applicant has not had an opportunity to rebut the comments mailed directly to the Commissioners or the letter from State Parks. The applicant may not have received all of the printed materials that were provided at the last meeting. Prior to continuing deliberation on this matter the applicant should be given an opportunity to rebut the additional information. The applicant should also be instructed to limit his rebuttal to only those additional comments mentioned.

Mr. Wall asked the Chairman to allow him to address several Commission members to get some items clarified for the record.

Mr. Wall mentioned that Commissioner Ruffner was quoted in an article published on June 4th by KBB. It quotes him saying concerning material sites “The Planning Commission does not have the authority to say no.” Mr. Wall asked Commissioner Ruffner to state the context of that statement. Commissioner Ruffner does not recall verbatim the comments and context. Since he has been on the Commission, when material sites have come before the Planning Commission, it has been clear that their job is to interpret the code as it has been laid forth from the Assembly. In respect of a denial, if a permit application comes in and it is complete and meets the conditions set forth in 21.29 the Commission does not have the right to deny the permit. That is his understanding because of those elements that address the conditions are specific in 21.29.050. Mr. Wall said it was his understanding that the article was in the context of Commissioner Ruffner’s role as the Chair of the Material Site Work Group. Commissioner Ruffner said he knows that KBB called and asked to do an interview on that. It wasn’t specific to any gravel pit but was about the code. He made very similar comments on the record for several material site permits that have come before the Commission in the last 5 to 7 years.

Mr. Wall asked to address Commissioner Foster. At the April 22nd meeting the applicant stated, this is from the minutes of the meeting which are not verbatim, “That he met prior to the meeting with planning staff, Mr. Best, Mr. Wall and the acting Chairman, Dr. Foster. They made some changes to procedures and they wanted to make him aware of the changes. He listened and came away from the meeting knowing how things would go concerning scheduling. All of the testimony would be allowed and at the end of the public testimony they would ask for a continuance and that would be the end of the public testimony. Starting on April 22nd, the date presented by staff and Dr. Foster, they would begin with his rebuttal and it sounded fine so they agreed.” Mr. Wall said that while reading Mr. Trimble’s account of the situation it sounded like the conversation was limited to how the meeting was to proceed. He wanted to allow Commissioner Foster an opportunity to provide any additional information regarding the conversation. Commissioner Foster said when he arrived he had a short meeting with Mr. Best and Mr. Wall in regards to the hearing procedure. That they would begin with the Chair introducing the agenda item, then staff presenting the staff report and recommendations. The presentation by the applicant and their representatives would follow. In the past

the Commission has started that way but hasn't read it out loud as the process. Testimony from the public would be next. The response by staff to any testimony that was given and an opportunity for the Commission to ask questions of the staff would follow. The rebuttal by the applicant would then follow and that was something that was not regularly done. The Chairperson would then close the hearing and entertain a motion. He read the procedure over and agreed to it as the acting Chair. He then shared that information and showed Mr. Trimble the steps and explained where in the meeting he would be able to present. That was the limit of his conversation with the applicant.

Mr. Wall noted that Commissioner Whitney and Commissioner Carluccio received ex parte communications after the hearing was closed. He felt it was a good time for anyone else on the Commission to disclose if they received any ex parte communications.

Commissioner Carluccio addressed the letter she received. She did not know what it was when she opened it. She read the first line and realized it was pertaining to the permit and she did not continue reading. She scanned it in and sent it to staff. The first time she read the letter was when reviewing the desk packet.

Commissioner Foster said he received the same letter in the mail. He brought it in and gave it to staff.

Commissioner Whitney said he also received it and emailed it to staff the next day.

Commissioner Fikes also received the same letter and turned it into staff prior to the meeting. She also received a phone call message for contact information and she did not respond.

Commissioner Bentz said she had not received a letter. She did receive calls from neighbors but the calls were related to the Material Site Code Ordinance. She reminded them that she would not be able to speak to any specific permits. The Ordinance was the only thing discussed.

Commissioner Ruffner said if a letter was sent he did not receive it. He has not had any ex parte communications. He wanted to add that he was not present for the last meeting. He did go back and listen to almost all the audio from the last meeting and read through the minutes carefully. He feels caught up on what occurred at the last meeting.

Commissioner Morgan was also absent from the last meeting. She also listened to the audio, read the minutes and reviewed the packets.

Mr. Wall wanted to add that Commissioner Ruffner and Commissioner Morgan viewed the video presentation given by the applicant at the beginning of the previous meeting.

Mr. Wall concluded that staff recommends that the Planning Commission review the application, site plan, staff report, and comments received and determine if the mandatory conditions contained in KPB 21.29.050 will be met. The Planning Department recommends that the Planning Commission amend the Resolution as discussed in the staff report, deny the processing distance waiver request, approve the conditional land use permit with listed conditions and adopt the findings of fact subject to the requirements contained in the full staff report.

Commissioner Whitney wanted to ask a procedural question. He wanted to know if the new resolution presented would cause them to allow public testimony because of the changes. Mr. Wall explained the resolution included in the packet is what was approved by the Commission at the last meeting. He just updated the resolution to contain those changes. What is contained in the staff report for this meeting is the applicant's response to the public testimony that has been heard. The Commission is free to act on that without taking additional public comment. The public has already commented and the applicant has responded with additional volunteered conditions. Changes to the buffer is still within the Commission's purview. It does not require public comment.

Commissioner Ecklund asked staff if additional discussion and amendments were allowed other than the

ones that are new and presented tonight and the changes they made at the last meeting. Mr. Wall stated he recalled the previous meeting being ended with the Commission leaving it open to bring the applicant up to ask for additional volunteered conditions. Mr. Wall also worked with the applicant between the meetings so it wouldn't all have to occur at this meeting. Commissioner Ecklund stated that since the last meeting it came to her attention that there are three times of the year that the beach is inundated with people. There are three openings that are mentioned in the letter from State Parks on page 30 of the packet. The salt water and fresh fishery openings increase traffic. She wanted to know if those were the same periods of time that the applicant has amended and agreed to. Listed are holidays but wanted to know if the fishery openings could be included. They do change every year but it does increase public traffic. Mr. Wall said they could discuss with the applicant.

Mr. Wall felt that it would be a good time to allow the applicant an opportunity to rebut the additional comments received if he wishes to do so.

Mr. Trimble was brought up to rebut and answer questions.

1. Emmitt Trimble, PO Box 193, Anchor Point

Mr. Trimble's understanding regarding his rebuttal is that it must deal with the letter received and he also wanted to comment on the presentation given over a two-hour period. It was an opponent sitting with a computer during testimony. He felt that it was something that should not have happened. They previously rebutted those drawings and assertions with the letter from a licensed land surveyor. Regarding the letter that came in late he had no issue with anything stated.

Commissioner Ecklund wanted to discuss the letter from the State of Alaska Division of Parks and Outdoor Recreation, Jack Blackwell. It mentions the increase of traffic during the freshwater and saltwater fisheries. She believed that those were just a few days but three different times. She wanted to know if he was familiar with the fishery openings. Mr. Trimble said he is very familiar and they are not the same. The freshwater opening varies every year. It opens around Memorial Day but sometimes it is the weekend before and sometimes it is the weekend after. On Memorial Day and holidays is when the most people are there. Last Saturday there were about 14 people there out of 186 sites. They choose to respond to the State's concerns. It is not in their best interest to be trying to operate during the busy times. The saltwater is continuous every day but mostly on the weekends. He is open to suggestions but summer is the time they have and need to operate. He thought it was reasonable to not operate on Memorial Day, Labor Day and the 4th of July. There is a parade on the 4th of July with big BBQs. Those are the big events for the area. Commissioner Ecklund stated she went by the site two Saturdays ago and drove the road. She saw the recreational sites and it was a pretty quiet Saturday and she didn't think there was a freshwater opening. Mr. Trimble said yes, that was when there was only 14 out of the 186. This previous Saturday had 35. Commissioner Ecklund noted that on his additional conditions that he agrees to he states that if the 4th is on a Thursday he would not operate Saturday, Sunday and Friday. She wanted to know if the parade was on the 4th or on Friday. Mr. Trimble did not discuss the clarifications of when it falls and is open to suggestions. Mr. Trimble does not want to operate while the parade is going on. He thinks it is a clarification from staff due to the 4th falling on different days of the week. Commissioner Ecklund felt like the fourth was being skipped in how they were listed. Mr. Wall did clarify that the intent was to include the fourth. If it can be construed a different way, the Commission should reword that condition. Commissioner Ecklund asked if it will include the fourth and the additional days around the holidays. Mr. Trimble said sometimes there is a four-day weekend so it was the intent to include that. Commissioner Ecklund noted that he seemed agreeable to not operate on the freshwater opening when it is crowded. Mr. Trimble would rather keep it to the holidays because there is too much uncertainty about the openings. Usually the first weekend hardly anyone is there. He wanted to keep it to the holidays because they know people will be there regardless of the fishing.

Mr. Tremble wanted to clarify a question Mr. Wall had regarding the backup beepers. Mr. Tremble is in agreement on that condition for his equipment. He cannot govern what happens with a truck that may come in one time. He will try to accomplish that. It is not a big deal to deactivate the

beeper without putting the other white noise machine on. He would do everything he could to keep that down on other people's equipment.

Commissioner Ecklund wanted to ask about the weight limit on the bridge. She knows he can't use it but wanted to know the weight limit. Mr. Trimble thought it was 11 tons. He followed a dump truck across it with 12 yards of dirt in it the other day. Commissioner Ecklund had one follow her across the bridge. Mr. Trimble said it is not being monitored but he thinks 11 tons. Commissioner Ecklund wanted to know how much a full gravel truck would weight. Mr. Trimble said it is more than that and they will not be going across that bridge until it is repaired. Commissioner Ecklund wanted to know about other contractors he will be working with in the pit. Mr. Trimble stated that he will require that they cannot go across the bridge until it is repaired if they buy gravel from him. Commissioner Ecklund asked if there was a timeline for the repairs. Mr. Trimble is hoping for next summer but is not optimistic. They will have to build a separate bridge to tear the existing one down.

Commissioner Fikes wanted to know if there was an area in the residential zone or housing area that would be affected by Jake brake use. Mr. Trimble responded that the only place someone might use a Jake brake would be on the other side of the river coming down the hill towards the bridge. His daughter lives in that area and he doesn't recall hearing any Jake brakes when spending time there. He has heard them from the Old Sterling Highway. He wanted to clarify that it is not a residential zone. There are residential properties but there is no zone. Commissioner Fikes agreed.

Mr. Bilben approached the microphone and Chairman Martin let him know that public testimony was not going to be taken and not part of the procedure. The Commission is in discussion at this point and some information was taken by request from the Commission.

Commissioner Ecklund referred to page 124 of Volume 2 of the packet. She wanted to know about the letter received from the Alaska Department of Transportation and Public Facilities that gives the Borough direction. There were black and white pictures of the road presented at the last meeting during public testimony. She drove that road and she can't imagine what that road will turn into with a large amount of heavy trucks going over it. It is narrow and cracked all over especially along the edges. She spoke to Planning Director Best and asked if there had been any follow up because at the meeting Mr. Wall stated the Borough would not do any repairs as the Department of Transportation and Public Facilities requested. She wanted to know if there was any place in the Borough code that talks about a state maintained roads. If the Commission approves something that requires a roads use and it causes damage she wanted to know who is responsible for fixing the road. Mr. Best responded that there is nothing in Borough code that would require an applicant or somebody utilizing the state road to repair it. The code does talk about Borough roads and the Borough ownership of those roads. That responsibility lies with the State. If they want to impose weight restrictions, axle load limits on a road in disrepair they have that ability. They do have the tools available if they felt it was necessary on that road.

Commissioner Bentz noted that testimony was received that it would have to be approved by the State DNR through the State Parks since that road was originally granted as an easement through the State parks for DOT. She recalled that there was some combination of State Parks and DOT relationship with that road building. Mr. Wall said it is complicated and he did look into it. He believes that DOT does have an easement to do all the work they need. From his previous conversations with DOT the major limiting factor was the adjacent wetlands and encroaching upon the adjacent private property. There is not much room to work in there. It is more of a physical restraint then a legal restraint.

Commissioner Whitney wanted to know who would trigger issues of weight limits with DOT. He wanted to know if it needed to be a complaint from the Borough, property owners in the area, people using the road, or Parks Department. Mr. Best thought that anybody could make the complaint but it would be up to DOT to go out and do an analysis to decide if there should be a load limit.

AMENDMENT MOTION: Commissioner Ruffner moved, seconded by Commissioner Bentz to amend the motion by substitution to include the updated Resolution presented in the packet, pages 22 through 29.

Commissioner Ruffner noted that the substitution amendment renumbers a number of sections to have it make more sense. There are a couple of additions that are in red that include the voluntary conditions that were worked on and agreed upon by the applicant and staff. Also, it makes changes and clarifies the permit conditions in respect to a change in the height of the berm specifically along one of the streets. This was all covered by staff in the staff report. Mr. Wall wanted to clarify that the Resolution on the page numbers referenced does not include the conditions that has been volunteered since the last meeting and the clarification of the buffer along Denver Road will need to be a separate motion to amend.

Commissioner Bentz referred to page 27 of the packet and the permit conditions. There is language change on condition number 2 about buffers and the language that was replaced was "between the vegetative buffer and the" and was replaced with "placed near the active". She asked for him to explain the language change for the three bullet points in condition two. Mr. Wall was trying to get into words what the applicant was volunteering regarding the rolling or moving berms. The way it was previously written he could put that berm anywhere between the property boundary and the excavation. This limits him to placing the berm near the active excavation area. As the excavation area moves he would need to move the berm.

AMENDMENT MOTION PASSED: Seeing and hearing no discussion or objection the motion passed by unanimous consent.

Commissioner Ruffner noted that there was some discussion occurring among the Commission but he wanted to note the discussion was because the Commission needed some clarification on where they could locate the additional changes. Mr. Wall clarified that on condition 2 the fifth bullet point be changed to a 50-foot vegetated buffer adjacent to the eastern most parcel boundary and a 12-foot-high berm placed near the active extraction area except along the northern 200 feet of the proposed excavation. That takes care of the buffer issue along Denver. Commissioner Carluccio wanted to clarify because she was not sure what item 2 Mr. Wall was referring to. Mr. Wall was referring to the staff report in the desk packet. Commissioner Carluccio stated it was the permit conditions on page 27 of 173 and page 15.1 of 173. Mr. Wall said yes, on the resolution that is contained in the packet he is proposing to change the fifth bullet point on Condition 2 on page 27. Commissioner Ruffner asked if that was the only proposed change. Mr. Wall noted that the second change is located in the staff report on page 15.1. It would be all of the text under number 22 and 29. E, F, and G. 29 E, F, and G are the findings to support the additional condition number 22.

AMENDMENT MOTION: Commissioner Ruffner moved, seconded by Commissioner Bentz to amend Resolution 2018-23 to change the fifth bullet point on condition number 2 to change it to read "A 50-foot vegetated buffer adjacent to the eastern most parcel boundary; and a 12-foot-high berm placed near the active extraction area except along the northern 200 feet of the proposed excavation."

Commissioner Carluccio wanted to know why the 200 feet along the north was being excluded. Mr. Wall stated that it is an area with significant vegetation. The applicant felt like a 12-foot berm would be redundant particularly since that property sits at a higher elevation than the adjacent road. The adjacent road is quite a bit lower right there. The adjacent property across the street on Denver is a prior existing use material site. Generally, the Commission does not require a buffer between material sites. The applicant can extract more gravel from that area that is hidden from the neighbors and that would be less gravel he would have to extract elsewhere. Commissioner Ecklund noted when she drove down Denver the first 200 feet is the access road. An upper level area of gravel can be seen and somewhere along Denver there is a big high berm. She wanted to know if that berm was within that 200 feet and it seemed close to the Anchor Point Road. Mr. Wall stated that the berm would not be within the 200 feet. The 200 feet would end where the denser vegetation ends. Commissioner Ecklund noted that there is a berm and then there is an area where there is no vegetation along Denver Road where the fenced horse area can be seen. She wanted to know if that area is Phase 2 or 3. She wanted to try to figure out the buffer along there. Commissioner Bentz suggested looking at page 190 in Volume 2 of the packet. Commissioner Carluccio was wondering if there was a photo or aerial. Mr. Wall found the map and it was page 420 of Volume 2. There is a prior existing

use material site that is where the pond is on the opposite side of Danver. Immediately west of that pond is vegetation that is fairly dense. That is the portion that he is proposing to eliminate the 12-foot-high berm. On page 423 there is some contour lines that may help visualize it and show that the road is at a lower elevation there. The adjacent properties are about 24-foot elevation and where the trees are there is about a 44-foot elevation.

Commissioner Ecklund said that when looking at that page there is an area with no trees. She wanted to know how a 50-foot vegetative buffer could be obtained. She wanted to know if grassland would be considered. Mr. Wall said there are some trees in that area but are sparse. It does not provide a lot of screening. Most of that will be grass and that is why a 12-foot berm is being recommended there in addition to the 50-foot vegetation.

AMENDMENT MOTION PASSED: Seeing and hearing no discussion or objection the motion passed by unanimous consent.

AMENDMENT MOTION: Commissioner Ruffner moved, seconded by Commissioner Foster to amend Resolution 2018-23 to include the volunteered condition as number 22. "The permittee shall not operate the material site or haul material from the site on Memorial Day weekend, Labor Day weekend, and the 4th of July holiday." the specifics of how those fall is spelled out in three bullet points on page 15.1 of 173, and attach the following findings 29.E. The applicant has volunteered a condition that prohibits material site operations on holiday weekends during the summer months; 29.F. The volunteered condition, to not operate on holidays, is consistent with the standard to reduce noise disturbance to adjacent properties; 29.G. The volunteered condition, to not operate on holidays, ins in the best interest of the Borough and the surrounding property owners because the Anchor River State Recreational Area has a significant greater number of visitors on holidays and several of the neighbors and Alaska State Parks has expressed concern about the noise impacts to the recreational area.

AMENDMENT MOTION PASSED: Seeing and hearing no discussion or objection the motion passed by unanimous consent.

Chairman Martin noted that discussion was for the main motion as amended.

Commissioner Ecklund noted that this is the main motion to approve this material site permit. She asked staff if the area around the gravel pit would have been a sufficient area for local option zoning had it been done prior to this application. Mr. Wall said that all that is required for a local option zone is twelve contiguous lots. Commissioner Ecklund wanted to know if the State recreational sites would be included, she noted that Mr. Best was shaking his head no. She stated it would have to be twelve privately owned lots. Mr. Wall said that the code deals with similarly sized lots. That would exclude the State Recreational areas because they would need to be similarly sized lots and similar uses. Commissioner Ecklund wanted to know if it was ever a possibility. Commissioner Carluccio stated she did not think so. Even if they did an LOZ it would not necessarily include Mr. Trimble's property. The LOZ would not have affected this in anyway. Mr. Wall said that was correct. Under the current ordinance, because the parcel sizes need to be similarly size, they could not include Mr. Trimble's property within that LOZ. It would be limited to 12 contiguous similarly residential use lots.

Commissioner Carluccio wanted to know if Mr. Trimble had indicated how much gravel he intended to move on a yearly bases or how much he planned to excavate. Mr. Wall said the application states up to 50,000 cubic yards. In previous hearings he indicated that he has no intentions of going that high. It would probably be much smaller. That is just a number he used because anything beyond that requires bonding with the state. Commissioner Carluccio stated the applicant would be allowed to excavate and move that much gravel in a year and wanted to know if the property is sold if the conditional use permit goes with the property. Mr. Wall said yes, he could excavate the 50,000 cubic yards if this permit is approved. Yes, the permit does carry with the land. It is not tied to the owner it is tied to the land. Commissioner Carluccio followed up, if he doesn't intend to move 50,000 in a year but he sold the property it would be open for up to 50,000. Mr. Wall said that was correct. Commissioner Carluccio asked if all the other conditions put on the permit would still remain in effect. Mr. Wall said they would.

Commissioner Bentz wanted to remind the Commission that if there were any other conditions or modifications to the conditions that are before them that would facilitate a reduction in negative secondary impacts of this material site could be discussed. Briefly talked about has been the rolling berm and how it would be more or less effective based on the approach to the extraction. She felt it could be more effective depending on whether it was going from east to west towards neighboring residents or north to south. She was trying to think of the practicality of that rolling berm and having it march ahead of any excavation so that it reduces that sight angle or reduce that potential dust or noise barrier. It's a concept that she hasn't seen a lot in other material sites and was curious if other Commissioners had opinions about it and the practicality of it.

Commissioner Ruffner wanted to check with staff that they did include in the amendment by substitution that the applicant volunteered to utilize that technic so it seems to make sense in this case because of the sight angles. The practicality of being able to extract material being and remove the stuff not wanted and putting it on top and then keep stacking and moving as the applicant goes will keep the greatest distance of a buffer. This is instead of pushing it all out and build the berm way out. In a large size area, it would make a lot of sense to apply it.

Commissioner Foster wanted to know if the berms ever have alder added to let the alder take off on the earthen berms or they just cut down trees and pile them up with biomass and dirt. He wanted to know what would consist of earthen berms and if there were additional conditions that could be added to it. Mr. Wall said the code doesn't really allow any additional conditions since it is assumed to be an earthen berm. Typically, that is what he sees with material sites. An earthen berm with some woody debris in there from the clearing. Usually that stuff gets in the way so there is usually not much woody debris. If that berm stays in place for some time vegetation will naturally grow on it such as alders but that would not be practical in this case because they will be moving the berm periodically.

Commissioner Carluccio wanted to know if the reclamation plan was in place or if it is up to the applicant. Mr. Wall said there is a plan included with the application that meets the code requirements. Commissioner Carluccio wanted to review the requirements. Mr. Wall stated that the exhausted areas exceeding 5 acres in size needs to be reclaimed with 4 inch of soil and revegetated. The slopes need to be 2:1 so there are no steep slopes. Commissioner Carluccio wanted to know the borough's history on following up on reclamation of other sites. Mr. Wall goes each year and does an inspection of each of the permitted material sites. He takes note of what areas are in need of reclamation. If they do not keep up he follows up with them. The current language of the code is a little problematic because it talks about exhausted areas. It is a little bit subjective. If an area is obviously exhausted, then he follows up and requires the reclamation take place. Commissioner Carluccio wanted to know if the code states what to do if they don't reclaim. Mr. Wall said there are provisions in the code for enforcement of the ordinance, particularly pertaining to reclamation. It involves sending out an enforcement notice, scheduling a hearing with the hearing officer, and fines are typically \$300 a day plus the hearing officer can take additional action concerning requiring the reclamation and revoking the permit. Commissioner Carluccio wanted to follow up that a permit can be revoked if they don't follow the guidelines. Mr. Wall said absolutely. Commissioner Carluccio wanted to know how much time the applicant has once a letter is sent out of notice. She wanted to know if it was weeks, months, or years. Mr. Wall felt he was maybe too generous with working with the applicants by giving them more time than he should. The idea is to get them in compliance and help them determine a time frame that works for them. It is not years it is months.

Commissioner Venuti wanted to know if reclamation would require bonding. Mr. Wall responded that the way the code is currently written is if a material site in the borough is exempt from the state bonding requirements the borough will also exempt it from the borough bonding requirements. Anything that has a total disturbed area of less than 5 acres is exempt from the state bonding requirement. If they start reclaiming land after they disturbed five acres, then bonding is not required under the current code. Commissioner Venuti asked if bonding could be made a condition. Mr. Wall said that the ordinance specifically exempts it if they are exempt from the state bonding requirements.

Roll call vote was requested for the main motion to approve a conditional land use permit application for Beachcomber LLC, Resolution 2018-23, that has been amended with voluntary conditions.

MOTION PASSED BY MAJORITY VOTE: 8 Yes, 2 No, 1 Recused, 1 Absent.

- Yes: Bentz, Ecklund, Fikes, Foster, Martin, Morgan, Ruffner, Venuti
- No: Carluccio, Whitney
- Recused: Brantley
- Absent: Ernst

Chairman Martin thanked the public that attended, did their research and participated in the process.

AGENDA ITEM F. VACATIONS NOT REQUIRING A PUBLIC HEARING

F. Utility Easement Vacation

1. Vacate the 10-foot-wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition, granted by AA Mattox Peggi's Addition (Plat HM 99-64); within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-048V

Staff Report given by Scott Huff

PC Meeting: June 24, 2019

Purpose as stated in petition: The 10' drainage easement has not been used since it was granted in 1984. There is an alternative corridor in place on the Nelson Avenue ROW above the north lot line of the subject property. A long driveway permit on the Nelson Avenue ROW has been issued by the City of Homer to the Quiet Creek Park LLC Project. The long driveway permit requires that the existing drainage corridor remain in place on the North side of the long driveway. The current corridor on the Nelson Avenue ROW handles any storm or seasonal water runoff from the Quiet Creek Park LLC Project and above, as well as, the drainage plan in place in the Quiet Creek Park LLC Project. The owner understands that the City of Homer prefers not to cross personal property when other more adequate options or corridors are available to the City of Homer for drainage and seasonal runoff. The subject property is currently for sale and buyers are concerned about the future use of the subject property 10' drainage easement, therefore preventing them from making an offer on the subject property. This is creating an adverse effect to the subject property. Vacating this easement would not create any adverse effects to the surrounding properties.

Petitioner: Peggi Patton of Homer, Alaska

Location: on Nelson Avenue and Heidi Court, in the City of Homer

Notification: Notice of vacation mailings were sent by regular mail to 17 owners of property within 300 feet. Notice of the proposed vacation was emailed to 8 agencies and interested parties.

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building.

The City of Homer Advisory Planning Commission recommended approval of the drainage easement vacation on May 15, 2019.

Comments Received:

Alaska Communications Systems: No objection.

ENSTAR Natural Gas: No objection.

GCI: No objection.

MISCELLANEOUS / ADDITIONAL INFORMATION



Planning Department

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

Charlie Pierce
Borough Mayor

«OWNER»
«ATTENTION»
«ADDRESS»
«CITYSTATEZIP»

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

Public notice is hereby given that a conditional land use permit application for material extraction on a parcel in the **Anchor Point** area has been remanded on appeal to the Planning Commission. This notice is being sent to landowners located within ½ mile of the subject property. All members of the public are invited to comment. The project under consideration is described as follows:

Applicant: Beachcomber LLC
Landowner: Beachcomber LLC
Parcel Number: 169-010-67
Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.
Location: 74185 Anchor Point Road
Proposed Land Use: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

KPB Code: Conditional land use permit applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.29. Copies of these ordinances are available from the Planning Department or at: kpb.us

Public Hearing: A hearing will be held by the Kenai Peninsula Borough Planning Commission to consider the application on **Monday, March 25, 2019**, commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting will be held in the Betty J. Glick Assembly Chambers of the borough administration building located at 144 N Binkley St, Soldotna.

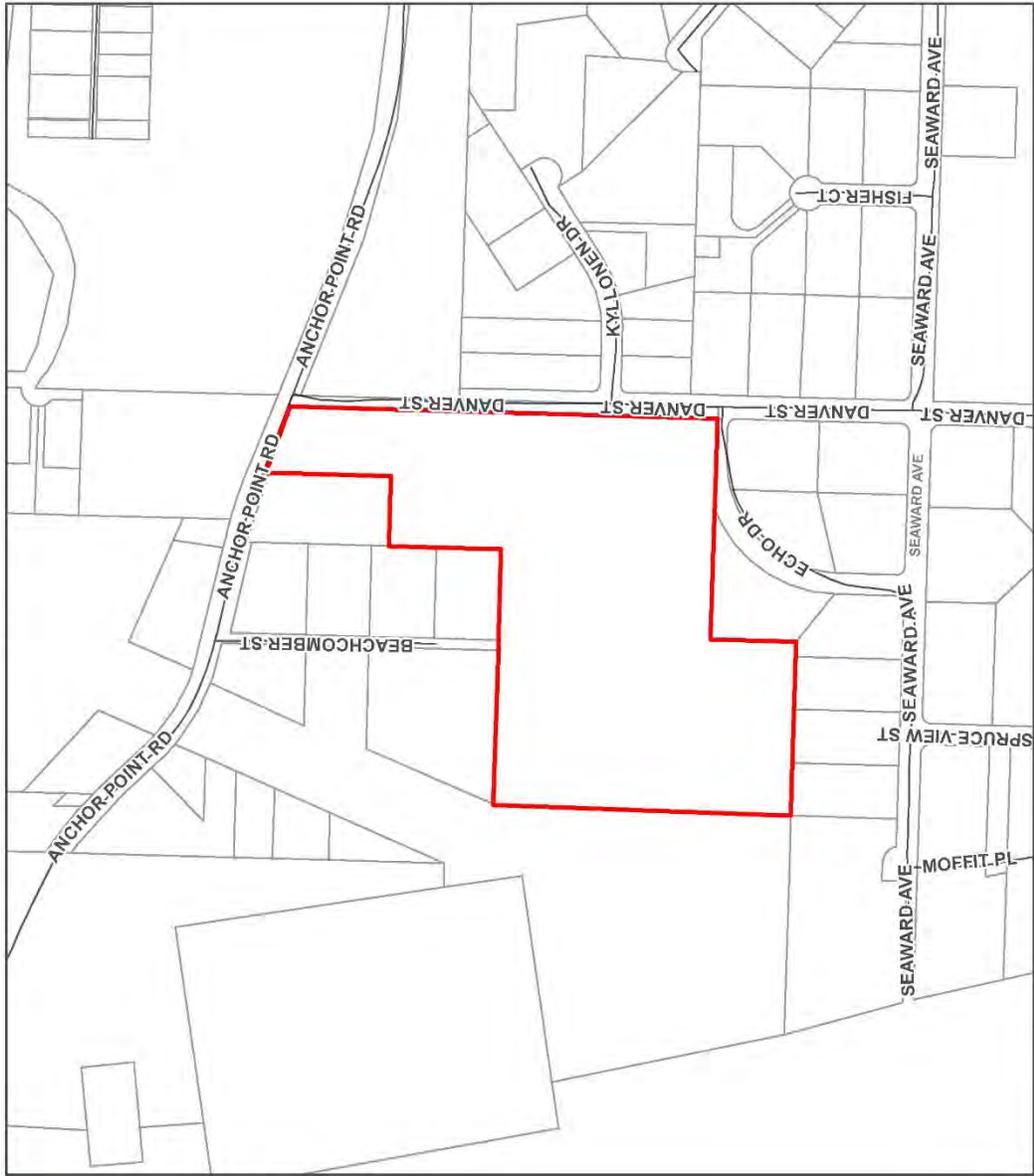
Public Comment: All comments previously submitted to the Planning Commission will again be provided to the Commission. Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99669. A statement addressed to the chairman may also be emailed to: bwall@kpb.us. Please provide written statements by Friday, March 22, 2019. Aggrieved persons, who participate (or previously participated) in the public hearing, by written or oral statement, may appeal the Planning Commission's decision within 15 days of the date of the Notice of Decision.

The application and staff report will be available on the Planning Commission website a week prior to the meeting. For additional information or to obtain a copy of the application materials earlier, please call the planning department at (907) 714-2206, or 1-800-478-4441 (toll free within the Borough).

Bruce Wall, AICP
Planner

Kenai Peninsula Borough Planning Commission Meeting, March 25, 2019
 Conditional Land Use Permit for a Material Site

Parcel Number: 169-010-67
 Applicant: Beachcomber LLC



LEGEND

Proposed Material Site
 — Boundaries

0 250 500 Feet

Date: 3/1/2019

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

ABBREVIATED STAFF REPORT

PC MEETING: March 25, 2019

Applicant: Beachcomber LLC

BACKGROUND INFORMATION: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

On July 16, 2018, the Planning Commission denied the approval of this Conditional Land Use Permit application based upon the following findings:

- 1. The noise will not be sufficiently reduced with any buffer or berm that could be added.
- 2. The visual impact to the neighboring properties will not be reduced sufficiently.

The Planning Commission’s decision was appealed to a hearing officer in accordance with KPB 21.20. The hearing office has remanded the decision to the Planning Commission with the following instructions:

The Commission shall reevaluate the Application with respect to the mandatory conditions listed in KPB 21.29.050, as well as any voluntary conditions that Beachcomber may agree to. The Commission shall conduct a second public hearing at which it shall issue findings of fact, pertaining to the mandatory conditions listed in KPB 21.29.050 ...”

In the decision, the hearing officer stated that the Commission exceeded the scope of its authority in denying the permit based upon its determination that the conditions would not afford adequate protection from noise and visual blight and that the code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code. She also stated that the findings issued by the Commission did not provide substantial evidence in support of its denial and were not adequate. The complete decision of the hearing officer will be included in the Commission’s Packet.

The submitted site plan indicates that the material site haul route will be Danver Street, which is a Borough maintained road. The site plan and application proposes the following buffers:

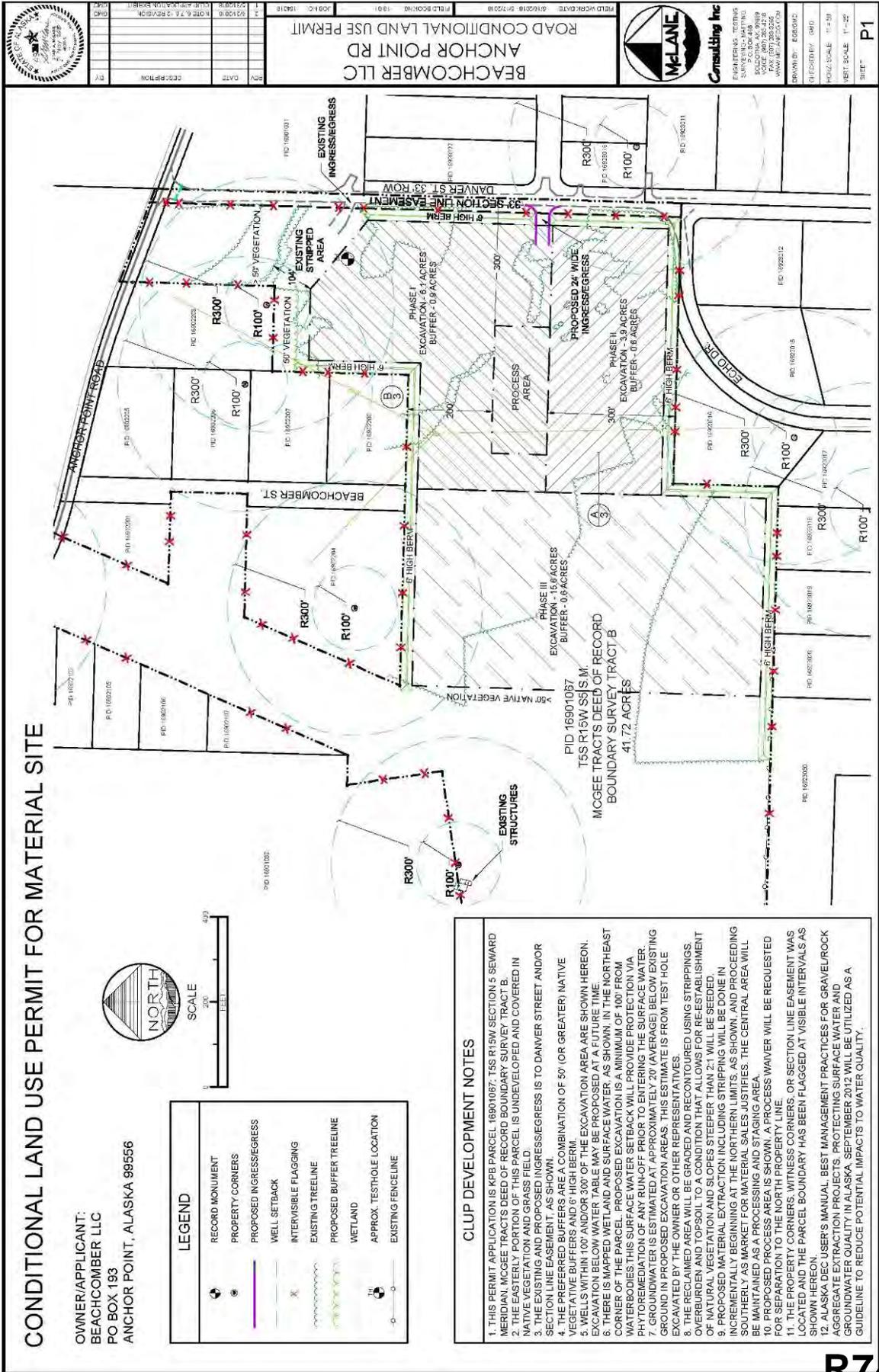
- North: 6-foot high berm except along the east 400 feet where a 50-foot vegetated buffer is proposed.
- South: 6-foot high berm.
- East: 6-foot high berm.
- West: Greater than 50-foot vegetated buffer.

It is anticipated that staff will recommend additional buffers for the material site. The site plan indicates that the processing area is 300 feet from the south and east property lines. It is greater than 300 feet from the west property line. A waiver is being requested from the north property line. The site plan indicates that the proposed processing area is located 200 feet south of Parcel 169-022-08, which is undeveloped. Parcel 169-022-04 is developed and located within 300 feet of the proposed processing area; this parcel is owned by the applicant’s daughter. The site plan indicates that there are several wells located within 300 feet of the parcel boundaries but none within 100 feet of the proposed excavation area.

STAFF RECOMMENDATION

The Planning Commission should review the application, site plan, staff report, and comments received and determine if the mandatory conditions contained in KPB 21.29.050 will be met. Based upon the guidance contained in the hearing officer’s decision, it is anticipated that the Planning Department will recommend approval of the Conditional Land Use Permit with the conditions listed in the full staff report.

Not to Scale



CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT:
 BEACHCOMBER LLC
 PO BOX 193
 ANCHOR POINT, ALASKA 99556



LEGEND	
	RECORD MONUMENT
	PROPERTY CORNERS
	PROPOSED INGRESS/EGRESS
	WELL SETBACK
	INTERVISIBLE FLAGGING
	EXISTING TREELINE
	PROPOSED BUFFER TREELINE
	WETLAND
	APPROX. TESTHOLE LOCATION
	EXISTING FENCELINE

CLUP DEVELOPMENT NOTES

1. THIS PERMIT APPLICATION IS KPB PARCEL, 18901087, T5S R15W SECTION 5 SEWARD MERIDIAN, MCGEE TRACTS DEED OF RECORD BOUNDARY SURVEY TRACT B. THE EASTERLY PORTION OF THIS PARCEL IS UNDEVELOPED AND COVERED IN NATIVE VEGETATION AND GRASS FIELD.
2. THE EXISTING AND PROPOSED INGRESS/EGRESS IS TO DANVER STREET AND/OR SECTION LINE EASEMENT, AS SHOWN.
3. THE PREFERRED BUFFERS ARE A COMBINATION OF 50' (OR GREATER) NATIVE VEGETATIVE BUFFERS AND 6' HIGH BERM.
4. WELLS WITHIN 100' AND/OR 300' OF THE EXCAVATION AREA ARE SHOWN HEREON. EXCAVATION BELOW WATER TABLE MAY BE PROPOSED AT A FUTURE TIME.
5. THERE IS MAPPED WETLAND AND SURFACE WATER, AS SHOWN, IN THE NORTHEAST CORNER OF THE PARCEL. PROPOSED EXCAVATION IS A MINIMUM OF 100' FROM WATERBODIES. THIS SURFACE WATER SETBACK WILL PROVIDE PROTECTION VIA PHYTOREMEDIATION OF ANY RUNOFF PRIOR TO ENTERING THE SURFACE WATER BODIES.
6. CHANGES TO THE EXISTING (RED) BERM BELOW EXISTING GRASS IN PROPOSED EXCAVATION AREAS. THIS ESTIMATE IS FROM TEST HOLE CROWNED BY THE OWNER OR OTHER REPRESENTATIVES.
7. THE RECLAIMED AREA WILL BE GRADED AND RECONToured USING STRIPPINGS, OVERBURDEN AND TOPSOIL TO A CONDITION THAT ALLOWS FOR RE-ESTABLISHMENT OF NATURAL VEGETATION AND SLOPES STEEPER THAN 2:1 WILL BE SEEDED IN PROPOSED MATERIAL EXTRACTION INCLUDING STRIPPING WILL BE DONE IN INCREMENTALLY BEGINNING AT THE NORTHERN LIMITS, AS SHOWN, AND PROCEEDING SOUTHERLY AS MARKET FOR MATERIAL SALES JUSTIFIES. THE CENTRAL AREA WILL BE MAINTAINED AS A PROCESSING AND STAGING AREA.
8. PROPOSED PROCESS AREA IS SHOWN. A PROCESS WAIVER WILL BE REQUESTED FOR SEPARATION TO THE NORTH PROPERTY LINE.
9. THE PROPERTY CORNERS, WITHNESS CORNERS, OR SECTION LINE EASEMENT WAS LOCATED AND THE PARCEL BOUNDARY HAS BEEN FLAGGED AT VISIBLE INTERVALS AS SHOWN HEREON.
10. ALASKA DEC USER'S MANUAL, "BEST MANAGEMENT PRACTICES FOR GRAVEL/ROCK AGGREGATE EXTRACTION PROJECTS," PROTECTING SURFACE WATER AND GROUNDWATER QUALITY IN ALASKA, SEPTEMBER 2012, WILL BE UTILIZED AS A GUIDELINE TO REDUCE POTENTIAL IMPACTS TO WATER QUALITY.

	FIELD WORK DATE: 01/15/2018 - 01/22/2018 FIELD BOOKING: 1891 JOB NO.: 184116 DATE: 01/22/18 SCALE: 1"=20' SHEET: P1
	DRAWN BY: EGB/BC CHECKED BY: GMD HORIZ. SCALE: 1"=20' VERT. SCALE: 1"=20' SHEET: P1

BEACHCOMBER LLC
 ANCHOR POINT RD
 ROAD CONDITIONAL LAND USE PERMIT

PARCEL_ID	PHYSICAL_ADDRESSES	OWNER	ATTENTION	ADDRESS	CITY/STATE/ZIP
16928031	73892 KYLLONEN DR	257 ROBERTS HOLDINGS LLC		554 RANCH CREEK RD	UPTON, WY 82730
16929044	73691 ANN RD	AARON BRIAN K		PO BOX 5511	CHINIAK, AK 99615
16936021	73727 SEAWARD AVE	ABBOTT RYAN E		102 JULIETTE CT	CHAPEL HILL, NC 27516
16925012	35227 MOFFIT PL	AKEE BRITTNEY DALE MOANALIHA		PO BOX 514	ANCHOR POINT, AK 99556
16901031		ALASKA STATE D N R		550 W 7TH AVE STE 650	ANCHORAGE, AK 99501
16933002		ALASKA STATE PARKS DIVISION		550 W 7TH AVE STE 1380	ANCHORAGE, AK 99501
16907122	34905 SEABURY CT	ALEXANDER THOMAS		785 CASCADE CT	PALMER, AK 99645
16928014	73938 DESA AVE	ALLEN DANIEL J		PO BOX 1463	ANCHOR POINT, AK 99556
16902109	74272 ANCHOR POINT RD	ALLEN LEE D & CHARLOTTE A		9101 E MILE 6 RD	PALMER, AK 99645
16902302	74160 ANCHOR POINT RD	ANCHOR RIVER RV LLC	DAVID DRIGGERS	PO BOX 745	ANCHOR POINT, AK 99556
16936023	73485 SEABURY RD	ANDERSON MELISSA L & JOHN S Jr		PO BOX 1466	ANCHOR POINT, AK 99556
16929060	73686 SILVER KING LOOP	BAIR FRED D		1227 ALDER AVE TRLR 44	LEWISTON, ID 83501
16923019	74160 SEAWARD AVE	BAKER R O II REVOCABLE TRUST	ROBERT O BAKER II	PO BOX 870	ANCHOR POINT, AK 99556
16903211		BALLAND D THOMAS		66437 OUT THERE AVE	ANCHOR POINT, AK 99556
16904021	73785 SCHOOL AVE	BANKS JEAN L		PO BOX 127	ANCHOR POINT, AK 99556
16907202	73525 TWIN PEAKS LOOP	BAREMAN TODD		PO BOX 1462	ANCHOR POINT, AK 99556
16902205	34672 BEACHCOMBER ST	BARNETT MARY JO		PO BOX 2782	HOMER, AK 99603
16901106	34143 HMS RESOLUTION RD	BARTLEY INVESTMENTS LLC		PO BOX 147	EUREKA, NV 89316
16901067	74185 ANCHOR POINT RD	BEACHCOMBER LLC		PO BOX 150	ANCHOR POINT, AK 99556
16929224	73550 BREAKAWAY RD	BEASLEY ALAN		PO BOX 311	ANCHOR POINT, AK 99556
16925006		BELLAMY LEHUA NANI M		3801 JAMES DR	ANCHORAGE, AK 99504
16924010		BERKBIGLER WILLIAM J		17253 HILLTOP RIDGE DR	EUREKA, MO 63025
16924011	35039 DANVER ST	BILBEN HANS & JEANNE		PO BOX 1176	ANCHOR POINT, AK 99556
16907108	73600 TWIN PEAKS LOOP	BLAIR GERALD A TRUST		PO BOX 978	ANCHOR POINT, AK 99556
16929010	73717 BREAKAWAY RD	BLISS GORDON A & ELIZABETH A		3415 HOLLYWOOD AVE	MEDFORD, OR 97501
16904023		BLOCK 16 LLC		395 E SUNSET RD	LAS VEGAS, NV 89119
16923028		BODDE BRAD & MARY		25245 CRYSTAL CREEK DR	EAGLE RIVER, AK 99577
16902203	74057 ANCHOR POINT RD	BRANTLEY MICHAEL JOHN LIVING TRUST		PO BOX 950	ANCHOR POINT, AK 99556
16929050	73705 SILVER KING LOOP	BRATCHER EDITH BERNICE		6214 BIG HOUSE RD	BLACKSHEAR, GA 31516
16936001	35075 OLD STERLING HWY	BREESE DONALD N		35090 OLD STERLING HWY	ANCHOR POINT, AK 99556
16901110	34195 HMS RESOLUTION RD	BREZINA STEPHEN D		5295 E SILO CIR	WASILLA, AK 99654
16901108	34167 HMS RESOLUTION RD	BRINCKERHOFF SCOTT & DONNA E		269 PLAINS RD	HADDAM, CT 06438
1902208		BRNA PHILIP J		5601 E 98TH AVE	ANCHORAGE, AK 99507
1925001		BROOK THOMAS J		PO BOX 39004	NINILCHIK, AK 99639
1929307	34960 SEABURY CT	CAFFROY DAVID KYLE		7680 APPALOOSA LN	EMMETT, ID 83617
16929227	73520 BREAKAWAY RD	CANNON JAMES E		PO BOX 886	ANCHOR POINT, AK 99556

16929043	73687 ANN RD	CARLSON STANLEY D & BECKY ANN	4002 E SUMAC DR	SPOKANE, WA 99223
16936027	73500 SEABURY RD	CARLTON RICHARD D	PO BOX 29	ANCHOR POINT, AK 99556
16929051	73697 SILVER KING LOOP	CARTER HAROLD J	3492 LARK RDG	WAYCROSS, GA 31503
16928015	73956 DESA AVE	CATHEY SHYAN	PO BOX 1066	ANCHOR POINT, AK 99556
16904020	73729 SCHOOL AVE	CATLIN DEANNA C	PO BOX 34	ANCHOR POINT, AK 99556
16929301	34833 COASTIE CIR	CHICARELL DONALD L & EDNA M	211 RHODODENDRON DR	SEQUIM, WA 98382
16923009	34952 DANVER ST	CLINE ANN G AND RICHARD L LEGACY TRUST	61 TRILLIUM TRL	UNDERWOOD, WA 98651
16929023	73609 BREAKAWAY RD	CNUDDE MATTHEW	10046 W RHETT ST	BOISE, ID 83709
16929059	73680 SILVER KING LOOP	COBURN JAMES	1112 COLONIAL DR	KENAI, AK 99611
16929029	73592 BREAKAWAY RD	COMBS ROGER	2560 FRUITVALE GLENDALE RD	FRUITVALE, ID 83612
16929057	73674 SILVER KING LOOP	COX CHARLES B	905 RICHARDSON VISTA RD APT 37	ANCHORAGE, AK 99501
16928033	34818 SEABURY CT	CULLIP GARY L & SANDRA L	1523 SW 58TH LN	CAPE CORAL, FL 33914
16929027	73575 BREAKAWAY RD	DEAL THOMAS W	1200 W DIMOND BLVD SPC 905	ANCHORAGE, AK 99515
16904014		DESTEXHE ELEONORE	1933 STERREBEEK	BELGIUM
16903207	73775 CUFFEL DITTON RD	DITTON ROBERT L & CHARLENE R	PO BOX 601	HOMER, AK 99603
16923016	34925 ECHO DR	DRINKHOUSE MARIE L	5949 S HAYFIELD RD	WASILLA, AK 99623
16928004	34820 SEABURY CT	DUKE PHILIP B & TOMOKO	19809 EAGLE RIVER RD	EAGLE RIVER, AK 99577
16936024	73525 SEABURY RD	DUNCAN BRYAN & CAVALIER NICOLE	PO BOX 1436	ANCHOR POINT, AK 99556
16929063	73714 SILVER KING LOOP	DUNCAN CHARLES M LIVING TRUST	911 JAYME CT	ANCHORAGE, AK 99518
16929056	73670 SILVER KING LOOP	DURAN BILLIE F & LANE FRED H	PO BOX 1417	ANCHOR POINT, AK 99556
16902201		EDELEN H C	13840 HIGHWAY PP	NEW HARTFORD, MO 63359
16907125	73780 SEAWARD AVE	EHMEN JARED	1926 MAPLEWOOD DR	CEDAR FALLS, IA 50613
16904010	34346 MARYSVILLE ST	ELLISON JEFFREY S	PO BOX 569	ANCHOR POINT, AK 99556
16907121	34885 SEABURY CT	ELMALEH JOSHUA L	PO BOX 542	ANCHOR POINT, AK 99556
16929033	73573 ANN RD	FAULK SAMANTHA	12641 FOSTER RD	ANCHORAGE, AK 99516
16903106	73754 CUFFEL DITTON RD	FINNEY PAUL G & SUANNE Y	1588 HILLSIDE PL	HOMER, AK 99603
16903107		FIRTH BENJAMIN A	1802 GOLF COURSE RD	LITTLETON, NC 27850
16929045	73701 ANN RD	FLEMING LEON R	13943 W KNIGHTS DR	WASILLA, AK 99623
16929215	73501 BREAKAWAY RD	FLORES JOSHUA	2539 CORONADO PL	VISTA, CA 92081
16907112	73640 TWIN PEAKS LOOP	FOUSEL SKIP	2225 S PLEASANT VIEW DR	SHOW LOW, AZ 85901
16929028	73580 BREAKAWAY RD	FUGITT DEBORAH	47 SEMINOLE PATH	WILDWOOD, FL 34785
16907104	73480 TWIN PEAKS LOOP	GIRTON JOHN & BARBARA	PO BOX 869	ANCHOR POINT, AK 99556
16902106		GO FOR IT	33881 STERLING HWY	STERLING, AK 99672
9923026	34919 FISHER CT	GORDON GARY & PAMELA	PO BOX 876130	WASILLA, AK 99687
9907145	73608 TWIN PEAKS LOOP	GORMAN FAMILY TRUST	PO BOX 1239	ANCHOR POINT, AK 99556
9907107	73560 TWIN PEAKS LOOP	GORMAN MICHAEL LEE	4 TOOMEY CIR	BURLINGTON, MA 01803
16925010	74085 PARKINSON CIR	GRADE A PROPERTIES LLC	4164 PENNOCK ST STE A	HOMER, AK 99603

16925007	35385 DANVER ST	GREGOR FORREST & WILMA	PO BOX 169	ANCHOR POINT, AK 99556
16923001	73850 SEAWARD AVE	GREGORY DAVID DEAN	PO BOX 904	ANCHOR POINT, AK 99556
16903105	73760 CUFFEL DITTON RD	HABER MCKENZY SAGE	PO BOX 2429	HOMER, AK 99603
16902105		HALEY KATHLEEN	PO BOX 1194	STERLING, AK 99672
16929035	73621 ANN RD	HART STEVEN E	4008 W LANE AVE	PHOENIX, AZ 85051
16901107	34155 HMS RESOLUTION RD	HARTVIGSEN RICHARD M	2339 N 1000 E	LEHI, UT 84043
16929240	73510 ANN RD	HENDERSHOT SANDY	1508 BUMBLEBEE AVE	KENAI, AK 99611
16901105	34131 HMS RESOLUTION RD	HENDRIKS JERRY L & RITA D	PO BOX 709	ANCHOR POINT, AK 99556
16929222	73570 BREAKAWAY RD	HERBST BRIAN	959 MILAM HEIGHTS RD	WATERLOO, SC 29384
16929223	73562 BREAKAWAY RD	HERBST GREGORY J	244 COATES RD	INMAN, SC 29349
16925003	74053 BECKER CT	HERRICK JOHN B & JOAN A COMMUNITY PROPERTY TRUST	PO BOX 87	ANCHOR POINT, AK 99556
16925005	35235 DANVER ST	HIBBERT KIM	13020 GALVESTON CIR	ANCHORAGE, AK 99516
16925004	74045 BECKER CT	HIBBERT KIM O	2940 WESTWIND CT	ANCHORAGE, AK 99516
16924015	35031 MOFFIT PL	HODNIK VICKEY	PO BOX 1836	HOMER, AK 99603
16929031	34786 GAZEBO WAY	HOLMES NATHAN W J	10 DORMAN RD	CAMPOBELLO, SC 29322
16923012	34910 ECHO DR	HORTON DONALD LEE JR	221 ELLEN CIR	ANCHORAGE, AK 99515
16936015	73595 SEABURY RD	HOUGLUM HOWARD & ELIZABETH	PO BOX 1379	ANCHOR POINT, AK 99556
16936044	73565 SEABURY RD	HOUGLUM JOHN	PO BOX 1336	ANCHOR POINT, AK 99556
16907146	73614 TWIN PEAKS LOOP	HOZA ANTHONY J FAMILY TRUST	PO BOX 1177	HOMER, AK 99603
16929026	73587 BREAKAWAY RD	HUNT STEVEN M	10069 S TELEGA DR	VAIL, AZ 85641
16902304		ISBELL CAROLYN YORK	2333 TIMOTHY DR	COOKEVILLE, TN 38506
16902204	34737 BEACHCOMBER ST	ISENHOOR LAUREN	PO BOX 317	ANCHOR POINT, AK 99556
16929002	73765 BREAKAWAY RD	JENKINS GINGER N	3126 W 80TH AVE	ANCHORAGE, AK 99502
16904036		JENSEN JAY F	PO BOX 447	PAULDEN, AZ 86334
16929009	73725 BREAKAWAY RD	JERMAIN JANE B	PO BOX 292	INDEX, WA 98256
16929058	73676 SILVER KING LOOP	JOHNSON EDWIN D & DENISE	PO BOX 3244	SEWARD, AK 99664
16923014		JOHNSON JANET R	4915 NE TOLO RD	BAINBRIDGE ISLAND, WA 98110
16916005	73590 ANCHOR POINT RD	JORGENSEN JUDY LOUISE	1223 CEDAR AVE	REDLANDS, CA 92373
16936037		JOSLYN SEAN A	PO BOX 34492	JUNEAU, AK 99803
16929039	73649 ANN RD	KEEFER DONALD C & VICKI T	12231 KINLIEN CIR	ANCHORAGE, AK 99516
16929232	73565 ANN RD	KENAI PENINSULA BOROUGH	144 N BINKLEY ST	SOLDOTNA, AK 99669
16929064	73718 SILVER KING LOOP	KLOBERDANZ THOMAS W	PO BOX 330	WAPITI, WY 82450
16904009	34358 MARYSVILLE ST	KOCH DOUGLAS A & VALERIE D	PO BOX 554	ANCHOR POINT, AK 99556
9928027		KYLLONEN H V & SUSAN	PO BOX 49	ANCHOR POINT, AK 99556
9929015	73675 BREAKAWAY RD	LANZ STEPHEN H	3531 W 80TH AVE	ANCHORAGE, AK 99502
9929055	73648 ANN RD	LARSON ERIC & MONICA	2208 LINCOLN AVE	ANCHORAGE, AK 99517
16929041	73665 ANN RD	LAWRENCE KATHY M	PO BOX 403	HEALY, AK 99743

R750

16901109	34179 HMS RESOLUTION RD	LEIGHTY ROBIN L & JONES MICHAEL A	PO BOX 91865	ANCHORAGE, AK 99509
16907204	73645 TWIN PEAKS LOOP	MADSEN MARCY	PO BOX 1104	ANCHOR POINT, AK 99556
16902108	74278 ANCHOR POINT RD	MANSER HOWARD TRUST	147 SABINAS CT	SOLANA BEACH, CA 92075
16929022	73617 BREAKAWAY RD	MAPSTON DAVID AND LADONNA LIVING TRUST	13900 MULLIGAN RD	ANCHORAGE, AK 99516
16929001	73773 BREAKAWAY RD	MARKS DALE L & CHARLENE L	PO BOX 875035	WASILLA, AK 99687
16929047	73732 BREAKAWAY RD	MARSH MICHAEL J & LILY A	1564 CACHE DR	ANCHORAGE, AK 99507
16933001		MATTER BERNADINE R	140 CARLSON PKWY APT 220	MINNETONKA, MN 55305
16929242	73521 BREAKAWAY RD	MAXWELL BRIAN MONTGOMERY LIVING TRU; BRIAN MAXWELL	1001 S ANDERSON ST	TACOMA, WA 98405
16936026	73450 SEABURY RD	MCCAMPBELL ROGER LEE	PO BOX 321	HOMER, AK 99603
16903212	73715 CUFFEL DITTON RD	MCCURLEY FRANK J Jr	12531 TURKS TURN ST	ANCHORAGE, AK 99516
16907110	73622 TWIN PEAKS LOOP	MCGAW HELEN G	PO BOX 1286	HOMER, AK 99603
16929236	73563 BREAKAWAY RD	MEAD ALFRED TRUST	170 PETTIS RD	ANCHORAGE, AK 99515
16901077	35390 DANVER ST	MIKESSELL JAMES DAVID	PO BOX 772	ANCHOR POINT, AK 99556
16924014		MILLARD DANIEL C	2266 PANORAMA WAY W	GUNTERSVILLE, AL 35976
16929225	73542 BREAKAWAY RD	MILLER ROBERT E	PO BOX 7088	OCEAN VIEW, HI 96737
16925002	74052 BECKER CT	MISHLER LINDA J	PO BOX 2193	HOMER, AK 99603
16929046	73718 BREAKAWAY RD	MORINO PAUL	7360 WHITE HAWK DR	ANCHORAGE, AK 99507
16907113	73650 TWIN PEAKS LOOP	MUNSELL GEORGE R III & CYNTHIA J	PO BOX 596	ANCHOR POINT, AK 99556
16923013	34969 DANVER ST	MYERS BRANDON	371 OBANNON AVE	NEWARK, OH 43055
16903103	73790 CUFFEL DITTON RD	NELSON ROBERT W & KERRY E	PO BOX 205	KASILOF, AK 99610
16904018	73737 SCHOOL AVE	NORCROSS JAMES H II	PO BOX 3676	HOMER, AK 99603
16928016	34880 DANVER ST	OLIVER LAWRENCE R	PO BOX 1444	ANCHOR POINT, AK 99556
16929201	73564 ANN RD	ORCUTT STEPHEN	PO BOX 39222	NINILCHIK, AK 99639
16929016	73667 BREAKAWAY RD	OSBORNE DONALD G & VIVIAN A	7009 WARFIELD PL	ANCHORAGE, AK 99502
16923008	73976 SEAWARD AVE	OVERSON ELDON	PO BOX 1318	ANCHOR POINT, AK 99556
16929238	73486 ANN CT	PALAKOVICH JOHN N	622 MAIN ST	ANACONDA, MT 59711
16929066	73728 SILVER KING LOOP	PARKER MICHAEL H	PO BOX 201407	ANCHORAGE, AK 99520
16925015		PARKINSON STANLEY KIRT Jr	PO BOX 1446	ANCHOR POINT, AK 99556
16923027	34897 FISHER CT	PATRICK WILLIAM M & LINDA M	PO BOX 335	ANCHOR POINT, AK 99556
16929004	73751 BREAKAWAY RD	PATTERSON GEORGE MICHAEL	8052 QUEEN VICTORIA DR	ANCHORAGE, AK 99518
16929202	73554 ANN RD	PAULSON RONALD W	3820 LOWER RIVER RD TRLR 7	GREAT FALLS, MT 59405
16929013	73691 BREAKAWAY RD	PETERSON FRANK R	29492 RIDGE RD	SAN JUAN CAPISTRANO, CA 92675
16929052	73691 SILVER KING LOOP	PETRIE JOAN A	11438 UPPER SUNNY CIR	EAGLE RIVER, AK 99577
16904024	73705 SCHOOL AVE	POINDEXTER DUSTIN	PO BOX 1163	ANCHOR POINT, AK 99556
16903101	73846 CUFFEL DITTON RD	POLLOCK JOHN MARK	535 MOREMEN RD	BRANDENBURG, KY 40108
16923006		PRITCHARD CHARLES E & REBECCA A	10750 COUNTY ROAD 204	DE BEQUE, CO 81630
16907126	73820 SEAWARD AVE	REID JIM & SUSAN	PO BOX 85	EVERGLADES CITY, FL 34139

R751

16929303	34880 SEABURY CT	RELAXING TRUST	17255 E RELAXING RD	PALMER, AK 99645
16904019	73735 SCHOOL AVE	REYES RAMON VICENTE	PO BOX 1418	ANCHOR POINT, AK 99556
16936003		RICHARDSON WILLIAM CLAIRE	PO BOX 1325	ANCHOR POINT, AK 99556
16907203	73555 TWIN PEAKS LOOP	RICHTER FRANCIS J	PO BOX 532	ANCHOR POINT, AK 99556
16929226	73528 BREAKAWAY RD	ROLAND ANGELA	4014 BEN WALTERS LN APT C6	HOMER, AK 99603
16929230	73549 ANN RD	ROUSSEL JOHN M	19407 CAVALIER CT	TEHACHAPI, CA 93561
16929304	34900 SEABURY CT	SCHLOTT ALFRED O Jr	PO BOX 98	SELDOVIA, AK 99663
16901079	35422 DANVER ST	SCHMIDT KATHERINE A	PO BOX 39273	NINILCHIK, AK 99639
16929048	73748 BREAKAWAY RD	SEAWARD DAVID CHULE	935 E 11TH AVE	ANCHORAGE, AK 99501
16907105	73510 TWIN PEAKS LOOP	SGLK LIVING TRUST	13701 ERVIN RD	ANCHORAGE, AK 99516
16924006	35069 MOFFIT PL	SHAFFER RONALD A & CHARLOTTE M	24044 ALPENGLOW DR	EAGLE RIVER, AK 99577
16929302	34860 SEABURY CT	SHERIDAN GARY L & EILEEN D	PO BOX 661	ANCHOR POINT, AK 99556
16925013	35225 MOFFIT PL	SHOWALTER GLEN	PO BOX 7	ANCHOR POINT, AK 99556
16907143	73588 ANN RD, 73626 ANN RD	SILVER KING CAMP ASSOCIATION	PO BOX 242491	ANCHORAGE, AK 99524
16904025	34281 MARYSVILLE ST	SIMONDSEN ERIC	PO BOX 1186	ANCHOR POINT, AK 99556
16903208	73765 CUFFEL DITTON RD	SLATER CAROL A	1143 BAINBRIDGE BLVD	FAIRBANKS, AK 99701
16923015	34920 ECHO DR	SLUSHER TERRY L	40 ANTLER CT	SEQUIM, WA 98382
16929239	73540 ANN RD	SMITH CHAD	49 JESSE CT	TAYLORS, SC 29687
16929065	73720 SILVER KING LOOP	SMITH FRANK R & KAZUKO	2067 CRATAEGUS AVE	ANCHORAGE, AK 99508
16923007	73884 SEAWARD AVE	SPARKMAN JOSEPH J & DENISE	PO BOX 767	ANCHOR POINT, AK 99556
16929020	73633 BREAKAWAY RD	STAMPS DOUGLAS	420 SCORPIO CIR	ANCHORAGE, AK 99508
16929040	73655 ANN RD	STAREGOWSKI VINCENT F Jr	3705 ARTIC BLVD	ANCHORAGE, AK 99503
16923017		STERLING TRUST CO CUSTODIAN FBO MICHAEL J TONER	2309 GREEN MEADOWS WAY	ASHLAND, OR 97520
16929038	73641 ANN RD	STRONG KIMBERLY L & JOHNSON ERIC W	8521 FLAMINGO DR	ANCHORAGE, AK 99502
16936043	73535 SEABURY RD	SWICK KENNETH A Jr	PO BOX 112	SELDOVIA, AK 99663
16901120	34197 HMS RESOLUTION RD	SWISHER BRIAN	PO BOX 24	ANCHOR POINT, AK 99556
16936008	73530 SEABURY RD	SYME DANIEL R	PO BOX 1457	ANCHOR POINT, AK 99556
16936041	73580 SEABURY RD	TALLMAN PAUL	PO BOX 1012	KOTZEBUE, AK 99752
16928032	34853 SEABURY CT	TESAR DAVID J & BONITA G	PO BOX 871567	WASILLA, AK 99687
16903209		THOMPSON KRETA JO	111 PAULA ST	KENAI, AK 99611
16929019	73643 BREAKAWAY RD	THOMPSON RUTH E	3742 W 79TH AVE	ANCHORAGE, AK 99502
16923011	73945 DESA AVE	THOMPSON STEVEN P	PO BOX 310	ANCHOR POINT, AK 99556
16929208	73494 ANN CT	THOMSON JOHN J & LAURA E	1618 W PARK AVE	ANACONDA, MT 59711
16903102	73842 CUFFEL DITTON RD	TIGERT ALLEN	1192 GLEN ASPEN DR	BELLEVEUE, ID 83313
16904037	34460 MARYSVILLE ST	TRIMBLE EMMITT & MARY JOINT REVOCABLE TRUST	PO BOX 193	ANCHOR POINT, AK 99556
16907111	73630 TWIN PEAKS LOOP	TRUITT JOHN W	1430 DAHLIA ST	DENVER, CO 80220
16929042	73673 ANN RD	TUSTIN CLARK PAGE	PO BOX 1083	ANCHOR POINT, AK 99556

R752

16902104	74223 ANCHOR POINT RD	UDELHOVEN RENTALS LLC	PO BOX 126	KASILOF, AK 99610
16901032		UNITED STATES BLM	222 W 7TH AVE STOP 13	ANCHORAGE, AK 99513
16929032	34774 GAZEBO WAY	UYEMA STANLEY K REVOCABLE LIVING TRUST	1623 KALAUPO ST	PEARL CITY, HI 96782
16904015		VANHAUWAERT MARC	1933 STERREBEEK	BELGIUM
16928029	73926 KYLLONEN DR	VARNER ALLEN J & UNSOON	12051 FORELANDS CIR	ANCHORAGE, AK 99515
16929012	73699 BREAKAWAY RD	VINCENT MICHAEL T & TAMI D	52901 HOYT LN	KENAI, AK 99611
16929003	73759 BREAKAWAY RD	VROMAN ROBERT H REVOCABLE TRUST	PO BOX 466	PALMER, AK 99645
16929037	73635 ANN RD	WARREN WILLIAM F	PO BOX 906	KENAI, AK 99611
16930002		WARTBURG MICHAEL G	PO BOX 849	ANCHOR POINT, AK 99556
16929014	73683 BREAKAWAY RD	WASLER ANN M & PETERSON ROY S	6983 E SHORECREST DR	ANAHEIM, CA 92807
16929030	34794 GAZEBO WAY	WASLER ANN M & STACIE A	PO BOX 91040	ANCHORAGE, AK 99509
16901111	34190 HMS RESOLUTION RD	WELSH ALAN	13020 FOSTER RD	ANCHORAGE, AK 99516
16902207		WHITMORE NATHAN LYNN	PO BOX 355	ANCHOR POINT, AK 99556
16923025	34907 FISHER CT	WIERSUM KIM	2808 244TH AVE SE	SAMMAMISH, WA 98075
16929305	34920 SEABURY CT	WILLIAMS DEBORAH A	3041 RIVERWOOD DR	JUNEAU, AK 99801
16903203	73785 CUFFEL DITTON RD	WILSON RONALD GARY & THOMAS ROBERT STERLING	15939 ROBSON CT	FOUNTAIN VALLEY, CA 92708
16929034	73601 ANN RD	WRIGHT JAY ALAN	3269 MARICOPA AVE # 114-137	LAKE HAVASU CITY, AZ 86406
16923018	74140 SEAWARD AVE	YALE MARK M	74140 SEAWARD AVE	ANCHOR POINT, AK 99556
16929061	73696 SILVER KING LOOP	YOUNG ROBERT D & TRUDY M	1120 HUFFMAN RD STE 24-656	ANCHORAGE, AK 99515



Planning Department

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

Charlie Pierce
Borough Mayor

March 6, 2019

Postmaster
33790 Sterling Hwy
Anchor Point, AK 99556-9606

Enclosed is a notice for a public hearing. Kenai Peninsula Borough Ordinance (21.25.060) requires that notice of public hearings for Conditional Land Use Permits be posted in the post office of the impacted community.

Can you post this for me in the Anchor Point Post Office?

Thanks,

Bruce Wall, AICP
Planner
bwall@kpb.us



Planning Department

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

Charlie Pierce
Borough Mayor

KENAI PENINSULA BOROUGH PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

Public notice is hereby given that a conditional land use permit application for material extraction on a parcel in the **Anchor Point** area has been remanded on appeal to the Planning Commission. All members of the public are invited to comment. The project under consideration is described as follows:

- Applicant:** Beachcomber LLC
- Landowner:** Beachcomber LLC
- Parcel Number:** 169-010-67
- Legal Description:** Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.
- Location:** 74185 Anchor Point Road
- Proposed Land Use:** The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

KPB Code: Conditional land use permit applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.29. Copies of these ordinances are available from the Planning Department or at: kpb.us

Public Hearing: A hearing will be held by the Kenai Peninsula Borough Planning Commission to consider the application on **Monday, March 25, 2019**, commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting will be held in the Betty J. Glick Assembly Chambers of the borough administration building located at 144 N Binkley St, Soldotna.

Public Comment: All comments previously submitted to the Planning Commission will again be provided to the Commission. Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99669. A statement addressed to the chairman may also be emailed to: bwall@kpb.us. Please provide written statements by Friday, March 22, 2019. Aggrieved persons, who participate (or previously participated) in the public hearing, by written or oral statement, may appeal the Planning Commission's decision within 15 days of the date of the Notice of Decision.

The application and staff report will be available on the Planning Commission website a week prior to the meeting. [For additional information](#) or to obtain a copy of the application materials earlier, please call the planning department at [\(907\) 714-2206](tel:(907)714-2206), or 1-800-478-4441 (toll free within the Borough).

Bruce Wall, AICP
Planner

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

}
SS:

Elizabeth A. Ulricksen being first duly sworn, on oath deposes and says:

That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Homer News, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

Beachcomber PHN
March 14, 2019

X 

SUBSCRIBED AND SWORN before me on this

15th day of March, 2019.



NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 07/10/22.

NOTARY PUBLIC
RANDELEE J. KEATON
STATE OF ALASKA
My Commission Expires July 10, 2022

KENAI PENINSULA BOROUGH PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

Monday, March 25, 2019

Public notice is hereby given that a conditional land use permit application has been remanded on appeal to the Planning Commission for material extraction on a parcel in the Anchor Point area.

Applicant / Landowner: Beachcomber LLC; **Parcels:** 169-010-67; **Legal Description:** Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District. **Location:** 74185 Anchor Point Road.

Proposed Land Use: The applicant wishes to obtain a permit for sand, gravel and peat extraction on a portion of the parcel listed above.

KPB Code: Conditional land use permit applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.28. Copies of these ordinances are available from the Planning Department or at www.kpb.us

Public Hearing: A hearing will be held by the KPB Planning Commission to consider the application on Monday, March 25, 2019, commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting will be held at the Betty J. Glick Assembly Chambers of the KPB administration building located at 144 N. Binkley St., Soldotna.

Public Comment: Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to: Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 98668. A statement addressed to the chairman may also be emailed to: bwelk@kpb.us. Please provide written statements by Friday, March 22, 2019. Aggrieved persons, who participate in the public hearing, either by written or oral statement, may appeal the Planning Commission's decision within 15 days of the date of notice of the decision.

The application and staff report will be available on the Planning Commission website a week prior to the meeting. For additional information or to obtain a copy of the application materials earlier, please call the planning department at (907) 714-2206, or 1-800-478-4441 (toll free within the Borough).

Bruce Well, AICP
bwelk@kpb.us

Publish Homer News, March 14, 2019

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

}
SS:

Elizabeth A. Ulricksen being first duly sworn, on oath deposes and says:

That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Homer News, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

Beachcomber PHN
March 14, 2019

x 

SUBSCRIBED AND SWORN before me on this

28th day of March, 2019.



NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 07/10/22.

NOTARY PUBLIC
RANDALEE J. KEATON
STATE OF ALASKA
My Commission Expires July 10, 2022



**Kenai Peninsula Borough Planning Commission
MARCH 25, 2019 TENTATIVE AGENDA**

The next regularly scheduled Plat Committee and Planning Commission meetings will be held **Monday, March 25, 2019** at the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, AK.

**PLAT COMMITTEE
8:30 p.m.**

Subdivision Plat Public Hearings

1. Commercial Park Unit 2; KPB 2016-039R2 [Geovera, LLC/Arno, TL Investments, LLC] Location: on Ternview Pl. and Spruce Ln., City of Homer. Submitted: 2/26/19. Phase plan that will divide 1 tract into 16 lots and 2 tracts in 2 phases.
2. Fourth of July Creek Sub. Seward Marine Industrial Center Rainbow Replat #2; KPB 2019-015 [Joshua Varney / City of Seward] Location: on Morris Ave., Olga St. and Sorrel Rd., City of Seward. Submitted: 2/25/19. Divides 1 lot into 2 lots.
3. Ji-Anna Sub. Phase 3 Roady Addn.; KPB File 2019-016 [Segesser Surveys / Roady] Location: on Higher Ground St. off Robinson Loop Rd., Sterling. Submitted: 2/20/19. Divides 2 lots into 18 lots.
4. Murwood South Sub.; KPB File 2019-020 [Segesser Surveys / Kenai Peninsula Borough] Location: on Murwood Ave. and Iditarod St., Kalifornsky. Submitted: 3/13/19. Divides 1 parcel into 2 tracts.
5. R. Abbott Sub.; KPB File 2019-018 [Johnson Surveying / Abbott] Location: on A Private Rd. and Merkes Rd. off the Sterling Hwy., Sterling. Submitted: 2/21/19. Divides 1 parcel into 2 lots.
6. Seward Business Park Phase 4 2019 Addn.; KPB File 2019-019 [Johnson Surveying / Noyes] Location: on Nautical Ave. off the Seward Hwy., Bear Creek. Submitted: 2/25/19. Divides 1 tract into 2 lots.
7. Hermin Sub. 2019 Addn.; KPB File 2019-012 [Johnson Surveying / Koberstein] Location: On Lost Street and Blithe Court, Coho (Postponed from March 11, 2019 Meeting) Submitted: 02/11/19. Divides 1 tract into 2 tracts.

**PLANNING COMMISSION
7:30 p.m.**

Utility Easement Vacation

Petition was received on 2/22/19 to vacate the 20-foot-wide utility easement centered on shared lot line of Lot 7 and Lot 8 Block 2 Longmere Estates Sub. Part 1 and vacate the 10-foot-wide utility easement adjoining the south lot line of Lot 8 Block 2 Longmere Estates Sub. Part 1, both granted by Longmere Estates Sub. Part 1 (Plat KN1780); within S19 & S20, T5N, R9W, SM, KPB, AK. Petitioners: Wendi & Innetta Schreiber of Soldotna, AK. KPB File 2019-017V.

**Anadromous Waters Habitat Protection District
(21.18)**

1. Resolution 2019-10; A Conditional Use Permit (CUP) to expand an existing deck and install exterior stairs between the upper and lower decks using light penetrating grating within the 50-foot Habitat Protection District of the Kenai River. This project is located at River Mile 15 on the left bank, near Soldotna, AK. Legal Description: T5N, R10W, S19, SM, KN2004111 River Quest Phase 1 Amended Lot 37. KPB Parcel: 055-033-37. Applicant: Doug Clegg, Spring Creek Office, LLC.

Public Hearings

1. Public hearing on a Limited Marijuana Cultivation Facility license in the Sterling area to provide comment to the State of Alaska. Applicant: Danny's Place Landowner: Ronald Pritchard Parcel Number: 058-291-21 Property Description: Lot 2B, Robinette Sub. Laurel-Ryan Addn., according to Plat KN2007-98. Location: 36221 Pine Street.
2. Resolution 2019-020; A Resolution classifying certain parcels of borough owned land in Nikiski, North Kenai, Ciechanski, Kalifornsky, Tote Rd., Anchor Point, and Diamond Ridge areas.
3. Ordinance 2019-03; An Ordinance Substitute authorizing the sale of certain parcels of borough land by sealed bid followed by an over-the-counter sale.
4. Conditional Land Use Permit application for material extraction on a parcel in the Anchor Point area that has been remanded on appeal to the Planning Commission. Applicant / Landowner: Beachcomber LLC. Parcel Number: 169-010-67. Legal Description: Tract B, McGee Tracts-Deed of Record Boundary Survey (Plat 80-104)-Deed recorded in Book 4, Page 116, HM Recording District. Location: 74185 Anchor Point Rd. Proposed Land Use: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

Anyone wishing to testify may come to the meetings to give testimony. Written statements may be submitted by hand-delivery, mail (Planning Department, 144 N. Binkley St., Soldotna, AK 99689), email (planning@kpb.us) or fax (907-714-2378).

FUTURE MEETINGS

The next regularly scheduled Plat Committee and Planning Commission meetings will be held **Monday, April 8, 2019** at the KPB George A. Navarre Administration Building, 144 North Binkley St., Soldotna, Alaska.

The Plat Committee meeting will begin at 8:30 p.m. Please check the KPB's website as this time is subject to change. The Planning Commission meeting will begin at 7:30 p.m.

ADVISORY PLANNING COMMISSIONS
Check KPB's website for Advisory Planning Commission meeting dates & times

KPB PLANNING DEPARTMENT
Julie Hindman, Administrative Assistant
Phone: (907) 714-2215 / Fax: (907) 714-2378
Toll free within the Borough 1-800-478-4441

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

}
SS:

Elizabeth A. Ulricksen being first duly sworn, on oath deposes and says:

That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Homer News, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

Planning Comm: Agenda
April 18, 2019

x 

SUBSCRIBED AND SWORN before me on this

22nd day of April, 2019.



NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 07/10/22.

NOTARY PUBLIC
RANDELEE J. KEATON
STATE OF ALASKA
My Commission Expires July 10, 2022



**Kenai Peninsula Borough Planning Commission
APRIL 22, 2019 TENTATIVE AGENDA**

The next regularly scheduled Plat Committee and Planning Commission meetings will be held **Monday, April 22, 2019** at the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, AK.

**PLAT COMMITTEE
5:30 p.m.**

Subdivision Plat Public Hearings

1. AA Mattox Sub. Gwen's 2019 Addn.; KPB 2019-026 [Seabright Surveying / Echo Trading Company LLC] Location: on Nelson Ave., off Kallman Rd., City of Homer. Submitted: 3/19/19. Combines 2 parcels into 2 tracts and finalizes a public access easement vacation.
2. Seldovia Townsite Chartier Addn. 2019 Replat; KPB 2019-029 [Seabright Surveying / Chartier] Location: on C St, on the Seldovia Slough, City of Seldovia. Submitted: 3/25/19. Combines 3 lots into 1 lot.
3. Kooly Sub.; KPB File 2019-031 [Johnson Surveying / Kooly] Location: on Oskolkoff St. and Weldin Ave. in the Caribou Hills, Ninilchik. Submitted: 4/1/19. Divides 1 parcel into 2 lots.
4. Basin View Sub. Pettey-Daniel Replat; KPB File 2019-033 [Segesser Surveys / Daniel Pettey] Location: on Dolchok Lane, off Beaver Loop Rd., City of Kenai. Submitted: 4/1/19. Combines 3 lots into 2 lots.
5. Right of Way Acquisition Sterling Highway Reconstruction Anchor Point to Baycrest Hill; KPB File 2019-032 [State of Alaska DOT&PF / State of Alaska] Location: Sterling Hwy. MP 157-169, Anchor Point and the City of Homer, Anchor Point APC. Submitted: 4/1/19. Finalizes right-of-way acquisitions.

**PLANNING COMMISSION
TRAINING MEETING
8:00 p.m.**

Planning Commission Training to start at 8:00 p.m. or as soon thereafter as business permits.

**PLANNING COMMISSION
7:30 p.m.**

Plat Amendment Request

Jan Feller Sub. Amended; KPB 2015-087A1 [Integrity / Feller] Recording No. KN 2015-82; Location: on Miller Loop Road and Autumn Road

Public Hearings

Petition was received on 4/1/2019 to vacate a public easement in the City of Seldovia. Location: Vacate the 25' wide Frank Raby Dr. ROW adjoin Lots 3, 6 and 7, Block 44, East Addn. Seldovia Townsite Alaska (SL 66-28) and

Lot 4B Seldovia Townsite East 2003 Addn. Amended (SL 2004-1). Also, vacate the 10' wide alleyway adjoining Lots 1A and 2, Block 44, East Addn. Seldovia Townsite Alaska (SL 66-28). ROW is unconstructed except for a driveway and alleyway is unconstructed. Located within SW 1/4, S32, T8S, R14W, SM, KPB, AK. KPB File 2019-030V. Purpose: House expansion plans cannot move forward without the vacation. Petitioners: Keith and Jennifer Swick, Raymond Waterbury Jr., Edward Girard, Hugh and Sally Smith, and James Hopkins of Seldovia, AK; Kevin and Conny Vandergriff of Eagle River, AK; Alfred and Judy Weglinski of Homer, AK; and Precious Earth Inc. of Bakersfield, CA.

Anadromous Waters Habitat Protection District (21.18)

Resolution 2019-08; A Conditional Use Permit (CUP) to replace two bridges and improve the Windy Bay Rd., within the 50-foot Habitat Protection Districts of two anadromous streams. This project is located on both banks of two unnamed anadromous streams, Anadromous Waters Catalog numbers 242-30-10160 and 242-30-10170, T11S, R14W, SM, SL, All of sections 11 & 12 (Parcels 191-070-13 and 191-070-14) on the south side of Kachemak Bay, AK. Applicant: Port Graham Village Council.

Special Considerations

1. Building Setback Exception; Lot 3 Block 2, Longmere Estates Sub. Part 1; KPB File 2019-034; Resolution No. 2019-11; Location: On Lakeshore Dr. and Longmere Way, in the Sterling Area.
2. Consideration of a motion to amend after adoption of the hearing continuance date for a conditional land use permit application for material extraction. Applicant: Beachcomber LLC.

Anyone wishing to testify may come to the meetings to give testimony. Written statements may be submitted by hand-delivery, mail (Planning Department, 144 N. Binkley St., Soldotna, AK 99690), email (planning@kpb.us) or fax (907-714-2378).

FUTURE MEETINGS

The next regularly scheduled Plat Committee and Planning Commission meetings will be held **Monday, May 13, 2019** at the KPB George A. Navarre Administration Building, 144 North Binkley St., Soldotna, Alaska.

The Plat Committee meeting will begin at 5:30 p.m. Please check the KPB's website as this time is subject to change. The Planning Commission meeting will begin at 7:30 p.m.

ADVISORY PLANNING COMMISSIONS

Check KPB's website for Advisory Planning Commission meeting dates & times

KPB PLANNING DEPARTMENT

Julie Hindman, Administrative Assistant
Phone: (907) 714-2215 / Fax: (907) 714-2378
Toll free within the Borough 1-800-478-4441

From: Wall, Bruce
Sent: Wednesday, March 20, 2019 4:58 PM
To: Wall, Bruce
Subject: Beachcomber LLC - Proposed material site
Attachments: 169-010-67_2019-03-20_Staff_report.pdf; 169-010-67_2019-03-01_Notice.pdf;
169-010-67_2019-03-18_Postponement_Request.pdf

Attached is a staff report for the planning commission meeting on March 25, 2019, the notice for the meeting, and a request from the applicant for a continuance.

At the March 25th Planning Commission Meeting, borough staff will recommend that the Planning Commission open the public hearing, accept public comment, and continue the hearing to April 22nd, 2019.

This continuance will allow the applicant and their representative to be present at the hearing to address any questions that may arise.

Thanks,

Bruce Wall, AICP
Planner
907-714-2206

KENAI PENINSULA BOROUGH
144 North Siskley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.



Planning Department

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

April 23, 2019

Charlie Pierce
Borough Mayor

«OWNER»
«ATTENTION»
«ADDRESS»
«CITYSTATEZIP»

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

On March 25, 2019, the Kenai Peninsula Borough Planning Commission conducted a public hearing for a conditional land use permit application for material extraction on a parcel in the Anchor Point area that had been remanded on appeal to the Planning Commission. That public hearing has been continued to **June 10, 2019**. This notice is being sent to landowners located within ½ mile of the subject property. All members of the public are invited to comment. The project under consideration is described as follows:

- Applicant:** Beachcomber LLC
- Parcel Number:** 169-010-67
- Legal Description:** Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.
- Location:** 74185 Anchor Point Road
- Proposed Land Use:** The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

KPB Code: Conditional land use permit applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.29. Copies of these ordinances are available from the Planning Department or at: kpb.us

Public Hearing: A hearing will be held by the Kenai Peninsula Borough Planning Commission to consider the application on **Monday, June 10, 2019**, commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting will be held in the Betty J. Glick Assembly Chambers, George A. Navarre Borough Administration Building located at 144 N Binkley St, Soldotna.

Public Comment: All comments previously submitted to the Planning Commission will again be provided to the Commission. Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99669. A statement addressed to the chairman may also be emailed to: bwall@kpb.us. Written statements provided prior to May 31, 2019 will be placed in the Planning Commission packet. Other written statements provided by Friday, June 7, 2019 will be given to the Planning Commission the day of the hearing. Aggrieved persons, who participate (or previously participated) in the public hearing, by written or oral statement, may appeal the Planning Commission's decision within 15 days of the date of the Notice of Decision.

For additional information, please call the planning department at (907) 714-2206, or 1-800-478-4441 (toll free within the Borough).

Bruce Wall, AICP
Planner

Account Detail Report

Date Range: Apr 30 2019 to Apr 30 2019
Meter Group: Custom
Meter 1W00-1361487 at SOLDOTNA, AK

Account Detail

Account	Pieces	Postage	Fee Amount	Surcharge	Total Charged
PLANNING	202	\$102.300	\$0.000	\$0.000	\$102.300
Grand Total	202	\$102.300	\$0.000	\$0.000	\$102.300



Planning Department

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

Charlie Pierce
Borough Mayor

April 24, 2019

Postmaster
33790 Sterling Hwy
Anchor Point, AK 99556-9606

Enclosed is a notice for a public hearing. Kenai Peninsula Borough Ordinance (21.25.060) requires that notice of public hearings for Conditional Land Use Permits be posted in the post office of the impacted community.

Can you post this for me in the Anchor Point Post Office?

Thanks,

Bruce Wall, AICP
Planner
bwall@kpb.us



Planning Department

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

April 23, 2019

Charlie Pierce
Borough Mayor

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

On March 25, 2019, the Kenai Peninsula Borough Planning Commission conducted a public hearing for a conditional land use permit application for material extraction on a parcel in the Anchor Point area that had been remanded on appeal to the Planning Commission. That public hearing has been continued to **June 10, 2019**. All members of the public are invited to comment. The project under consideration is described as follows:

Applicant: Beachcomber LLC

Parcel Number: 169-010-67

Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Location: 74185 Anchor Point Road

Proposed Land Use: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

KPB Code: Conditional land use permit applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.29. Copies of these ordinances are available from the Planning Department or at: kpb.us

Public Hearing: A hearing will be held by the Kenai Peninsula Borough Planning Commission to consider the application on **Monday, June 10, 2019**, commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting will be held in the Betty J. Glick Assembly Chambers, George A. Navarre Borough Administration Building located at 144 N Binkley St, Soldotna.

Public Comment: All comments previously submitted to the Planning Commission will again be provided to the Commission. Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99669. A statement addressed to the chairman may also be emailed to: bwall@kpb.us. Written statements provided prior to May 31, 2019 will be placed in the Planning Commission packet. Other written statements provided by Friday, June 7, 2019 will be given to the Planning Commission the day of the hearing. Aggrieved persons, who participate (or previously participated) in the public hearing, by written or oral statement, may appeal the Planning Commission's decision within 15 days of the date of the Notice of Decision.

For additional information, please call the planning department at (907) 714-2206, or 1-800-478-4441 (toll free within the Borough).

Bruce Wall, AICP
Planner

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

}
SS:

Elizabeth A. Ulricksen being first duly sworn, on oath deposes and says:

That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Homer News, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

NPH: Beachcomber
May 30, 2019



SUBSCRIBED AND SWORN before me on this

4th day of June, 2019.



NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 07/10/22.

NOTARY PUBLIC
RANDALEE J. KEATON
STATE OF ALASKA
My Commission Expires July 10, 2022

KENAI/PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF PUBLIC HEARING
Monday, June 10, 2019

Public notice is hereby given that on March 25, 2019 the Kenai Peninsula Planning Commission conducted a public hearing for a conditional land use permit application for material extraction on a parcel in the Anchor Point area that had been remanded on appeal to the Planning Commission. That public hearing has been continued to June 10, 2019. All members of the public are invited to comment.

Applicant / Landowner: Beachcomber LLC. **Parcels:** 169-010-87 **Legal Description:** Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116 Homer Recording District. **Location:** 74185 Anchor Point Rd. **Proposed Land Use:** The applicant wishes to obtain a permit for sand, gravel and peat extraction on a portion of the parcel listed above.

KPB Code: Conditional land use permit applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.28. Copies of these ordinances are available from the Planning Department or at: www.kpb.us

Public Hearing: A hearing will be held by the KPB Planning Commission to consider the application on Monday, June 10, 2019, commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting will be held in the Betty J. Glick Assembly Chambers, KPB George A. Navarre Administration Building located at 144 N. Binkley St., Soldotna.

Public Comment: All comments previously submitted to the Planning Commission will again be provided to the Commission. Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to: Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99689. A statement addressed to the chairman may also be emailed to: bwall@kpb.us. Written statements provided prior to May 31, 2019 will be placed in the Planning Commission packet. Other written statements provided by Friday, June 7, 2019 will be given to the Planning Commission the day of the hearing. Aggrieved persons, who participate (or previously participated) in the public hearing, either by written or oral statement, may appeal the Planning Commission's decision within 15 days of the date of the Notice of Decision.

For additional information please call the planning department at (907) 714-2206, or 1-800-478-4441 (toll free within the Borough).

Bruce Wall, AICP
bwall@kpb.us

2368518 Publish Homer News, May 30, 2019

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

}
SS:

Elizabeth A. Ulricksen being first duly sworn, on oath deposes and says:

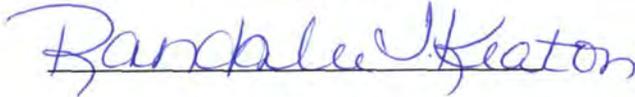
That I am and was at all times here in this affidavit mentions, Supervisor of Legals of the Sound Publishing / Homer News, a newspaper of general circulation and published at Kenai, Alaska, that the advertisement, a printed copy of which is hereto annexed was published in said paper on the dates listed below:

PC tentative agenda
June 6, 2019

x 

SUBSCRIBED AND SWORN before me on this

11th day of June, 2019.



NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 07/10/22.

NOTARY PUBLIC
RANDELEE J. KEATON
STATE OF ALASKA
My Commission Expires July 10, 2022



**Kenai Peninsula Borough Planning Commission
JUNE 10, 2019 TENTATIVE AGENDA**

The next regularly scheduled Plat Committee and Planning Commission meetings will be held **Monday, June 10, 2019** at the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, AK.

PLAT COMMITTEE

6:30 p.m.

Subdivision Plat Public Hearings

1. Stanley's Meadow No. 18 Jones Addn. 2019 Replat; KPB File 2019-062 [Seabright Surveying / Jones, Whaley] Location: on Jones Dr. off East End Rd., Fritz Creek; Kachemak Bay APC. Submitted: 5/21/19. Divides 1 tract into 2 lots.
2. Gentles Sub. McEldowney Addn.; KPB File 2019-061 [Edge Survey & Design, LLC / Ascension Properties LLC] Location: on Old Exit Glacier Rd., off Herman Leirer Rd., Bear Creek. Submitted: 5/17/19. Divides 1 lot into 3 lots.
3. Pilot's Bend Sub. Tom Addn. Section Line Easement Vacation; KPB File 2019-056 [Edge Survey & Design, LLC / Tom] Location: on Glenmore Cir. and Funny River Rd., Funny River; Funny River APC. Submitted: 5/10/19. Finalizes vacations.
4. Aggregate Sub. 2019 Replat; KPB File 2019-060 [McLane Consulting Group / Dickinson Properties LLC, North Star Paving and Construction Inc.] Location: on Frontier Ave. and the Kenai Spur Hwy, Ridgeway. Submitted: 5/13/19. Reconfigure lot line between 2 lots.

Public Hearings

1. Ordinance 2019-13; An Ordinance Authorizing Retention or Sale of Certain Real Property Obtained by the Kenai Peninsula Borough Through Tax Foreclosure Proceedings.

2. Ordinance 2019-12; An Ordinance Authorizing the Sale of Certain Real Property Obtained by the Kenai Peninsula Borough Through Tax Foreclosure Proceedings which was Previously Retained for a Public Purpose.

3. Continuance of the March 25, 2019 public hearing on a conditional land use permit application for material extraction on a parcel in the Anchor Point area that has been remanded on appeal to the Planning Commission. **Applicant / Landowner:** Beachcomber LLC. **Parcel Number:** 169-010-67. **Legal Description:** Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District. **Location:** 74185 Anchor Point Road. **Proposed Land Use:** The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

Anyone wishing to testify may come to the meetings to give testimony. Written statements may be submitted by hand-delivery, mail (Planning Department, 144 N. Binkley St., Soldotna, AK 99689), email (planning@kpb.us) or fax (907-714-2378).

FUTURE MEETINGS

The next regularly scheduled **Plat Committee and Planning Commission** meetings will be held **Monday, June 24, 2019** at the KPB George A. Navarre Administration Building, 144 North Binkley St., Soldotna, Alaska.

The **Plat Committee** meeting will begin at 5:30 p.m. Please check the KPB's website as this time is subject to change. The **Planning Commission** meeting will begin at 7:30 p.m.

ADVISORY PLANNING COMMISSIONS

Check KPB's website for Advisory Planning Commission meeting dates & times

KPB PLANNING DEPARTMENT

Julie Hindman, Administrative Assistant
Phone: (907) 714-2215 / Fax: (907) 714-2378
Toll free within the Borough 1-800-478-4441

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA,
STATE OF ALASKA

} SS:

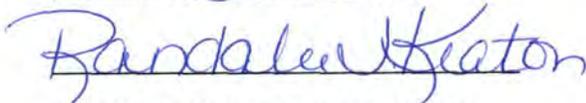
Elizabeth A. Ulricksen being first duly sworn, on oath deposes and says:
That I am and was at all times here in this affidavit mentions, Supervisor
of Legals of the Sound Publishing / Homer News, a newspaper of general
circulation and published at Kenai, Alaska, that the advertisement, a
printed copy of which is hereto annexed was published in said paper on
the dates listed below:

PC Agenda
June 20, 2019

X 

SUBSCRIBED AND SWORN before me on this

20th day of June, 2019.



NOTARY PUBLIC in favor for the State of Alaska.

My commission expires 07/10/22.

NOTARY PUBLIC
RANDELEE J. KEATON
STATE OF ALASKA
My Commission Expires July 10, 2022



**Kenai Peninsula Borough Planning Commission
JUNE 24, 2019 TENTATIVE AGENDA**

The next regularly scheduled Plat Committee and Planning Commission meetings will be held **Monday, June 24, 2019** at the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, AK.

PLAT COMMITTEE

Subdivision Plat Public Hearings

1. Troy's Camp; KPB File 2019-022R1 [Seabright Surveying / Sorensen] Location: on Mona Rd. and Dave Rd., Fox River; Kachemak Bay APC. Submitted: 5/29/19. Divides 1 parcel into 2 tracts.
2. 59 North; KPB File 2019-067 [Seabright Surveying / Shavelson-Weiss Community Property Trust] Location: on W. Fairview Ave. and Rangeview Ave.; City of Homer. Submitted: 6/3/19. Divides 1 tract into 10 lots and 1 tract.
3. Condra Terrace Too 2019 Addn.; KPB File 2019-068 [Orion Surveys/Merrick, Bruce B. Shaw Revocable Trust, Shaw] Location: on East End Rd. and Old East End Rd.; Fritz Creek; Kachemak Bay APC. Submitted: 6/3/19. Reconfigures lot line between 2 parcels.
4. Kachemak Bay Ranchos 2019; KPB File 2019-070 [Ability Surveys / Collins, Ward] Location: on Waldeck Ave., Brenda St., and Cindi Ave., off North Fork Rd., Diamond Ridge. Submitted: 6/3/19. Reconfigure lot line between 2 parcels.
5. Riverview Sub. Fraley 2019 Replat; KPB File 2019-050 [Segesser Surveys / Fraley] Location: on W. Riverview Ave., off S. Kobuk St., City of Soldotna. Submitted: 5/29/19. Reconfigure lot line between 2 parcels.
6. House Sub. 2019 Replat; KPB File 2019-068 [McLane Consulting Group / Plagge, The Dennis Ward Bible and Susan Bible Revocable Living Trust] Location: on Funny Moose Ln. and House Dr., off Funny River Rd., Funny River; Funny River APC. Submitted: 6/3/19. Divides 1 tract into 8 lots.
7. Birch Acres Sub. Number Two; KPB File 2019-069 [Edge Survey & Design, LLC / Muller, Poppin Family Revocable Community Property Trust] Location: on Erwein Rd., off Forest Ln., Sterling. Submitted: 6/3/19. Divides 2 tracts into 10 lots and 2 tracts.

**PLANNING COMMISSION
7:30 p.m.**

Time Extension Request

Seater View Sub.; KPB File 2009-085 [Integrity / Seater] Location: bordering Nikishka Bay in Nikiski

2381503

Unfinished Business

Conditional Land Use Permit for Beachcomber LLC. Postponed from 6/10/19 meeting. Motion on floor.

**Vacations Not Requiring A
Public Hearing**

Petition to vacate a 10-foot wide drainage easement in the City of Homer was submitted on 5/29/19. The easement is located on Lot 24-A, AA Mattox Peggi's Addn. (HM 996-64) within S17, T6S, R13W, SM, KPB, AK. KPB File 2019-048V. Petitioner: Peggi Patton of Homer, AK.

Special Considerations

Request to review the May 13, 2019 Plat Committee's Conditional Preliminary Approval of Diamond Ridge Estates No. 5; KPB File 2019-037 [Geovera, LLC / Amo] Location: on Estate Dr. off Skittles St. and Skyline Dr., Diamond Ridge, Kachemak Bay APC.

Public Hearings

1. A petition was received on 5/30/19 to vacate a public right-of-way and associated utility easements in the Diamond Ridge area. Vacate the southwestmost approximately 560 feet of the Dorothy Dr. ROW as dedicated on Gruening Vista 1988 Addn. (HM 88-37). Also, vacate the associated 10' wide utility easements within Lots 38, 40, and 41 Gruening Vista 1988 Addn. (HM 88-37). The ROW being vacated is unconstructed and located within the SE ¼ SE ¼ of S3, T6S, R13W, SM, KPB, AK. KPB File 2019-063V. Petitioner: Spotty Merle LLC of Peachtree City, GA. Reason stated in petition the ROW was to access parcels being reverted to a single tract.
2. Ordinance 2019-___; An Ordinance Amending KPB Chapter 21.25, Conditional Land Use Permits and Amending KPB Chapter 21.29, Material Site Permits.

Anyone wishing to testify may come to the meetings to give testimony. Written statements may be submitted by hand-delivery, mail (Planning Department, 144 N. Binkley St., Soldotna, AK 99689), email (planning@kpb.us) or fax (907-714-2378).

FUTURE MEETINGS

The next regularly scheduled Plat Committee and Planning Commission meetings will be held **Monday, July 15, 2019** at the KPB George A. Navarre Administration Building, 144 North Binkley St., Soldotna, Alaska.

The Plat Committee meeting will begin at 5:30 p.m. Please check the KPB's website as this time is subject to change. The Planning Commission meeting will begin at 7:30 p.m.

ADVISORY PLANNING COMMISSIONS
Check KPB's website for Advisory Planning Commission meeting dates & times

KPB PLANNING DEPARTMENT
Julie Hindman, Administrative Assistant
Phone: (907) 714-2215 / Fax: (907) 714-2378
Toll free within the Borough 1-800-478-4441

ANCHORAGE
AK 995

PM 11

KENAI PENINSULA BOROUGH
144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99669-7520



NMR

YALE MARK M
74140 SEAWARD AVE
ANCHOR POINT, AK 99556

99556-7520
99669-7520

NIXIE 995 DC 1 0003/07/19
RETURN TO SENDER
NO MAIL RECEIPTABLE
UNABLE TO FORWARD

SC: 99669752044 *1620-06453-04-42

ANCHORAGE
AK 995

PM 11

KENAI PENINSULA BOROUGH
144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99669-7520



MATTER BERNADINE R
140 CARLSON PKWY APT 220
MINNETONKA, MN 55305

55305-6581-520

NIXIE 553 EE 1 2203/10/19
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

SC: 99669752044 *1620-06453-04-42

U.S. POSTAGE PITNEY BOWES
ZIP 99669 \$ 000.50⁰
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RECEIVED

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KENAI PENINSULA BOROUGH
PLANNING DEPARTMENT

U.S. POSTAGE PITNEY BOWES
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RECEIVED

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KENAI PENINSULA BOROUGH
PLANNING DEPARTMENT

ANCHORAGE
AK 995

KENAI PENINSULA BOROUGH

144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99669-7520
PH 1 L



ADDRESS SERVICE REQUESTED

Flamingo

YALE MARK M
74140 SEAWARD AVE
ANCHOR POINT, AK 99556

99556-1353B
99669-7520

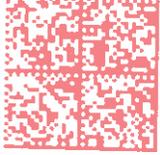
RETURNED MAIL

GRM _____ DMV _____
PFD _____ DATE: _____

NIXIE 995 CE 1 0104/13/19
RETURN TO SENDER
NO POSTAGE NECESSARY
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ZIP 99669 \$ 000.50⁰
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ANCHORAGE
AK 995

KENAI PENINSULA BOROUGH

144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99669-7520
PH 1 L



ADDRESS SERVICE REQUESTED

Flamingo

April 23, 2019

YALE MARK M
74140 SEAWARD AVE
ANCHOR POINT, AK 99556

99556-1353B
99669-7520



U.S. POSTAGE PITNEY BOWES
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RECEIVED

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KENAI PENINSULA BOROUGH
PLAYING DEPARTMENT

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NO POSTAGE NECESSARY
IF MAILED IN THE UNITED STATES

BC: 99669752044 *1620-04220-24-42

ANCHORAGE
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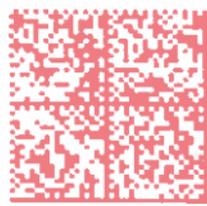
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KENAI PENINSULA BOROUGH
144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99669-7520



April 23, 2019

YALE MARK M
74140 SEAWARD AVE
ANCHOR POINT, AK 99556



U.S. POSTAGE >> PITNEY BOWES



ZIP 99669 \$000.50⁰
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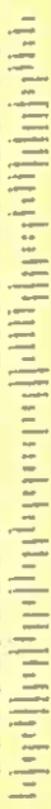
RECEIVED
MAY 06 2019
KENAI PENINSULA BOROUGH
PLANNING DEPARTMENT

NIXIE 995 CE 1 0105/03/19

RETURN TO SENDER
NO MAIL RECEPTACLE
UNABLE TO FORWARD

BC: 99669752044 1620-05110-30-44

NMR
~~9966975206~~



R773

695

OWNER	ATTENTION	ADDRESS	CITY/STATE/ZIP	CONTACT INFORMATION
LEAH & BILL SCOTT		PO BOX 1193	ANCHOR POINT, AK 99556	naturesventures@gmail.com
DAPHANE MAXON		32977 HEATHER GLEN CT	ANCHOR POINT, AK 99556	daphane50@gmail.com
MIKE JONES		PO BOX 91865	ANCHORAGE, AK 99509	anchorrivier500@yahoo.com
STEVE THOMPSON		PO BOX 310	ANCHOR POINT, AK 99556	stevethompson1961@yahoo.com
PETE KINNEEN		PO BOX 810	ANCHOR POINT, AK 99556	Biocharalaska@gmail.com
CHANDRA CAFFROY		34980 SEABURY CT	ANCHOR POINT, AK 99556	
VICKEY HODNIK		PO BOX 1836	HOMER, AK 99603	vickey@gci.net
DAN & CATHY MILLARD		2266 PANORAMA WAY W	GUNTERSVILLE, AL 35976	
CARLA MILBURN		66090 MOOSEWOOD CT	ANCHOR POINT, AK 99556	cjm2@me.com
MARIE HERDEGEN		69195 KAREN CIR	ANCHOR POINT, AK 99556	marieherdegen@icloud.com
MARK SCHOLLENBERGER		69195 KAREN CIR	ANCHOR POINT, AK 99556	msberger@horizonsatellite.com
SHIRLEY GRUBER		13701 ERVIN RD	ANCHORAGE, AK 99516	shirleytdx@yahoo.com
LANNY KELSEY		13701 ERVIN RD	ANCHORAGE, AK 99516	shirleytdx@yahoo.com
MARY BARNETT		PO BOX 2782	HOMER, AK 99603	maryjbw@gmail.com
TODD BAREMAN		74294 ANCHOR POINT RD	ANCHOR POINT, AK 99556	
GEORGE KRIER		PO BOX 1165	ANCHOR POINT, AK 99556	vickey@gci.net
BILBEN HANS & JEANNE		PO BOX 1176	ANCHOR POINT, AK 99556	catchalaska@alaska.net
LEAH & BILL SCOTT		PO BOX 1193	ANCHOR POINT, AK 99556	naturesventures@gmail.com
GORMAN JAMES		PO BOX 1239	ANCHOR POINT, AK 99556	captainboomer@hotmail.com
OVERSON ELDON		PO BOX 1318	ANCHOR POINT, AK 99556	
JIM HALVERSON		PO BOX 134	ANCHOR POINT, AK 99556	irhalver27@gmail.com
OLIVER RICK		PO BOX 1444	ANCHOR POINT, AK 99556	roliverb747@me.com
DAN SYME		PO BOX 1457	ANCHOR POINT, AK 99556	
TODD BAREMAN		PO BOX 1462	ANCHOR POINT, AK 99556	
LINDA FEILER		PO BOX 148	ANCHOR POINT, AK 99556	
RYAN MUZZARELLI		PO BOX 170	ANCHOR POINT, AK 99556	akmoonlit@yahoo.com
EMMITT AND MARY TRIMBLE	BEACHCOMBER LLC	PO BOX 193	ANCHOR POINT, AK 99556	emmitttrimble@gmail.com
JEANNE ENGLISHBEE		PO BOX 201	ANCHOR POINT, AK 99556	jeanneenglishbee@gmail.com
CHARITY JACOBSON		PO BOX 21	ANCHOR POINT, AK 99556	
DEENA BENSON		PO BOX 243	ANCHOR POINT, AK 99556	nosnebaneed@gmail.com
GREGG WIESER		PO BOX 281	ANCHOR POINT, AK 99556	
Marie Cariton		PO Box 29	Anchor Point, AK 99556	
ISENHOUR LAUREN		PO BOX 317	ANCHOR POINT, AK 99556	
LINDA STEVENS		PO BOX 330	ANCHOR POINT, AK 99556	grizzlysafety@aol.com
PATRICK MIKE & LINDA		PO BOX 335	ANCHOR POINT, AK 99556	mlpatrick335@yahoo.com
WHITMORE LYNN		PO BOX 355	ANCHOR POINT, AK 99556	
CHRIS CRUMM		PO BOX 375	ANCHOR POINT, AK 99556	christinecrum1@gmail.com
CARRIE HARRIS		PO BOX 385	ANCHOR POINT, AK 99556	myalaska9.3@gmail.com

RICHARD AND LORETTA STAPEL	PO BOX 386	ANCHOR POINT, AK 99556	stapel6@live.com
MARIA BERNIER	PO BOX 421	ANCHOR POINT, AK 99556	maria.bleu.ak@gmail.com
YALE MARK & LEE	PO Box 429	ANCHOR POINT, AK 99556	markvale2001@yahoo.com
DAVID S ANDERSON	PO BOX 475	ANCHOR POINT, AK 99556	
HAHN DETRICIA	PO BOX 475	ANCHOR POINT, AK 99556	
BUZZ KYLLONEN	PO BOX 49	ANCHOR POINT, AK 99556	
TED GRAY	PO BOX 490	ANCHOR POINT, AK 99556	rddcr@acsalaska.net
DEANNA L CHESSER	PO BOX 515	ANCHOR POINT, AK 99556	sleepybear@alaska.net
ELMALEH JOSHUA L AND CHRISTINA	PO BOX 542	ANCHOR POINT, AK 99556	twoshar@acsalaska.net
COSMAN TERESA	PO BOX 563	ANCHOR POINT, AK 99556	david.driggers@gmail.com
SHERIDAN GARY L & EILEEN D	PO BOX 661	ANCHOR POINT, AK 99556	jay1332@att.net
DAVID DRIGGERS	PO BOX 745	ANCHOR POINT, AK 99556	
SPARKMAN JOSEPH J & DENISE	PO BOX 767	ANCHOR POINT, AK 99556	
SHARON FROMONG	PO BOX 849	ANCHOR POINT, AK 99556	
WARTBURG MICHAEL G	PO BOX 849	ANCHOR POINT, AK 99556	
GIRTON JOHN & BARBARA	PO BOX 869	ANCHOR POINT, AK 99556	
BAKER R O	PO BOX 870	ANCHOR POINT, AK 99556	bobkleen@acsalaska.net
GREGORY DAVID & TERESA ANN JACOBSON	PO BOX 904	ANCHOR POINT, AK 99556	davidgregory0754@gmail.com
LORRI DAVIS			lorrildavis.com
BRANTLEY MICHAEL	PO BOX 950	ANCHOR POINT, AK 99556	
TOM CLARK	PO BOX 962	ANCHOR POINT, AK 99556	
BLAIR GERALD	PO BOX 978	ANCHOR POINT, AK 99556	
DAVID DRAKE	PO BOX 985	ANCHOR POINT, AK 99556	cope_10@yahoo.com
ROBERT W CORBISIER	500 L ST SUITE 300	ANCHORAGE, AK 99501	rob@reevesamodio.com
ALASKA DNR	550 W 7TH AVE SUITE 900C	ANCHORAGE, AK 99501	kyle.kidder@alaska.gov
HOLMES WEDDLE & BARCOTT	701 W EIGHTH AVE, SUITE 700	ANCHORAGE, AK 99501	sstone@hwb-law.com
BRNA PHILIP J	5601 E 98TH AVE	ANCHORAGE, AK 99507	fishyweak@gmail.com
PAUL MORINO	7360 WHITE HAWK DR	ANCHORAGE, AK 99507	
LORRI L DAVIS	9801 HOMESTEAD TRAIL	ANCHORAGE, AK 99507	homesteadart@aol.com
HORTON DON & LORI	221 ELLEN CIR	ANCHORAGE, AK 99515	hortons6@gmail.com
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LANNY KELSEY	13701 ERVIN RD	ANCHORAGE, AK 99516	shirleytdx@yahoo.com
JOSELYN BILOON	4111 AVIATION AVE	ANCHORAGE, AK 99519	joselyn.biloon@alaska.gov
SILVER KING RV VILLAGE ASSOCIATION	PO BOC 242491	ANCHORAGE, AK 99524	
GULLIP GARY L & SANDRA L	1523 SW 58TH LN	CAPE CORAL, FL 33914	
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REED JIM & SUSAN	PO BOX 85	EVERGLADES CITY, FL 34139	ecapjimsue@gmail.com
ALLISON TRIMBLE PAPAROA	3020 UPLAND WAY	FERNDALE, WA 98248	allisontrimblerealestate@gmail.com

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MIKE BRADY	804 13TH AVE SO	GREAT FALLS, MT 54905	cmwalker9@alaska.edu
WAYLON JANOUSEK	2110 RIVER DRIVE NORTH	GREAT FALLS, MT 59401	bob@inletkeeper.org
MILLARD DANIEL C	2266 PANORAMA WAY W	GUNTERSVILLE, AL 35976	angelaroland@gmail.com
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ANGELA ROLAND	4014 BEN WALTERS LN APT C6	HOMER, AK 99603	
HOMER SOIL & WATER CONSERVATION DIST	432 E PIONEER AVE, STE D	HOMER, AK 99603	
ALAN AND LACRETIA BALLANCE	55535 PREVET CT #420	HOMER, AK 99603	
TONY HOZA	PO BOX 1177	HOMER, AK 99603	
GARY DRAKE	PO BOX 2043	HOMER, AK 99603	
STEVE HABER	PO BOX 2429	HOMER, AK 99603	
DON HORTON	PO Box 2552	HOMER, AK 99603	
XOCHITL LOPEZ-AYALA	PO Box 2552	HOMER, AK 99603	
ROGER MCCAMPBELL	PO BOX 321	HOMER, AK 99603	
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DANICA HIGH
NICK FINLEY

danicabrianne@icloud.com
nicfin23@hotmail.com

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Planning Department

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

June 26, 2019

Charlie Pierce
Borough Mayor

«OWNER»
«ATTENTION»
«ADDRESS»
«CITYSTATEZIP»

At their June 24, 2019 meeting, the Planning Commission approved a conditional land use permit for a material site that was requested for Parcel 169-010-67, Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

This decision may be appealed within fifteen days of the date of the Notice of Decision. The appeal must be submitted to the borough clerk on forms provided by that office, along with a filing and records preparation fee of \$300.

If you have any questions or comments, please feel free to contact me (907) 714-2206.

Sincerely,

Bruce Wall, AICP
Planner
bwall@kpb.us

Enclosures

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm placed near the active extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm placed near the active extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary; and a 12-foot high berm placed near the active extraction area except along the northern 200 feet of the proposed excavation.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls.

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- 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
 5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
 8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
 9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
 10. The permittee shall ensure that fuel storage 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.
 11. The permittee shall conduct operations 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.
 12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
 13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
 14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
 15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.
 16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
 17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
 18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
 19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
 20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.
 21. The permittee shall operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
 22. The permittee shall not operate the material site or haul material from the site on Memorial Day weekend (Saturday through Monday), Labor Day weekend (Saturday through Monday), and the 4th of July holiday to also include:
 - Saturday and Sunday if July 4th is on a Saturday, Sunday, Monday, or Friday
 - Saturday, Sunday, and Monday if July 4th is on a Tuesday
 - Saturday, Sunday, and Friday if July 4th is on a Thursday



Planning Department

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

Charlie Pierce
Borough Mayor

NOTICE OF DECISION

At their June 24, 2019 meeting, the Planning Commission approved a conditional land use permit for a material site that was requested for Parcel 169-010-67, Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

FINDINGS OF FACT

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On June 4, 2018, the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. Land use in the rural district is unrestricted except as otherwise provided in KPB Title 21.
5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres and provides regulations for material extraction.
6. The proposed disturbed area is approximately 27.7 acres.
7. Consistent with KPB 21.25.050(A) on June 21, 2018, the applicant submitted a revised site plan and application to the Planning Department that addressed issues raised by staff with the initial review of the application.
8. The submitted application with its associated documents was reviewed by staff for compliance with the application requirements of KPB 21.29.030. Staff determined that the application was complete and scheduled the application for a public hearing.
9. A public hearing of the Planning Commission was held on July 16, 2018. Public notice of the hearing was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the July 5, 2018 & July 12, 2018 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
10. Testimony was filed and heard regarding issues that are not addressed by the KPB 21.29.040 standards or 21.29.050 conditions. Staff and the Planning Commission in reviewing the application are not authorized by the code to consider those issues such as property values, water quality, wildlife preservation, a material site quota, and traffic safety.
11. A public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
12. A public hearing of the Planning Commission was held on June 10, 2019. Public notice of the hearing was mailed on April 30, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the May 30, 2019 and June 6, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
13. At the June 10, 2019 hearing, the applicant volunteered to utilize a moving, or rolling, berm rather than a stationary berm. The berms will be placed near the active excavation area to be moved as the extraction area and reclaimed areas expand.
14. At the June 10, 2019 hearing, the applicant volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
15. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
16. Parcel boundaries. All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. The submitted site plan indicates the location of each of the parcel boundary stakes.
 - B. Planning staff has visited the site several times and has observed that the boundary stakes are in place.
17. *Buffer zone.* A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.

- A. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
 - B. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
 - C. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.
 - D. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.
 - E. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
 - F. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
 - G. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
 - H. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that can provide visual and noise screening of the material site for some of the adjacent uses.
 - I. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent properties.
 - J. A 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - K. The total buffer width, as recommended by staff, along the southern and eastern property boundaries is 98-feet.
 - L. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
 - M. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
 - N. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - O. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
 - P. There has been testimony that the material site will mar the view of Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.
 - Q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.
 - R. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.
18. *Processing.* Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
- A. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the north property line.
 - B. The applicant proposed the following justifications for waiving the processing setback: "Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant's daughter & 169-022-08 is not developed."
 - C. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
 - D. The portion of the proposed processing area greater than 300 feet from the property line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.

- E. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.
19. *Water source separation.* All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.
- A. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
 - C. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.
20. *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.
- A. This permit approval does not allow excavation in the water table.
21. *Waterbodies.* An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
- A. The Cook Inlet lies about 600 feet west of the proposed material extraction.
 - B. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
 - C. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast corner of the property.
 - D. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.
 - E. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - F. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the floodplain is an existing stripped area.
 - G. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.
 - H. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
 - I. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
22. *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.
- A. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.20.050(A)(7).
23. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads.
- A. The submitted site plan indicates that the material site haul route will be Denver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - B. There was a significant number of public comments concerning the condition of Anchor Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
 - C. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
24. *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.
- A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.

25. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
26. *Hours of operation.* Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - B. This condition reduces off-site noise impacts of the material site.
27. *Reclamation.* Reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
 - A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.
 - C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission
 - D. The application states that less than 50,000 cubic yards will be mined annually therefore the material site qualifies for a small quantity exception from bonding.
28. *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.
 - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
29. *Voluntary permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - A. The applicant has volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
 - B. The volunteered condition concerning back-up alarms is in the best interest of the Borough and the surrounding property owners because the multi-frequency alarms better minimizes the noise impacts of the material site.
 - C. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.
 - D. The volunteered condition to place the berm near the active excavation area is in the best interest of the Borough and the surrounding property owners because this placement of the berm will better minimize the visual impacts of the material site.
 - E. The applicant has volunteered a condition a condition that prohibits material site operations on holiday weekends during the summer months.
 - F. The volunteered condition, to not operate on holidays, is consistent with the standard to reduce noise disturbance to adjacent properties.
 - G. The volunteered condition, to not operate on holidays, is in the best interest of the Borough and the surrounding property owners because the Anchor River State Recreational Area has a significantly greater number of visitors on holidays and several of the neighbors and Alaska State Parks has expressed concern about the noise impacts to the recreational area.
30. *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.
 - A. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance

This decision may be appealed through the Borough Clerk within fifteen days of the date of the Notice of Decision.

Bruce Wall, AICP
Planner

June 26, 2019
Date

**VERBATIM TRANSCRIPT
&
INDEX**

MARCH 25, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION**LOCATION**

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Monday, March 25, 2019
7:30 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 112, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Syverine Abrahamson-Bentz, Anchor Point/Ninilchik
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Robert Ernst, Northwest Borough
Dr. Rick Foster, Southwest Borough
Diane Fikes, City of Kenai
Virginia Morgan, East Peninsula
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna

Staff Present:

Max Best, Planning Director
Marcus Mueller, Land Management Officer
Julie Hindman, Administrative Assistant
Jordan Reif, Platting Technician
Holly Montague, Deputy borough Attorney
Karyn DeCinco, Resource Planner
Bruce Wall, Planner
Scott Huff, Platting Manager

Others Present:

Douglas Clegg

Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP

Page 2

1 PROCEEDINGS
 2 7:28:18 p.m.
 3 (This portion not requested)
 4 8:03:22 p.m.
 5 **COMMISSIONER FOSTER:** It brings us to
 6 Item G-4.
 7 Yes, Mr. Brantley, do you have something
 8 you'd like to offer?
 9 **COMMISSIONER BRANTLEY:** Yes. I would
 10 like to recuse myself from this -- from G-4 for an
 11 appearance of a conflict of interest.
 12 **COMMISSIONER FOSTER:** It's been brought
 13 forth that Mr. Brantley may have a conflict, or at
 14 least appears to have a conflict of interest.
 15 Does anybody have an issue that we would
 16 need to call this to a count -- to a vote? Seeing and
 17 hearing no one, you are so recused.
 18 Anybody else have a concern? Mr. Venuti.
 19 **COMMISSIONER VENUTI:** Thank you, Mr.
 20 Chair. In our lay-down packet there is a letter
 21 suggesting that I have a conflict of interest on this
 22 issue and actually accuses me of unethical behavior,
 23 which is quite insulting. I don't feel that I have a
 24 conflict of interest. I feel that I could make a fair
 25 decision on this.

Page 3

1 **COMMISSIONER FOSTER:** Does anybody here
 2 have a concern that Mr. Venuti may have the appearance
 3 of a conflict of interest; and if so, want to discuss
 4 this?
 5 Should we -- in this case should we vote
 6 on this, or -- Mr. Venuti, you don't want to set out as
 7 recusing yourself then, is that correct?
 8 **COMMISSIONER VENUTI:** No.
 9 **COMMISSIONER FOSTER:** Okay, does anybody
 10 have an issue with that? Seeing and hearing no one,
 11 you are so not recused. You do not have a conflict,
 12 the chair decides.
 13 Staff report, please.
 14 **MR. WALL:** Thank you, Mr. Chairman. This
 15 is an application for a conditional land use permit for
 16 a material site in the Anchor Point area. It is
 17 located at 74185 Anchor Point Road. The parcel number
 18 is 169-010-67. The applicant is Beachcomber, LLC.
 19 This application was heard by the
 20 Planning Commission on July 16th where the application
 21 was denied approval. This decision was appealed, and
 22 it was reviewed by a hearing officer. The hearing
 23 officer has remanded the application to the Planning
 24 Commission.
 25 Excerpts from the hearing officer's

Page 4

1 decision is included in the staff report, and copies of
 2 the decision is contained in pages 20 through 41 of
 3 your packet.
 4 Pages 2 through 10 of your packet
 5 contains the staff report. It has been updated from
 6 the July meeting to be consistent with the hearing
 7 officer's instructions that the findings should be
 8 based on the mandatory conditions contained in KPB
 9 21.29.050.
 10 Staff is recommending different buffers
 11 from what is showing on the applicant's site plan and
 12 different from staff's recommendation in July.
 13 On page 18 of your packet is a map
 14 showing staff's recommendations. On the north
 15 boundary, staff recommends a 50-foot vegetated buffer
 16 adjacent to the south boundary of parcel 169-022-03,
 17 this is the Brantley parcel, with a six-foot high berm
 18 between the vegetated buffer and the extraction area.
 19 There is a riparian wetland and
 20 floodplain in the very northeast corner of the
 21 property, and staff is recommending a six-foot high
 22 berm between the extraction area and the 100-foot
 23 setback from the riparian wetland and floodplain.
 24 Then along the rest of the northern
 25 boundary, staff recommends a 12-foot high berm. And

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1 then on the south boundary, staff is recommending a
 2 50-foot vegetated buffer adjacent to the southern
 3 parcel boundaries with a 12-foot high berm between the
 4 vegetated buffer and the extraction area.
 5 Along the east boundary, a 50-foot
 6 vegetated buffer adjacent to the eastern-most parcel
 7 boundary -- and actually let me rephrase that. That
 8 actually should say a 50-foot vegetated buffer adjacent
 9 to the section line easement along the eastern property
 10 boundary with a 12-foot high berm between the vegetated
 11 buffer and the extraction area.
 12 And then along the west side, greater
 13 than a 50-foot vegetated buffer along the western most
 14 property boundary.
 15 A waiver is being requested for the
 16 300-foot processing distance requirement from the
 17 property lines. Staff does not recommend approval of
 18 the processing distance waiver requested. There is
 19 room elsewhere on the property for processing that
 20 meets the 300-foot setback requirement.
 21 Pages 42 through 115 of your packet
 22 contains comments that have been received for this
 23 hearing. And pages 116 through 303 contains the
 24 commission packet from the July meeting, including the
 25 application, the site plan, and public comments.

Page 6

1 Pages 304 through 331 contains the
 2 minutes from the July meeting. And then an additional
 3 54 comment letters have been received since your packet
 4 was prepared last week. These comments are sitting on
 5 your desk tonight.
 6 Also on your desk tonight is a letter
 7 from the applicant's representative requesting a
 8 continuance of the hearing due to unforeseen issues,
 9 and I will let the applicant address that. It was
 10 assumed that the applicant or the representative would
 11 not be available this evening, but it appears that they
 12 are.
 13 Staff recommends that you open the public
 14 hearing tonight as advertised and then continue the
 15 hearing to the April 22nd meeting. Even though the
 16 applicant and the representative appears to be here
 17 tonight, staff is -- has made an effort to make sure
 18 the public is aware that this would be continued and
 19 that they would not need to be here at this meeting to
 20 testify, that they could come to the next one.
 21 So we recommend that you table it to
 22 the -- or continue the hearing to April 22nd. And that
 23 is the end of my staff report.
 24 **COMMISSIONER FOSTER:** Thank you. At this
 25 time I'm going to have -- I'll open it for a

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1 presentation by the applicant and their representative.
 2 And as they are coming up, I will make
 3 comment that I will entertain a motion for a
 4 continuance after they speak -- after the public
 5 hearing, I'm sorry.
 6 **KERI-ANN BAKER:** Keri-Ann Baker on behalf
 7 of the applicant. First, I just wanted to apologize.
 8 I did not believe I was going to be able to make it to
 9 this hearing because of a personal issue. I spoke with
 10 Ms. Montague about it about a week ago. She suggested
 11 that I send an e-mail to Mr. Wall, which I did. It
 12 wasn't until today that I was able to get here at the
 13 last minute. As a courtesy to this group, as well as
 14 to everyone else, I did want to come.
 15 We're prepared to go forward, but we also
 16 understand, and we've spoken to Mr. Wall about his
 17 recommendation, that some of the public may not have
 18 heard because of our request, so whatever this body
 19 decides, we would respect.
 20 And again, I apologize that my e-mail
 21 caused that. That was not my intent, and it wasn't my
 22 intent to delay.
 23 **EMMITT TRIMBLE:** I'm the applicant,
 24 Emmitt Trimble, from Anchor Point, Mr. Chairman.
 25 I'd like to use the words that the

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1 borough attorney and borough staff used in their
 2 opening statement for the appeal. I think they
 3 articulated issues better than I could.
 4 This material site is located in the
 5 rural district of the borough. The rural district is
 6 unzoned. As such, this is not a case where a
 7 conditional use is being allowed in a residential zone
 8 where it would normally be prohibited. Subject to some
 9 protections afforded surrounding property owners as set
 10 forth in the code, a material site can be placed almost
 11 anywhere in the rural district of the borough.
 12 Given the wealth of gravel deposits in
 13 the Anchor Point area, it should not be surprising that
 14 this parcel would be utilized for a material site.
 15 Some of those property owners will be
 16 more protected by their distance from the material site
 17 and the proposed buffers; however, there will always be
 18 at least some noise and visual impacts to adjacent
 19 properties from a material site operation.
 20 In the history of the material site
 21 ordinance, there has not been an interpretation that
 22 all surrounding properties must not be able to see or
 23 hear the material site at all; rather the
 24 interpretation over the course of the 96 material site
 25 permits that have been issued since 1996 is a reduction

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1 in certain negative impacts is the goal of the material
 2 site regulations.
 3 Full elimination of negative secondary
 4 impacts has never been discussed or required, nor is it
 5 feasible. Attempting to judge whether a permit should
 6 be denied based on how many people claim they are not
 7 sufficiently protected ultimately will lead to
 8 arbitrary decision making.
 9 Rather than relying on evidence, this
 10 approach relies on surrounding property owners stocking
 11 the hall. Whether a permit is approved or denied
 12 becomes a numbers game. Such negative community
 13 sentiment is not a valid reason to deny a permit.
 14 Given the mandate from the assembly that
 15 material sites be subject only to certain mandatory
 16 conditions, a denial based on a conclusory statement
 17 that the buffers are insufficient to protect against
 18 noise and visual impacts cuts against the grain of the
 19 code.
 20 Rather, if the buffers that can be
 21 fashioned are entirely useless to protect surrounding
 22 uses, the answer is a waiver of the buffer requirements
 23 under the code, not an unauthorized denial of the
 24 permit.
 25 Staff though did not believe buffering

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1 would be useless and recommended enhanced buffers to
 2 afford increased protection over and above what the
 3 minimum buffers set forth in the code would require.
 4 The Planning Commission's findings are
 5 required to be supported by the substantial evidence in
 6 the record. The substantial evidence in the record
 7 required to support the Planning Commission's findings
 8 is not the same as a substantial number of people
 9 opposing a material site. Substantial evidence is
 10 defined as relevant evidence that a reasonable mind
 11 might accept to support a conclusion.
 12 One of nine commissioners indicated they
 13 read the information. One other commissioner indicated
 14 that they had read a bit of the information and assumed
 15 it would be verified by what they heard in the
 16 testimony.
 17 A Superior Court decision has upheld the
 18 borough assembly's authority to adopt an ordinance that
 19 favors material site operations. This order further
 20 held that it is the Planning Commission's
 21 responsibility to abide by the legislative standards
 22 the assembly has established.
 23 The assembly has specifically adopted
 24 ordinances that are protective of material site
 25 operators and rejected proposed ordinances that make it

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1 more difficult for the same to receive project
 2 approval.
 3 In adopting the material site code
 4 language, the borough task force rejected language that
 5 placed a larger burden on the permit applicant.
 6 The assembly could have chosen a policy
 7 that favors residential property owners; instead, it
 8 chose to adopt a policy that favors the material site
 9 operators.
 10 This is not to say a material site permit
 11 cannot be denied, but rather it cannot be denied based
 12 on inadequate buffers when, under the code, either
 13 enhancing the buffers or waiving the buffers are the
 14 authorized resolution to a situation where buffers are
 15 not feasible.
 16 This is the borough's reply to the
 17 opening statements of the opposition: The briefs
 18 presented in opposition to the Beachcomber application
 19 are very similar in that they discuss the volume of
 20 people who attended the hearing who complained
 21 primarily about the view shed being potentially ruined
 22 by the material site and also about potential noise,
 23 dust, road damage, diminishing property values, water
 24 quality and quantity.
 25 As discussed in the opening statement of

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1 the Kenai Peninsula Borough, the standards in .040
 2 address only water quantity, road damage, physical
 3 property damage, dust, noise, visual impacts, and
 4 reclamation. These are the adopted standards because
 5 these are the concerns that are raised about many, if
 6 not most, of the material site applications.
 7 The complaints received about the
 8 Beachcomber material site are not unique. Repeating
 9 over and over again the same complaints about the same
 10 material site doesn't change the standards or
 11 conditions for material site approval.
 12 Regardless of the evidence presented, the
 13 material site code is not designed to support a permit
 14 denial based on the buffers not being feasible given
 15 the topography of the location.
 16 Where buffers are not feasible, a waiver
 17 for those buffers is in order under the code. Staff,
 18 however, does not agree that the buffers are useless
 19 and not feasible, but rather believes that they reduce
 20 the negative impacts of the material site.
 21 The borough further contends that it
 22 would be unrealistic to expect buffers to fully
 23 eliminate the negative impacts of noise and
 24 unsightliness, which appears to be the position of the
 25 Planning Commission.

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1 Although the Planning Commission did not
 2 clearly articulate this interpretation of the code, it
 3 is inferred from their findings that a denial was
 4 appropriate because the buffers would not minimize
 5 noise and visual impacts.
 6 Reference is made to 200 pages of
 7 documents submitted, it's the Bilben brief. However,
 8 documents that don't address the standards are not
 9 persuasive. Minimal questions were asked of the
 10 applicant and testifiers regarding the standards
 11 applicable to the proposed material site.
 12 Evidence and fear are not synonymous.
 13 Much of what is referred to as evidence is actually
 14 voicing fear of what may happen if the material site is
 15 operated on the Beachcomber parcel.
 16 The borough inevitably hears complaints
 17 that wells will run dry and roads will be ruined by a
 18 material site, yet there has never been a substantiated
 19 case of these deleterious results occurring after 96
 20 permitted material sites. Fears and concerns, even
 21 though they may be real, are not evidence.
 22 There was no real discussion of these 200
 23 pages of documents. This wasn't a thorough,
 24 well-reasoned decision; it was a hasty, reactionary
 25 decision made to accommodate the fears and concerns of

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1 the crowd.
 2 In -- the Girton brief references the
 3 peace, tranquility, natural beauty of the open meadow
 4 and the view shed that will be destroyed by the
 5 material site; however, that open meadow is not a state
 6 or national park. That open meadow is a privately
 7 owned parcel in an unzoned area of the borough.
 8 The Baker Trust chose a -- referenced a
 9 case from Anchorage, however -- as supporting denial of
 10 a conditional use permit. However, in both cases the
 11 applicant was attempting to conduct a use in a
 12 residential zone where the activity would generally be
 13 prohibited.
 14 The borough has not adopted the
 15 geographical zoning scheme authorized in .040, but
 16 rather has adopted an ordinance to minimize unfavorable
 17 effects of material sites as authorized in .040.
 18 Consistent with the KPB comprehensive
 19 plan, a permit is required to operate a material site
 20 in the unzoned borough, but that permit requirement
 21 does not rely on the premise that material sites are in
 22 conflict or are generally prohibited in residential
 23 areas. A permit is required in the borough whether the
 24 nearest residence is across the street or across
 25 Kachemak Bay.

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1 The Bilben brief asserts there is
 2 substantial evidence in the record to support the
 3 Planning Commission's decision, but then goes on to
 4 argue is that if there isn't substantial evidence, the
 5 hearing officer should remand to the Planning
 6 Commission.
 7 Obviously, Bilben does not have
 8 confidence in the position that the substantial
 9 evidence in the record supports denial of the permit or
 10 he would not be suggesting a remand as an alternative.
 11 The arbitrariness of the Planning
 12 Commission's decision is underscored by the fact that
 13 another material site in Anchor Point was heard by the
 14 same commission on the same night. The Blauvelt pit is
 15 27-and-a-half acres, while the Beachcomber pit is 27.7
 16 acres.
 17 The testimony regarding Walt Blauvelt's
 18 material site was remarkably similar to the testimony
 19 regarding the Beachcomber material site; however, three
 20 people testified about the negative impacts of the
 21 Blauvelt material site while approximately 30 testified
 22 regarding Beachcomber. The extreme difference between
 23 the two decisions the Planning Commission reached
 24 cannot be rationally explained.
 25 While some commissioners may not like the

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1 standards and conditions in the material site code, is
 2 it not the Planning Commission's job to second guess
 3 the standards established by the assembly or ignore
 4 that the only conditions that may be placed on a
 5 material site are those set forth in KPB .050?
 6 The Planning Commission must work within
 7 the legislative standards established by the assembly.
 8 Staff does not believe there is legal support for
 9 upholding the Planning Commission's findings of fact or
 10 conclusions of law.
 11 Indeed, the Planning Commission gave no
 12 explanation for its diversion from the legal
 13 requirements. The Planning Commission's findings were
 14 conclusory and inadequate to support abandoning the
 15 well-established approval process for material site
 16 CLUPs.
 17 Conclusion, the denial of the material
 18 site based on perceived inadequate buffers is
 19 inconsistent with the many decisions issued by the
 20 Planning Commission where similar complaints have been
 21 raised.
 22 In those cases the Planning Commission
 23 enhanced the buffers to the extent allowed by the code.
 24 The Planning Commission may change course as its
 25 expertise and experience suggests or requires, but when

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1 they do so, they must provide a reasoned analysis
 2 indicating that prior standards and policies are being
 3 deliberately changed, not casually ignored.
 4 The Planning Commission made no analysis
 5 of why it would deny this material site as opposed to
 6 other material sites the very same meeting. It was
 7 arbitrary and unreasonable for the Planning Commission
 8 to deny this material site permit.
 9 Rather than relying on its own expertise
 10 and experience in administering KPB 21.29, it ignored
 11 the expertise and experience. As such, the hearing
 12 officer should not give consideration to the Planning
 13 Commission's interpretation in this case.
 14 In fact, it would be difficult to give
 15 much consideration to the Planning Commission's
 16 interpretation because they didn't discuss the
 17 ordinance, question staff or the witnesses in any
 18 meaningful way, or attempt to fashion more appropriate
 19 buffers.
 20 I'm sorry for being so lengthy. I know I
 21 went long there. I have submitted, and I believe you
 22 have a drawing and a cover letter that provides a grid
 23 and a profile to respond to the opposition's drawings
 24 that were submitted.
 25 And so we feel that this drawing done by

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1 a licensed registered surveyor is a more accurate
 2 representation. And that at worst it shows that as
 3 long as the berm is placed close to the excavation site
 4 as recommended by staff, they are showing that it would
 5 have to be 24 feet tall at Echo Street.
 6 But that's hundreds of feet away from
 7 where we propose to put the berm, which is right at the
 8 excavation site that will probably last for three to
 9 five years without any movement. It's not a
 10 large-scale operation. That's on page 410 or 412 in
 11 your packet, that drawing.
 12 **UNIDENTIFIED SPEAKER:** You think it is.
 13 **EMMITT TRIMBLE:** I think it is, yeah.
 14 **COMMISSIONER FOSTER:** Is that Mr.
 15 Trimble? Does anybody have any questions for Mr.
 16 Trimble?
 17 **COMMISSIONER BOKENKO-CARLUCCIO:** The
 18 question that I have is -- he just spoke to a drawing
 19 on page 410, and I have no 410. So I don't know what
 20 he's referring to.
 21 **MR. WALL:** Mr. Chairman, he's referring
 22 to a letter from his surveyor, which begins on page
 23 41.69 of your desk packet, 41.70, and 41.71.
 24 **COMMISSIONER FOSTER:** Thank you. Go
 25 ahead.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** I'm
 2 sorry, I have no questions at this time.
 3 **COMMISSIONER FOSTER:** Ms. Ecklund, yeah.
 4 **COMMISSIONER ECKLUND:** I have a question
 5 for Mr. Trimble.
 6 **EMMITT TRIMBLE:** Yes, ma'am.
 7 **COMMISSIONER ECKLUND:** So the large
 8 amount of reading that you did was all from our staff
 9 or our attorneys during the hearing process with the
 10 hearing officer, that was their presentation to the
 11 hearing officer? It was hard to determine where you
 12 began and ended.
 13 **EMMITT TRIMBLE:** It was all from --
 14 **COMMISSIONER ECKLUND:** Our attorney?
 15 **EMMITT TRIMBLE:** -- borough staff and
 16 borough attorney. It was the opening statement
 17 prepared for the appeal, and then it was the reply to
 18 the opponent's opening statement.
 19 **COMMISSIONER ECKLUND:** From our staff?
 20 All from our staff?
 21 **EMMITT TRIMBLE:** Yes, correct, from two
 22 different angles. There were two attorneys.
 23 **COMMISSIONER ECKLUND:** Two attorneys --
 24 **EMMITT TRIMBLE:** Yeah, so they responded
 25 to --

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1 **COMMISSIONER ECKLUND:** -- on our staff?
 2 **EMMITT TRIMBLE:** -- both of them.
 3 **COMMISSIONER ECKLUND:** Okay, thank you.
 4 **COMMISSIONER FOSTER:** Yes, Ms. Carluccio.
 5 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes, I
 6 do have a question, Mr. Trimble.
 7 So when you're talking about the berm,
 8 you're basically talking about a moving berm that's
 9 going to go along with -- as you excavate, then at the
 10 edge of that and when you decide to go further, you'll
 11 put up another berm, another 50 feet or 25 feet or
 12 whatever? But the berm will be 12 feet, or how high
 13 will the berm be?
 14 **EMMITT TRIMBLE:** Through the chair. Yes,
 15 ma'am, it would be as recommended, a 12-foot berm.
 16 There is currently about a 14-foot berm there that's
 17 running east to west with an area of about a half acre
 18 that's been stripped, which probably would not much
 19 happen this year.
 20 But I'm proposing, and was on site with
 21 Mr. Wall a few days ago, to go ahead and put a
 22 substantial berm 14 feet high if necessary towards the
 23 back of the Phase 1, in that area. And we looked at it
 24 on site and talked about the area to the east is
 25 actually where we're recommending a 12-foot berm.

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1 There is actually very dense timber there
 2 for a portion of that, and we discussed the possibility
 3 of not needing a berm there because of -- and the road
 4 is down below the level of the ground.
 5 And I would be moving, yes -- to
 6 answer -- I would be moving that berm when necessary,
 7 keeping it close to the excavation. And then we're 25
 8 feet below that level.
 9 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
 10 through the chair, one other question. So in the area
 11 that is vegetated --
 12 **EMMITT TRIMBLE:** Uh-huh.
 13 **COMMISSIONER BOKENKO-CARLUCCIO:** -- do
 14 you plan on leaving that also and only taking the
 15 vegetation down as you move the gravel pit?
 16 **EMMITT TRIMBLE:** I spent a lot of
 17 money -- ma'am, through the chair -- I spent a lot of
 18 money making that vegetation look like it does right
 19 now. It was a mess when I bought it.
 20 So yes. I don't anticipate having a big
 21 operation there, so having the berm close to the
 22 excavation, the pastures and the trees remain just like
 23 they are now for an extended period of time, depending
 24 on what the market is for sales of gravel. I primarily
 25 want to use the gravel for my own projects.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
2 thank you.
3 **COMMISSIONER FOSTER:** Are there any other
4 questions? Mr. Venuti.
5 **COMMISSIONER VENUTI:** Thank you for
6 coming, Mr. Trimble.
7 So my question is, what is the condition
8 of the Anchor River bridge?
9 **EMMITT TRIMBLE:** Through the chair.
10 It's, in a sense, been condemned to weight standards.
11 So gravel trucks can't -- they are doing it, not
12 anything to do with me, but there shouldn't be
13 anything -- I think it's either 10,000 or 11,000 pounds
14 limit. And it's proposed to be replaced. But it may
15 be two or three years.
16 **COMMISSIONER VENUTI:** So any product you
17 produce would go down the Old Sterling?
18 **EMMITT TRIMBLE:** Yes, sir.
19 **COMMISSIONER VENUTI:** Okay, thank you.
20 **COMMISSIONER FOSTER:** Any other questions
21 or comments? Now, thank you Mr. Trimble. Oh, one
22 more.
23 **MARY TRIMBLE:** Mary Trimble, I'm the
24 other half of Beachcomber, LLC. And my testimony is
25 quite a bit shorter.

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1 When we first started this permit
2 application process, we talked to the mayor about it,
3 and he said simply, "Follow the rules." And we have
4 been following the rules.
5 We hired an engineering firm to do the
6 surveys, drawings, and to work with us and the staff to
7 make our application complete.
8 Based on that, the staff did recommend
9 our permit for approval. Once again, we have worked
10 with the staff, and now are clearly stating in the
11 permit that our berms will be where they are most
12 effective, between the vegetative buffer and the
13 extraction site as we have intended to do all along.
14 The staff is again recommending approval.
15 The planning director Bruce and the borough attorney
16 have all visited the site and saw no problems with our
17 plan.
18 The borough attorney, in her briefs as
19 Emmitt already told you, interpreted the code, stated
20 the case law to back up her position that the permit
21 should be granted. These are professional, educated
22 people who represent the borough interests and who
23 interpret and enforce the code.
24 Emmitt and I became Anchor Point
25 residents in 1976, and we owned a tackle shop on the

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1 Anchor River for three years, so we have firsthand
2 experience in a tourist business there. Even though
3 our campgrounds and state park are a valuable resource
4 that we all enjoy, they contribute very little to the
5 town's economy.
6 The gravel industry is the economic
7 driver that helps many year-round businesses thrive.
8 The trickle-down effect is huge. We could not have
9 developed 150 residential home sites in the area
10 without an affordable source of gravel close by.
11 Currently we own 42 parcels of land,
12 eight homes, and a commercial building for a
13 significant combined tax assessed value. We also own a
14 construction company with our daughter, and we're
15 building new homes in town. Preserving property values
16 is very important to us.
17 With this permit we will only be a mom
18 and pop business and are not intending, able, or
19 willing to compete with the large operations, it just
20 isn't practical. We don't have equipment, so we will
21 hire local contractors that we know do a good job.
22 The permitted 27.7 acres, minus the
23 buffers, is actually less than 20 acres, planned in
24 three phases, and will be reclaimed as required by the
25 permit.

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1 As Emmitt said, our prime use for the
2 gravel will be to improve our other properties and sell
3 to the limited local market.
4 The contour of the surrounding area has
5 been mentioned many times, and erroneously described as
6 an amphitheater or bathtub. I submitted a colored
7 contour map, which I don't know what page it is in the
8 packet, but it clearly shows the true situation.
9 The higher area above our property runs
10 in a straight northeast/southwest line. Emmitt and I
11 believe in rights with responsibilities. And this is a
12 situation where we are agreeing to take on
13 responsibilities in exchange for the right to excavate
14 gravel on our property.
15 The opposition has the right to protect
16 their property but are unwilling to accept the fact
17 that they have a responsibility to do what they can to
18 minimize visual and noise, if it is bothersome, by
19 building a fence or a berm on their property or/and
20 installing blinds that raise up from the bottom so they
21 still maintain their inlet view.
22 They do not have rights to our land, so
23 we should not bear all the responsibility for
24 mitigating their perceived discomfort. As Emmitt said,
25 in fact our land is not a wildlife refuge, a bird

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1 sanctuary, or a state park. It is our private
 2 property, and we have the right to put it to its
 3 highest and best use, which is defined -- which being
 4 realtors, we deal with this quite a bit, highest and
 5 best use.
 6 It is the likely use, selected from a
 7 number of available choices, to which an area of land
 8 may be put based on what is physically possible in
 9 compliance with zoning and building regulations and
 10 which produces the most profitable present value of the
 11 land.
 12 As we have said before, this is an
 13 amazing legacy property for our family. We desire to
 14 build a home there so we can be close to our
 15 grandchildren who are on the lot adjoining Phase 3.
 16 Finally, 21.29 attempts to balance a
 17 variety of public needs, including residential area
 18 protection, a private party's right and ability to use
 19 their land to its highest and best use, and the
 20 public's need for gravel.
 21 Whether one agrees or not with 21.29, it
 22 is the law and standards that control what the Planning
 23 Commission can or can't do.
 24 Planning Commissioners have a fiduciary
 25 obligation to the taxpayers to thoroughly read and

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1 listen to what is presented, dismiss any irrelevant
 2 information, and make an informed decision based solely
 3 on the code and substantiated facts, thank you.
 4 **COMMISSIONER FOSTER:** Thank you. Are
 5 there any questions for Ms. Trimble? Seeing and
 6 hearing none, is there another statement?
 7 **KERI-ANN BAKER:** Yes, this will be a
 8 final statement. Keri-Ann Baker on behalf of the
 9 applicant, Beachcomber.
 10 You've got a very lengthy and heavy
 11 packet, and that packet contains our application for
 12 conditional land use together with our supporting
 13 documents. We've also asked the engineer, Gina
 14 DeBardelaben, to be here. She can answer any technical
 15 questions that you might have.
 16 You also have a staff report, a couple of
 17 staff reports, but the most recent staff report done in
 18 March.
 19 So what happened is after we all went
 20 back from this hearing, we went back through the
 21 application materials and we took a look at the permit
 22 conditions contained in 21.29.050. Because at the end
 23 of the day, that is really what we're here to look at,
 24 is the mandatory conditions that are set out in
 25 21.29.050 as compared to my client's application

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1 together with their supporting documentation.
 2 And when you take out the personal
 3 attacks, the personal attacks that have been made
 4 against my clients, the personal attacks that have been
 5 made against the commissioners, at the end of the day
 6 this doesn't have to do with a popularity contest, it
 7 has to do with the standards that are contained in
 8 21.29.050.
 9 Now, your staff, I believe, has gone
 10 through and done the same thing as us -- I don't know,
 11 you can ask them -- but gone back, looked at the
 12 application, analyzed it, looked at the permit
 13 conditions to determine whether they were met or
 14 exceeded.
 15 My client's position is that he has -- or
 16 they have met the codified conditions in the code.
 17 They have met the buffer requirements. They have met
 18 the water source separation. They have met the
 19 monitoring wells.
 20 And what I have here is a document where
 21 I've gone ahead and I've analyzed all of the conditions
 22 in 21.29.050, I compared it to the materials submitted
 23 by my clients, I've compared it to all of the staff
 24 reports that have been prepared by the borough
 25 representatives, and it will show you exactly what

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1 pages in the record -- and I do apologize, I was going
 2 to the hearing record -- where the information is
 3 showing that my client has met the mandatory conditions
 4 in 21.29.050.
 5 So if we take out all of the personal
 6 attacks and all of the animosity of this case, really
 7 what it comes down to is, does my client meet the
 8 mandatory conditions in 21.29.050 or not? And we
 9 believe the record clearly shows the substantial
 10 evidence that they do. So at the end of my conclusion,
 11 I'll go ahead and turn this in.
 12 So we would urge at this point that --
 13 either at this hearing or the 22nd if it's continued,
 14 that the commissioners take a look at the record and
 15 they take out everything else and they look at the
 16 conditions and they look at my clients' application and
 17 supporting materials, and they look at the staff
 18 report, and they look at the staff permit conditions.
 19 And when you look at that and you take out everything
 20 else, it's clear that my client has satisfied those
 21 mandatory conditions.
 22 And under the law, they have a right to
 23 receive this permit. I would just point out that we do
 24 have our engineer, if there were any technical
 25 questions, and she would be happy to answer them as

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1 well.

2 **COMMISSIONER FOSTER:** Does anybody have

3 any questions for the attorney? How about for the

4 engineer? Not at this time, thank you.

5 **KERI-ANN BAKER:** Thank you.

6 **COMMISSIONER FOSTER:** Okay, at this point

7 I will be opening the public hearing. And also to let

8 you know that we will -- I will entertain a motion to

9 continue this public hearing and not close it until the

10 22nd.

11 So if you've got something to say now or

12 you want to wait until then, that's perfectly up to

13 you, but the public hearing is now open. For anybody

14 who has any comments, please sign in.

15 And I will, again, read from the rules by

16 which public hearings will be conducted.

17 Persons wishing to testify must wait for

18 recognition by the chair and state their name and

19 address for the record at the microphone provided by

20 the public comment.

21 Each speaker is limited to five minutes

22 unless they have a prepared statement, in which case

23 they may request additional time. All questions will

24 be directed to the chair. All questions and comments

25 will be kept to the subject at hand and shall not deal

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1 with personalities. And the public shall maintain

2 decorum at all times and treat all testifiers with

3 respect. No applause or verbal outbursts will be

4 allowed.

5 Does anybody want to testify?

6 **HANS BILBEN:** Just a clarification before

7 we start on this, Mr. Chair. We've been told --

8 **COMMISSIONER FOSTER:** State your name,

9 please.

10 **HANS BILBEN:** Hans Bilben, Anchor Point.

11 Mr. Wall has advised us of this request

12 for a continuance, and he's also advised us that people

13 that wish to speak tonight would be allowed to speak

14 again at the continuance, is that correct?

15 **COMMISSIONER FOSTER:** As far as I know,

16 yes.

17 **HANS BILBEN:** Okay. Let me go ahead

18 then. A couple things here. First off, a mom and pop

19 operation doesn't take out 50,000 cubic yards per year

20 for 15 years. So you call it what you want, but it's

21 not a mom and pop operation. If it was, I think we

22 could probably deal with it, but not 50,000 cubic yards

23 a year, and that's what the permit stipulates, and it's

24 a 15 year.

25 They talk about buying and selling

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1 houses. Who is buying and selling these houses? It's

2 people that move to Anchor Point, a lot of them live in

3 this area. A lot of people that are upset about this

4 are people that bought properties through the Trimbles,

5 and now after investing their money they are going to

6 have a gravel pit in their front yard. I don't think

7 that's quite acceptable.

8 One thing, I'm a member of the Anchor

9 Point Advisory Planning Commission, and the chairman of

10 the Planning Commission, the local commission, and

11 myself have repeatedly tried to convince the planning

12 department to allow our group in Anchor Point to hear

13 this application. They wanted the community to weigh

14 in, make a recommendation to this commission, and the

15 request has been denied.

16 Wouldn't you think it would be

17 appropriate maybe if the locals were allowed to weigh

18 in in Anchor Point? And that didn't happen.

19 When I asked the borough planner how it's

20 possible that the applicant, without any legitimate

21 justification for a continuance, is allowed to dictate

22 the date he feels up to defending his application. He

23 said that the applicant has special rights. He did pay

24 the \$300 application fee, you know. So for \$300 he has

25 rights that are over and above the rights of 60-plus

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1 neighbors? We have asked for a continuance for this

2 hearing on a couple of occasions and been denied.

3 And the reason for that is it's a

4 recreational/residential area. A lot of the residents

5 of that particular area are snow birds. They worked

6 and lived in Alaska for many years, they bought

7 property in Anchor Point, now they winter someplace

8 else. They won't be back until May.

9 We'll requesting that if there is a

10 continuance, that it would be until May 28th. The

11 reason for that is so that the residents that are

12 affected by this application will be here and able to

13 speak in person.

14 For \$300 he lays claim to the planning

15 department, the borough attorney, unlimited financial

16 backing. And it's like, well, I brought 300 bucks. If

17 I throw this out, can we get rights, too?

18 I mean, it kind of boils down to you say

19 that the applicant has special rights but we don't. So

20 there is something wrong with this system.

21 In the July hearing there was findings of

22 fact from this Planning Commission, and thank you for

23 making a good decision in July, and it was the correct

24 one. There was some problems.

25 The findings of fact said the noise will

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1 not be sufficiently reduced with any buffer or berm
 2 that could be added, which is true. Number two, the
 3 visual impact to neighboring properties will not be
 4 reduced sufficiently, which is also true.
 5 The stated intent of these findings is
 6 very clear. The application does not meet the minimum
 7 requirements of the code. And the exact wording and
 8 contents of the findings of fact were disputed by the
 9 hearing officer, and probably rightfully so. The main
 10 reason that she wanted a remand is because she wanted
 11 to see these findings of fact linked to specific
 12 conditions from 21.29.050, and she wanted to see the
 13 substantial evidence going along with it.
 14 I don't think I'm mistaken, but I believe
 15 the deputy borough attorney was present and involved
 16 with the wording of those stated findings, and
 17 shouldn't she be knowledgeable enough to advise you
 18 people on the correct contents?
 19 The Planning Commissioner's handbook
 20 actually goes through what findings of fact should
 21 state, and that was kind of lacking.
 22 This time we'll propose adequate findings
 23 of fact for you to adopt, along with the substantial
 24 evidence that was admitted from the findings in the
 25 previous hearing.

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1 The hearing officer further stated that
 2 the code does not afford the commission the discretion
 3 to judge the effectiveness of the conditions identified
 4 in the code. I agree with that.
 5 As Planning Commission members, you can't
 6 say, "Hey, berms don't work." Berms work, everybody
 7 knows that, it's a standard in the industry, and that's
 8 why they use buffers and berms.
 9 What the Planning Commissioners -- what
 10 you guys have to do is determine from 21.29.050 if the
 11 berms are appropriate -- pardon me, if they are of
 12 sufficient density and sufficient height.
 13 So you don't have to say, "Berms and
 14 buffers don't work," you have to say, "Are they of
 15 sufficient density and sufficient height to screen
 16 neighbors from the proposed use?" And the answer in
 17 this case is absolutely not. We will have some
 18 drawings that we won't submit until the continuance of
 19 this hearing.
 20 Those drawings will show you that -- from
 21 some of these houses, from line of sight -- and we use
 22 line of sight from the upper levels of these houses,
 23 because we pay taxes on those upper levels, the borough
 24 gladly accepts our money for them -- line of sight from
 25 some of these houses is 53 above the floor of that.

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1 Now, how are you going to protect
 2 somebody that's 53 feet above the floor of this pit
 3 with a 12-foot berm? Razzle dazzle maybe, but I don't
 4 think it's quite possible.
 5 The fact that in the initial application
 6 there was six-foot berms that were supposed to protect
 7 people that were 53 feet above this thing, it was
 8 ludicrous to think that that was even in the
 9 application. The commissioners did the right thing,
 10 and hopefully they will do it again.
 11 As commissioners, you're required to make
 12 your decisions based upon the law. In this case, the
 13 law is the code. It's written in plain English and
 14 adopted by the borough assembly. The hearing officer
 15 is certainly entitled to her opinion, but it's just an
 16 opinion. She can't change the law as adopted by this
 17 assembly.
 18 The code, yes, it unfortunately favors
 19 material site applicants, but there are a few
 20 protections in place for neighboring property owners.
 21 Those few protections need to be fiercely protected by
 22 this Planning Commission.
 23 There aren't many things that you can say
 24 that can help the residents in this neighborhood, but
 25 because of the way this code is written, it does state

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1 in 21.29.050 that berms and buffers have to be of
 2 sufficient height and density. And I think you're
 3 going to see through the evidence that that's not the
 4 case.
 5 With all the supporting evidence
 6 presented in the past, plus what you're going to see
 7 and hear tonight, you'll see that this application is
 8 ill-conceived, can't possibly comply with the mandatory
 9 conditions and standards set forth in the code, and
 10 it's just wrong for the Anchor Point community. If
 11 ever there was an application -- pardon me?
 12 **COMMISSIONER FOSTER:** Sir, are you
 13 getting close to the end?
 14 **HANS BILBEN:** I am, I'm two seconds --
 15 well, five seconds away.
 16 **COMMISSIONER FOSTER:** Okay.
 17 **HANS BILBEN:** If ever there was an
 18 application that should be denied and could be denied
 19 justifiably because of the way the code is written and
 20 because of the way this application is written, based
 21 upon the protections afforded neighboring property
 22 owners, this application should definitely be denied
 23 again by the Planning Commission, thank you.
 24 **COMMISSIONER FOSTER:** Thank you. Any
 25 questions? Yes, Ms. Carluccio.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes,
2 thank you very much for your comments. What I
3 wanted -- what I noticed that -- you mentioned that you
4 were going to give us findings of fact and that you
5 were going to give us documentary information that
6 would substantiate your claim for not having this
7 gravel pit.
8 What I ask you to do -- I know you said
9 you were going to save it for the next meeting, but
10 please make sure you get it to the staff in time that
11 we get a chance to review it before we come to the
12 meeting.
13 **HANS BILBEN:** Right, we will do that.
14 **COMMISSIONER BOKENKO-CARLUCCIO:** Because
15 tonight we ended up with this packet --
16 **HANS BILBEN:** 322 pages, I saw it.
17 **COMMISSIONER BOKENKO-CARLUCCIO:** -- that
18 just got turned in, and I'm sorry, I read pretty fast,
19 but not that fast.
20 **HANS BILBEN:** Right. We will probably
21 present it at the hearing and get it so it's fresh in
22 your hands. It's only six pages, so it's not -- it's
23 pictures.
24 **COMMISSIONER BOKENKO-CARLUCCIO:** But it
25 still would be good to have it prior to the meeting.

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1 **HANS BILBEN:** Okay.
2 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
3 thanks.
4 **COMMISSIONER FOSTER:** Any other
5 questions? Okay, next testifier, please. State your
6 name and --
7 **MARK CLAYPOOL:** Mark Claypool from Kenai.
8 I'm here to represent Silver King RV Village in Anchor
9 Point on Anchor Point River Road.
10 I'm also the president of the association
11 there. I've gotten a lot of calls from a lot of people
12 that oppose this inside the park. I have also got
13 calls from people that didn't get their letter in time
14 to get the e-mail back by the 22nd.
15 So a continuation of this would be
16 greatly appreciated for their efforts, because they
17 come back here in the summer. And they come here to
18 enjoy a summer here and peaceful and quiet, and then
19 these dump trucks are going to be coming down through
20 there.
21 And it don't make any sense to me to have
22 this kind of activity on a road that's already
23 fractured and in poor shape to where as a boat owner
24 and an RV owner, we pull our boats down to the beach,
25 we drive our RVs down to the beach, and we have to

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1 drive slow because of the condition of the road.
2 But these dump trucks are not going to
3 run 25 mile an hour. They are going to be pushing
4 hard, they run by the load, and they are not going to
5 care about the noise.
6 And I can't hold hope that -- it said in
7 the paper that we picked up tonight that there is going
8 to be a bond put down in case the dust rises and there
9 will be -- Beachcomber will be held liable if they have
10 to -- you know, if the dust comes up and they are not
11 watering the roads, or if the noise is bad.
12 I can't hold hope that the state is going
13 to contact me and say, "Okay, we'll be right out." Or
14 if I call them and tell them, I don't think they are
15 going to come out here and stick their nose into
16 Beachcomber's business and say, "Come on, you guys got
17 to slow down, or you guys got to quit making so much
18 noise."
19 We have people that walk down through
20 there with their animals going to the beach. There is
21 no place to get off the side of the road. I don't know
22 what these people are going to do. And the dump trucks
23 ain't going to be careful of them. And there is also
24 businesses on this road, a couple businesses that are
25 just now trying to make it.

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1 Well, here is the business, the big guys
2 are going to knock these little guys out. It's just
3 not fair to these people, it's not fair to the people
4 that live on this road, or from Danver to the New
5 Sterling. But yet, you know, they want this to happen.
6 And I just don't see any reason for it.
7 And I'd like to ask for a continuation on
8 this, so that people when they come back, they can
9 voice their own opinion. I thank you.
10 **COMMISSIONER FOSTER:** Sir, you would
11 rather have a continuance from the -- not to the 22nd,
12 but to the next --
13 **MARK CLAYPOOL:** Actually, I'd like to see
14 it continued probably into May sometime or maybe even
15 June. I mean, these people, a lot of them don't come
16 back until June.
17 **COMMISSIONER FOSTER:** Okay, thank you.
18 Any -- anybody have any questions?
19 **MARK CLAYPOOL:** Thank you.
20 **COMMISSIONER FOSTER:** Next testifier,
21 please. State your name and your address.
22 **DAN SYME:** Dan Syme, 73530 Seabury Road.
23 I'm up over the hill from this proposed gravel pit
24 within the boundaries of a half mile though.
25 I guess my concern is here, you guys as a

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1 council and chair, Planning Commission, my concern is
 2 are you looking out for the safety for those
 3 constituents that you guys represent? And I haven't
 4 heard anything about -- very little about dust control.
 5 A 12-foot berm isn't going to hold the dust in.
 6 We just mentioned about the roadway.
 7 Where is the safety into all these state parks and
 8 stuff that are right along that roadway, right across
 9 the street from this gravel pit? There is kids out
 10 there all the time. I don't hear anything about the
 11 safety of those kids.
 12 I guess I would say to you guys, I hope
 13 you really look at this permit. It's time for a
 14 change. This free gratis of just putting a gravel pit
 15 wherever you think -- I don't think anybody that lives
 16 in the City of Kenai, because he has an acre, can have
 17 a gravel pit next to you.
 18 There has to be some gives and takes on
 19 both sides, I realize that. But this place and this
 20 pristine area, boat launches, state parks, residential
 21 areas, people walking their dogs, to me we need to take
 22 special attention to this. This is just not as usual,
 23 let it go down the lane and we'll approve it.
 24 Public safety means something. And I
 25 would like to see that happen to this council, thank

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1 you.
 2 **COMMISSIONER FOSTER:** Are there any
 3 questions, comments? Thank you. Thank you, not at
 4 this time. Next testifier, please.
 5 **RICHARD CARLTON:** My name is Richard
 6 Carlton. I live in Anchor Point not far from Mr. Syme,
 7 73500.
 8 I'd like to echo the safety issue, but at
 9 the same time I'd like to kind of bring -- you know,
 10 you could approve a facility, an extraction facility,
 11 you have certain guidelines, certain rules that have to
 12 be met for these people to apply -- to make their
 13 application out and for you guys to even look at the
 14 application.
 15 But what isn't on those applications,
 16 if -- from what I've seen in this last few months is
 17 going to meetings and things, is that -- just like what
 18 Dan was saying, you know, the fact that there is no
 19 shoulders on this primary haul road that gets them to
 20 the Old Sterling Highway, which is already pretty bad
 21 shape after the -- Hilcorp had their trucks running up
 22 and down it and all the neighbors had to put up with
 23 the sound and everything the last few months over that.
 24 This little stretch is about a half a
 25 mile, and like I said, no sides on it at all. Mr.

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1 Trimble's daughter, I had to stop last summer. She was
 2 pushing her baby in a stroller, and I had to just wait
 3 for the cars and the boats to go by before I could go
 4 around her. I mean, she was just going out for a walk.
 5 It's just the fact that, you know, what
 6 makes sense and what doesn't make sense doesn't seem to
 7 be applying to this particular event.
 8 A gravel pit amongst the state parks, RV
 9 parks, and, you know, cabin -- little business -- like
 10 the gentleman said, there was a couple businesses
 11 there, and all these people that come, wait all year
 12 long to come to this place to vacation.
 13 My wife and I, that's what we -- since
 14 1996 we would save up our vacation, come up to this
 15 location, and spend -- eventually we got up to a whole
 16 month. And so we got to be here for a whole month.
 17 Well, when we retired eventually, we went
 18 ahead and we live here now. And so when somebody
 19 wanted to desecrate this little jewel to us, naturally
 20 we've put a lot of time into trying to figure out why,
 21 you know. And I still haven't -- you know, I haven't
 22 figured out why, out of 96 applications, this happens
 23 to be the very first one.
 24 But it isn't really that hard to figure
 25 out when you consider not only all the residences that

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1 are around there, but the actual location, where it is.
 2 I realize there is no zoning, but it's
 3 not right. And anybody can say that it is. I'm sorry,
 4 they are really just not looking. They are not going
 5 for a walk in this area. That's all I have, thanks.
 6 **COMMISSIONER FOSTER:** Thank you. Any
 7 questions or comments for the speaker? Not at this
 8 time, thank you. Yes, next.
 9 **KATIE ELSNER:** Hi, good evening. My name
 10 is Katie Elsner, it's E-l-s-n-e-r. I don't actually
 11 live in Anchor Point. I'm a local attorney, and I've
 12 been helping the people who have been impacted or who
 13 will be impacted by this proposed site.
 14 And I just wanted to take the opportunity
 15 to discuss a little bit of the law with you tonight.
 16 And I will, in fact, be presenting proposed findings to
 17 you all and will do that in advance of the next
 18 hearing, and then I can sort of explain those proposed
 19 findings at that point in time.
 20 But there has been some notion that your
 21 authority is somewhat constrained here. And what the
 22 code does make very, very, very clear is that you are
 23 the body that is both vested with the authority and the
 24 responsibility to determine what site and noise impacts
 25 can be reduced sufficiently, and whether or not those

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1 reductions are, in fact, sufficient.
 2 And that is actually contained within the
 3 conditions, which can be found in 21.29.050, which
 4 requires you, as the body who applies the facts to the
 5 law, to determine what vegetation and fencing will be
 6 of sufficient height and density to provide visual and
 7 noise screening of the proposed uses deemed appropriate
 8 by you.
 9 And so the code actually requires that
 10 you determine that the buffer and berming proposal is
 11 both sufficient and appropriate to screen the nearby
 12 land owners and the nearby properties.
 13 And in order to approve an application,
 14 you must find that these conditions allow the standards
 15 to be met. And the standards that we're talking about
 16 here are, of course, 21.29.040(a)(4) and (5), which
 17 require that these conditions are both sufficient and
 18 appropriate to minimize these noise and visual impacts.
 19 And as far as your ability to deny an
 20 application when you cannot make a finding that the
 21 impacts are going to be minimized, that authority
 22 specifically is granted to you under 21.25.050(b),
 23 which states that before granting a permit, you must
 24 find at a minimum that the proposed activity complies
 25 with the code.

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1 And so you must find that these minimum
 2 standards are met, and these minimum standards are
 3 clearly met, and the conditions require that the
 4 berming, that the screening, be both sufficient and
 5 appropriate.
 6 And so if you disagree with the notion
 7 that you are un -- you're disallowed from denying or
 8 disallowing a permit when you cannot find that these
 9 conditions are met, you cannot find that these
 10 standards are met, you are allowed to, you know, break
 11 away from prior precedent.
 12 And if you believe that that prior
 13 precedent is clearly erroneous, the law does allow you
 14 to break away from those prior precedents and those
 15 prior interpretations of the code.
 16 But I would submit to you that you need
 17 not do that, because an application that does not
 18 provide sufficient screening, sufficient noise
 19 screening, sufficient visual impact screening, is
 20 actually just an incomplete application.
 21 And so in the event that you find that
 22 the applicant's submission -- that the conditions that
 23 the applicant is proposing in an effort to screen
 24 nearby neighbors and other properties that already
 25 exist is not sufficient and not appropriate, then I

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1 also submit to you that you could deny that application
 2 as it is an incomplete application because it does not
 3 meet the buffer requirements under the code.
 4 And so, like I said, I will propose
 5 actual proposed findings of fact for your consideration
 6 in advance of the next hearing and then be available in
 7 the event that there are any questions in support of
 8 those findings of fact.
 9 **COMMISSIONER FOSTER:** Are there any
 10 questions at this time?
 11 **KATIE ELSNER:** Thank you.
 12 **COMMISSIONER FOSTER:** Next testifier.
 13 **PETE KINNEEN:** My name is Pete Kinneen.
 14 **COMMISSIONER FOSTER:** You turned the
 15 light off. There you go.
 16 **PETE KINNEEN:** Oh yeah, all right. There
 17 is a major disconnect in this whole situation, not just
 18 in this particular application, but in what you are
 19 doing up there, and I'm compelled to talk about it.
 20 This is basically a head-on collision,
 21 and this is the time to get it straightened out. You
 22 are being told when you go through the whole tale that
 23 they are putting to you, that you are really nothing
 24 but a rubber stamp, that's what they are saying. That
 25 you cannot deny the application because the assembly

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1 has dictated that gravel pits get priority over
 2 everything else.
 3 We have queried most of the assembly.
 4 The assembly denies it. There is nobody on the
 5 assembly that will admit to that. So we say terrific.
 6 Where are the assembly people? Where is the director
 7 from the assembly that says that you are mandated to
 8 issue permits for a gravel pit?
 9 And incidentally, this is not a gravel
 10 pit. Gravel pits are typically little backyard
 11 operation. This is a mine. This is a full-blown
 12 processing mine with a proposed asphalt plant, that's
 13 what we've heard from the applicant in previous
 14 presentations. So this is a really big deal.
 15 And you have vested in you -- you are our
 16 legislature. You have higher authority than anybody
 17 over here. You do not work for them. You work for us.
 18 And all that we're asking is to follow the law.
 19 I've made a presentation before, it's in
 20 your packet under my name, Pete Kinneen, look it up.
 21 And we just had an attorney tell you in plain language
 22 that the code says that not only do you have the
 23 authority to deny, despite what you're hearing, and we
 24 lay it out, 1, 2, 3, 4, it starts with the legislative
 25 intent from the assembly, it's right in the code, it

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1 says "intent." The intent is to protect the
 2 preexisting properties.
 3 We were there mostly because we got
 4 buffaloes by the Trimble clan that we have covenants,
 5 we have protective zoning, self -- volunteer zoning.
 6 And we were told by them that this last little flat
 7 area down there at the bottom of the hill would be a
 8 high-end subdivision, and it would certainly not be
 9 motivated for gravel.
 10 And we hear incessantly about rights,
 11 that this is unzoned, and that the assembly is telling
 12 you that unzoned means the Wild West. It's not true,
 13 okay, it's not true.
 14 When it comes to gravel, there is three
 15 levels of gravel extraction. The first is -- you can
 16 disturb one acre, okay, almost anywhere you are unless
 17 it's zoned out.
 18 The second is up to two-and-a-half acres,
 19 then you have to go get an administrative approval.
 20 But it very clearly says that you cannot disturb more
 21 than two-and-a-half acres without your approval. And
 22 that's a proactive approval.
 23 And the code is incredibly clear that,
 24 okay, you cannot mandate out of whole cloth something
 25 more than berms and buffers. And so that is the only

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1 mandatory thing that you can do. But please go back
 2 and look at this, and it says "minimum six-foot berm."
 3 And we're going to have excellent
 4 evidence, excellent evidence using the borough's own
 5 data that will show you that in this particular
 6 circumstance, because of the topography of it, it's a
 7 very unique topography, that there are no berms and
 8 buffers that will meet the code. And therefore because
 9 it cannot meet the code, the standards and conditions,
 10 then it is your duty to deny.
 11 **COMMISSIONER FOSTER:** Thank you, Mr.
 12 Kinneen. Any questions?
 13 **PETE KINNEEN:** Sir, one last sentence,
 14 please.
 15 Also in the packet is testimony that we
 16 brought up before. And in this particular case the
 17 planning department met with the applicants' engineer,
 18 and it's in the record, we will point this out to you,
 19 where the staff and the applicants are saying that
 20 the -- and I'm quoting them, I'm quoting them -- that
 21 the berms are not sufficient to protect. And that's
 22 just down on the lower level. So when you go to the
 23 higher levels, it's clear from their own testimony, and
 24 we will point this out to you.
 25 **COMMISSIONER FOSTER:** Okay, we'll get to

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1 that. Any questions? All right, thank you. Next
 2 testifier, please.
 3 **RICK OLIVER:** My name is Rick Oliver, I
 4 live at 34880 Danver Street in Anchor Point.
 5 The borough and the Trimbles have, in
 6 their opening statements, claimed that no substantial
 7 evidence was submitted in [sic] the neighboring
 8 property owners to support the Planning Commission's
 9 decision, and I beg to differ.
 10 In your packet, and this is a poor copy,
 11 but it's in your packet, it's a picture taken from my
 12 bedroom window. Grade level from my property is
 13 approximately 20 feet above the grade level for the
 14 mine.
 15 And my house is classified as a
 16 one-and-a-half story with a basement. This will put
 17 the view from my bedroom window at approximately 34
 18 feet above the top of a six-foot berm.
 19 I feel like another nail in the coffin
 20 here, but I think it's important that you guys
 21 understand exactly what we're looking at here, or will
 22 be looking at here if you approve the application.
 23 The view from my living room is
 24 approximately 24 feet from the top of the berm, and I
 25 believe the borough must consider my bedroom as

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1 property in the fact that we do, in fact, pay taxes for
 2 that.
 3 Mr. Wall has been to my property and has
 4 seen this picture. He obviously does not see any dust
 5 or noise or visual impact that may affect my or any
 6 other neighboring property.
 7 My property is located directly across --
 8 directly east of the proposed gravel mine across Danver
 9 Street, which shows through the bottom of that picture.
 10 And although I'm a little bit short of 6
 11 feet tall, I'm carrying a 10-foot board, which will
 12 give you a practical application of just exactly the
 13 view that I'll be looking at should this be approved.
 14 Planning staff has concluded that a
 15 50-foot vegetated buffer and a six-foot berm will
 16 sufficiently minimize the dust, noise, and visual
 17 impact to my property. And I'm incensed, yet again,
 18 that Mr. Trimble has the audacity to state that we
 19 ought to buy heavy curtains to eliminate this
 20 obscenity.
 21 All trees behind me in this picture are
 22 located in the mine area and will be gone. That leaves
 23 one tree within the 50-foot vegetated buffer, and a
 24 six-foot berm to protect my property. I'm also
 25 standing on what would become the primary access road

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1 to the mine, and the potential 5,000 ten-yard dump
 2 trucks in, and the 5,000 ten-yard dump trucks out that
 3 would travel it annually for the next 15 years.
 4 Absolutely no noise impact there.
 5 250 feet behind me is the proposed
 6 location for the rock crusher, which will end up being
 7 about 300 feet from my front door.
 8 The borough and Mr. Trimble apparently
 9 don't consider this to be substantial evidence. I
 10 think I have a reasonable mind to conclude differently.
 11 To approve this application in light of
 12 the substantial evidence would have been a direct
 13 contradiction of 21.29.050(2)(E), which states that
 14 buffer requirements shall be made in consideration of
 15 and in accordance with existing use of adjacent
 16 property at the time of the approval of the permit.
 17 And 21.29.050(2)(C) which states that the
 18 vegetation and fence or berm shall be of sufficient
 19 height and density to provide visual noise and
 20 screening of the proposed use as deemed appropriate by
 21 the Planning Commission or the planning director.
 22 As such, the Planning Commission was
 23 justified in their denial of this application, and
 24 their findings of fact were correct, and I thank you
 25 again for that.

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1 The proposed buffering is neither in
 2 consideration of existing use or of sufficient height
 3 and density to provide visual and noise screening as
 4 required by the code.
 5 One tree does not constitute sufficient
 6 density. Sufficient height cannot be obtained to
 7 visualize the noise or impact for myself. And I'm
 8 certainly not the highest property that's affected by
 9 this application. And that's what I said before in
 10 this paragraph.
 11 All properties that are at higher
 12 elevations in the neighborhood are even more affected
 13 by the visual and noise impact than mine and will
 14 inflict -- because of the fact that the berms and
 15 buffers of any practical height are well below the line
 16 of sight, which will be proven again with more evidence
 17 that we'll provide prior to the next meeting.
 18 Standards 21.29.040(a)(4) and (a)(5),
 19 which are required by the code cannot be met and the
 20 Planning Commission's finding are correct and
 21 appropriate. Thank you.
 22 **COMMISSIONER FOSTER:** Thank you, sir.
 23 Any questions? Thank you. Next testifier, please.
 24 **MICHAEL BRANTLEY:** Good evening, ladies
 25 and gentlemen. My name is Michael Brantley. I'm an

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1 owner of a recently new opened business called the
 2 Anchor River Fly Fishing. It's an RV park and cabins
 3 for fly fishermen.
 4 I have one question, if I may ask the
 5 assembly, and if I can have a response by a show of
 6 hands, I would appreciate that. Do I have permission
 7 to ask a question?
 8 **COMMISSIONER FOSTER:** Not at this time.
 9 You can just ask the question and then we can discuss
 10 it in our discussion, or the staff -- if it's a
 11 question for staff, they will ask at a later time --
 12 answer it.
 13 **MICHAEL BRANTLEY:** Okay. My question is,
 14 how many of you folks actually have taken the
 15 initiative to drive down to the Anchor Point community
 16 and see what's going on in the community besides the
 17 gravel pit, and actually look at the homes of all the
 18 people that have written to you asking you to deny this
 19 permit? There is very obvious reasons, more than what
 20 I can come up with.
 21 If it's permissible, if Mr. Kinneen would
 22 like to take over the rest of my time to speak, I would
 23 allow that, if that's permissible.
 24 **COMMISSIONER FOSTER:** Well, let's hear
 25 from the other folks. If you have something else to

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1 say, you can, that way we just keep moving on.
 2 **MICHAEL BRANTLEY:** Okay. You know, in
 3 all the records and everything that I've read, there is
 4 a certain line that stands out there, and it has to be
 5 the health, safety, and welfare of the community, and
 6 that's what we're talking about here, too. Not just
 7 all the rules and regulations.
 8 I've contacted other departments about
 9 this issue. My opinion is they need to be rewritten,
 10 and these issues need to be applied.
 11 I got a fact sheet here from OSHA. There
 12 is a new standard that came out for the marine industry
 13 for silica. I wanted to read you the definition of
 14 silica.
 15 Crystalline silica is a known carcinogen
 16 found in sand, stone, and artificial stone. Exposure
 17 to silica dust can trigger sarcoidosis, a chronic
 18 disease that involves scarring of the lungs.
 19 OSHA estimates that 2.3 million workers
 20 are exposed to dust involving 2 million in the
 21 construction industry. This new standard went into
 22 effect sometime in February of 2018.
 23 My business is just on the northern
 24 property line -- on the other side of the northern
 25 property line of the pit. The mine's a southern.

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1 Last meeting I had a thumb drive
 2 presentation. I would like to leave this with you as
 3 evidence. I have drafted this and made it better with
 4 wording so you can understand. So you can take this,
 5 you can keep it, you can copy it. I don't need it
 6 back.
 7 You know, these carcinogens and this
 8 noise is going to be right there present. I'm staying
 9 in my cabins now as it is getting prepped for summer,
 10 and I can hear any traffic going up and down that
 11 Denver Road. And I think those cabins are pretty well
 12 insulated.
 13 I've got pictures that I'll present to
 14 the next one that's showing people, ladies with baby
 15 carriages, single baby, two babies, three babies,
 16 sometimes with dogs and --
 17 **COMMISSIONER VENUTI:** Sir, can you speak
 18 into the microphone so we can hear you, please.
 19 **MICHAEL BRANTLEY:** Yeah. I've got photos
 20 of mothers with their children in strollers, one
 21 stroller, a double stroller, a triple stroller,
 22 sometimes with kids, sometimes with dogs walking up and
 23 down that traffic, and everybody has to go around them.
 24 As described before, that road is in
 25 horrendous condition. If they got permitted tomorrow

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1 and they started tomorrow, I would predict that the
 2 middle of July that road would be closed to the heavy
 3 traffic.
 4 The carcinogens will be spread through
 5 the air. That embankment is a 2 to 1 slope. It's like
 6 a jet engine. When that wind hits that, it's going to
 7 go up. It's still going to travel in that direction,
 8 but it's going to go up to the higher elevations, come
 9 over and settle on my property. And across the road is
 10 the bird estuary, and those waters will get
 11 contaminated with the carcinogen dust, and therefore
 12 that would also flow over into the Anchor River and our
 13 sparsely reoccurring salmon return each year. It might
 14 get worse.
 15 **COMMISSIONER FOSTER:** Can you tie this up
 16 now?
 17 **MICHAEL BRANTLEY:** Yes, sir.
 18 **COMMISSIONER FOSTER:** Okay, thank you.
 19 **MICHAEL BRANTLEY:** I want to make
 20 perfectly clear, you stated that after I make my
 21 testimony today, with this continuation I will be able
 22 to make another statement at that time, is that
 23 correct?
 24 **COMMISSIONER FOSTER:** That's correct.
 25 **MICHAEL BRANTLEY:** Okay. My opinion is

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1 that the continuation should be into the latter part of
 2 May or the first part of June, that is my
 3 recommendation, so we can all prepare ourselves.
 4 As stated before, all these folks coming
 5 back to the RV village -- you know, I heard a statement
 6 back in the room a little bit ago that said, well, you
 7 know, those people don't live here.
 8 Well, they do live here. They bought
 9 here. They are paying taxes for the property that they
 10 own here. So don't discourage their wording. You've
 11 got to listen to the people. You folks need to come
 12 down and see this community, talk to the community. I
 13 thank you.
 14 **COMMISSIONER FOSTER:** Thank you. Are
 15 there any questions?
 16 **MICHAEL BRANTLEY:** Any questions, please?
 17 **COMMISSIONER BOKENKO-CARLUCCIO:** The only
 18 question is, please give Julie your thumb drive. Thank
 19 you, Mr. Brantley.
 20 **MICHAEL BRANTLEY:** Thank you.
 21 **COMMISSIONER FOSTER:** Next testifier,
 22 please.
 23 **TODD BAREMAN:** My name is Todd Bareman.
 24 I live about a mile away from the proposed pit, but I
 25 have a business within a half mile. I have the boat

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1 launch down at the end of Anchor Point Road. And that
 2 haul road, again, will be on that road, which we're
 3 real concerned about.
 4 The only reason I think that road hasn't
 5 fallen apart more is it's so bad that the motorhome and
 6 the boat traffic now have to go real slow down that
 7 road.
 8 We all know how fast and how heavy gravel
 9 trucks are, and that's a big concern to us. You guys
 10 have no plans. We've been fighting, this will be my
 11 8th summer at the boat launch, and we've been fighting
 12 to get that road fixed for -- until I -- since I
 13 started down there and before.
 14 There is no plans to do it. As far as I
 15 know, he's not liable, whoever hauls gravel out of that
 16 pit. If that road becomes destroyed so far that we
 17 can't safely travel it with motorhomes or boat traffic
 18 during the summer, that will impact a lot of businesses
 19 down there.
 20 I would like to ask for a continuation
 21 until the May 28th. I don't feel that April is
 22 sufficient time. My peak season doesn't start until
 23 the end of May, so I know when the residents are back
 24 because I see them, I'm launching their boats. My
 25 business starts the end of April down there launching

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1 boats, but there is nobody -- it's just not busy until
 2 the end of May for the summer. So that's why I would
 3 like to ask for a continuance so you can hear from the
 4 people that are there for four months a summer,
 5 whatever they are. They own property in the area.
 6 Another question, we're not hearing from
 7 state parks. I'm trying to get a comment from them.
 8 But I just have a question for you and
 9 I'll close. Vacation time is pretty important to
 10 working families and everybody else, and we have five
 11 state campgrounds down there that are really nice, and
 12 we have three RV parks, and they are all busy for those
 13 three or four months of the summer.
 14 And if you had to wake up with your
 15 family to a gravel crusher, an asphalt plant, dump
 16 trucks running up and down the road, just ask yourself
 17 if you'd come back to any of those campgrounds again.
 18 We're worried about that. This is not a one or
 19 two-year permit, this is a long permit, and that's why
 20 we're concerned about it. It is a big deal. Our
 21 economy is the fishing, the boat launch, the state
 22 parks, and the RV parks. That's a big deal for us
 23 during the summer. So just consider that, thank you.
 24 **COMMISSIONER FOSTER:** Thank you. Next
 25 testifier, anybody else?

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1 **LINDA FEILER:** Hi, my name is Linda
 2 Feiler, I live at 73230 Tryagain Avenue. And I've
 3 lived in Anchor Point for the past 42 years or more.
 4 And Anchor Point is a quiet town. Most
 5 of us moved there because of the river, and that river
 6 is our jewel. If you ask the hundreds of people that
 7 come down from Anchorage, if you ask the people from
 8 Homer who come up to walk the beaches, to fish in the
 9 river, to walk along the river, to walk along the river
 10 road, I personally go down to the beach very often
 11 with -- alone or with my dogs or just with friends, we
 12 go for exercise. We walk along the road because it's
 13 quiet, because it's deserted, because it's lovely, and
 14 that's why a lot of us moved there.
 15 You know, I had Hilcorp moving in next
 16 door. They are going to make a lot of noise. They
 17 weren't required to put in a berm, yet when they made
 18 noise, it vibrated right through our bodies.
 19 We have had other gravel pits, and we
 20 could hear them all the way from -- on the Sterling
 21 Highway you could hear the road crusher.
 22 When I first moved there in '77, I asked
 23 my boyfriend, "What is that?" He said, "Oh, that's a
 24 train that goes to Anchorage," you know, because of
 25 that chug, chug, chug. And I said, "No, it can't be.

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1 There is no train." He said, "Oh, that's --" and the
 2 noises with the beep, beep, beep, every time anything
 3 backs up or goes forward. And in the summertime it
 4 goes for 24 hours.
 5 Now, there is a rumor that Hilcorp wants
 6 the gravel to put their berms up around all the oil
 7 rigs that you're going to start putting in there. We
 8 live in this town. It may be just a town to you people
 9 or some kind of backwoods, podunk area down there, but
 10 a lot of us are very well educated, and we moved there
 11 in order not to be within city limits, in order not to
 12 have dog ordinances and everything else.
 13 But it used to be that if my neighbor's
 14 dog barked or they were shooting off guns, I could call
 15 the police and they would come and say, "No, sorry, you
 16 know, people are trying to sleep, you have to quit it."
 17 Nowadays, I don't know. We don't have
 18 anything that protects us. It doesn't have anything
 19 that protects us, that keeps our home values, keeps our
 20 families, keeps us safe.
 21 We're no longer a part of the Kenai
 22 Peninsula Borough if you're not going to think that we
 23 also live here. And it's very important to us to know
 24 that you care that we are part of the Kenai Peninsula
 25 Borough. That scares me when I hear people speak

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1 about -- when I hear the rumors, perhaps, of what you
 2 talk about when you discuss Anchor Point.
 3 When I moved there, there were 200 of us,
 4 and there is a heck of a lot more now. We all care
 5 about our town, and just because we have a gravel pit
 6 down on Danver, it doesn't mean that it's not going to
 7 affect me and it's not going to affect my neighbors,
 8 because we are walking on that road, we use that road
 9 as our park, our exercise track. And we don't walk
 10 along the river because it's too muddy, but we do walk
 11 in the road because there is no traffic, because it's
 12 lovely.
 13 And I think from now on when something
 14 happens in Anchor Point, that you take into
 15 consideration not the people that live 25 feet or 50
 16 feet from the proposed thing that's going to come in
 17 that's going to affect our town. If you want us to
 18 incorporate, then treat us like you know who we are.
 19 We are a town, and we care about each
 20 other, and many of us take care of each other, and many
 21 of us use the river and the river road.
 22 I'm also worried about the bridge. We've
 23 had it resurfaced, but after you -- you've seen all the
 24 damage from above. But when those trucks come
 25 downhill -- I lived as a trucker for the first 20

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1 years -- and when you come down the hill with a full
 2 load of gravel, or up the hill, that bridge is a
 3 danger, and it's not double wide.
 4 So I hope you take all that into
 5 consideration and remember that we are part of your
 6 community, thank you.
 7 **COMMISSIONER FOSTER:** Any questions?
 8 Yes, Ms. Carluccio.
 9 **COMMISSIONER BOKENKO-CARLUCCIO:** I'm
 10 curious about what rumors you hear about how we speak
 11 about Anchor Point.
 12 **LINDA FEILER:** "That little backwoods
 13 area. That little pain in the neck down there."
 14 We're -- you know, I mean, yes --
 15 **COMMISSIONER BOKENKO-CARLUCCIO:** I'm
 16 sorry, I'm just trying to figure out who --
 17 **LINDA FEILER:** Well, I hope it is a
 18 rumor.
 19 **COMMISSIONER BOKENKO-CARLUCCIO:** -- on
 20 this Planning Commission would say something like that?
 21 I don't think so.
 22 **LINDA FEILER:** Well, we only hear what
 23 filters down, and we hear things at meetings. And so,
 24 you know, it's worrisome.
 25 Because once again, we're not informed

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1 when something happens in our area, okay. All of a
 2 sudden, I go out to take care of my brother and
 3 sister-in-law that died, I come back and I have Hilcorp
 4 right there.
 5 And when they go on, they didn't have to
 6 put up a berm. And a six-foot berm wouldn't help. And
 7 I sleep upstairs in my bedroom. And the vibration that
 8 goes through your chest, and my neighbors who are just
 9 panicked about it, we weren't notified, we weren't
 10 asked how we felt about it. You wouldn't want one near
 11 your house.
 12 You know, noise is a big one, really big,
 13 and we can hear the highway noise. We've stopped Jake
 14 brakes. Remember, you're not allowed to go down the
 15 hill and put on your Jake brake? How far away is a
 16 Jake brake heard?
 17 In Anchor Point, I hear break-up when the
 18 river breaks up, I hear waves crashing, and I'm a good
 19 distance away. I'm up on Tryagain. I'm up on the Old
 20 Sterling, and I can hear the ocean, and I can hear the
 21 river.
 22 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay, I
 23 understand your comments now, but that's not what I
 24 asked you.
 25 **LINDA FEILER:** Right, okay. Okay, sorry.

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1 Well, that's --
 2 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay.
 3 **LINDA FEILER:** I will get you -- if I
 4 ever hear it again --
 5 **COMMISSIONER BOKENKO-CARLUCCIO:** Thank
 6 you.
 7 **LINDA FEILER:** -- I will try to find out
 8 where it's coming from.
 9 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
 10 thanks.
 11 **COMMISSIONER FOSTER:** Thank you. Next
 12 testifier, please.
 13 **ED MARTIN:** Hi, my name is Ed Martin, I
 14 live in Sterling. Just a couple things before I start
 15 my testimony that I think you guys should really know
 16 about from previous testimony.
 17 The aforementioned boat launch was built
 18 with gravel from this site.
 19 I hear a lot about safety. I'm the owner
 20 of Alaska Driving Academy. It's a school that I train
 21 people to obtain their CDLs and become good truckers.
 22 A lot of these people are talking about safety, they
 23 are talking about the width of the road, that they
 24 don't have the room to walk up and down it with their
 25 various baby strollers and whatnot.

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1 One thing you need to keep in mind is
 2 that the typical boat trailer is wider than a dump
 3 truck, is wider than a semi truck, therefore it takes
 4 up more of the road, therefore is less safe if you're
 5 sharing that 12-foot lane on either side of this road.
 6 Wider is worse, right?
 7 Second, another thing that they are
 8 really concerned about safety, yet I hear that they got
 9 Jake brakes banned, and a Jake brake is a safety device
 10 on a truck. So obviously they are willing to trade
 11 safety for noise degradation. As long as it sounds
 12 good, they don't mind not being quite as safe.
 13 Anyhow, now I'll get to my testimony.
 14 I'm the elected president of the Kenai Peninsula
 15 Aggregate and Contractors Association that is in the
 16 process of being formed this week. I represent over 40
 17 contractors and material site operators. I urge the
 18 commission to approve Beachcomber's application based
 19 on the reasons for denial were invalid.
 20 The commission's findings that noise and
 21 visual impact would not be sufficiently reduced are not
 22 a valid reason for denial. I would like to remind the
 23 commission that your power of judgment lies within the
 24 code. You may impose conditions outlined in the code,
 25 but you may not judge their effectiveness or impose

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1 conditions outside of the code. Therefore, you must
 2 approve a permit that has met the standards set forth
 3 in the application.
 4 I urge you to vote in favor of issuing a
 5 CLUP immediately. I believe further public comment
 6 will comprise no new findings, as the public has had
 7 ample time to testify in past meetings. You've already
 8 deliberated on this once, correct? And to not further
 9 burden the applicant.
 10 The construction and development season
 11 is short, and delaying another month will be
 12 detrimental to a material site operator. Thank you.
 13 Any questions?
 14 **COMMISSIONER FOSTER:** Thank you. Are
 15 there any questions? Yes, Mr. Venuti.
 16 **COMMISSIONER VENUTI:** Thank you for
 17 testifying. You might be the right guy to ask this
 18 question.
 19 **ED MARTIN:** Yes, sir.
 20 **COMMISSIONER VENUTI:** What do you know
 21 about white noise back-up alarms, and what's your
 22 opinion on them, and do you think this would be a good
 23 solution for noise at this site?
 24 **ED MARTIN:** Well, white noise back-up
 25 alarms is a give and take. I've researched them

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1 thoroughly. There is actually a couple of studies done
 2 on them. And it's kind of another one of those avenues
 3 where you give up safety for -- a little bit of safety
 4 for a little bit of noise degradation.
 5 So basically what I found out about them
 6 is that they are only effective in certain areas behind
 7 whatever vehicle that they are put on. And they are
 8 only effective if the surrounding noise is -- they are
 9 really only effective if -- say you have one machine,
 10 maybe two machines in a pit. As soon as you put a
 11 screening plant or a crusher or something like that,
 12 that the ambient noise level has gone up dramatically,
 13 then their effectiveness comes way down, extremely
 14 down, versus a multitone alarm, or the old beep-beep
 15 tone alarms. They are actually the most effective.
 16 And there has been studies in laboratories and on --
 17 in-the-field studies of their effectiveness and the
 18 alertness of people to alarm being turned on.
 19 **COMMISSIONER VENUTI:** So is this
 20 something you would recommend an operator to use? And
 21 again, what would be the typical cost to install a
 22 system like that on trucks?
 23 **ED MARTIN:** Typical cost to install a
 24 system like that ranges in between \$4- and \$600 for
 25 your typical setup. I mean, some are cheaper, some are

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1 more expensive, particularly more expensive on the
 2 newer machinery because they are computerized and such.
 3 You can't just hack into the electrical system like you
 4 can an old machine.
 5 But it really depends on the operation.
 6 Like I said, if it was just a gravel extraction
 7 operation where you just had one loader working in a
 8 pit filling up dump trucks, it would be an effective
 9 alarm.
 10 If you have a screening operation or a
 11 crushing operation, it's not really an effective alarm
 12 because of the ambient noise from the other machinery
 13 that's operating in that site.
 14 **COMMISSIONER VENUTI:** Great, thank you.
 15 **COMMISSIONER FOSTER:** Are there any other
 16 questions? Not at this time I guess. Thank you. Next
 17 testifier, please.
 18 **LARRY SMITH:** My name is Larry Smith. I
 19 reside at 320 Artifact Street, Soldotna.
 20 I had hoped to come up here tonight and
 21 testify and give you all the benefit of my knowledge of
 22 gravel pits.
 23 And just as a background there, I've been
 24 in the construction business in Alaska for nearly 40
 25 years. My brother and I own a construction company.

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1 We've built streets, roads, and bridges throughout
 2 Alaska. We're currently under contract with the Kenai
 3 Peninsula Borough to build the North Road extension,
 4 Kenai Spur Highway extension.
 5 That project has approximately 200,000
 6 tons of gravel, which converts to something around a
 7 hundred thousand yards, which converts to, I don't know
 8 how many truck loads. I could tell you if I had my
 9 calculator with me, but I left my smart phone at home.
 10 I'm up here tonight to testify on behalf
 11 of the Trimbles and ask you to approve their permit.
 12 I've bought gravel throughout the state from a number
 13 of different entities. My brother and I currently own
 14 three gravel pits, one in Ninilchik, one in Soldotna,
 15 and one in Nikiski.
 16 I've heard a lot of testimony. I've read
 17 a lot of the letters and e-mails and such in
 18 opposition. I read the hearing officer's decisions and
 19 findings of fact.
 20 And that's what this is all about. This
 21 is all about facts. I've heard a lot of testimony out
 22 there. Long on testimony, short on facts. I saw a lot
 23 of testimony that's long on emotion, again, short on
 24 facts.
 25 The facts in my mind are that Mr. and

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1 Mrs. Trimble have met the requirements of the Kenai
 2 Peninsula Borough ordinances as evidenced by your
 3 staff's recommendation on not one, but two occasions
 4 that you approve this permit.
 5 In reading through this packet today, I
 6 came across something that I would like to read here,
 7 and it's from -- it's on page 72 of 332 of packet No.
 8 2. It has to do with the study of values of homes, and
 9 that's not what I'm here to talk to you about. I have
 10 my opinion as to what happens with the value of homes
 11 near a gravel pit, and it's -- everybody has their
 12 opinion.
 13 What this is is the background, and I'm
 14 going to read, I'm quoting: Odds are that underneath
 15 your feet is a construction material made of sand,
 16 crushed stone, and gravel. And I can guarantee that
 17 under this building is gravel, and under this carpet is
 18 concrete, which consists of gravel and other
 19 ingredients.
 20 These construction materials are an
 21 essential ingredient into nearly ever construction
 22 project from residential housing, office buildings,
 23 retail outlets, entertainment structures, to the roads
 24 that connect them. Sand, rock, and gravel are
 25 literally the foundation of economic development, but

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1 their extraction process can generate dust, noise,
 2 vibration, and truck traffic.
 3 While modern technologies and methods
 4 have greatly reduced quarry's impact -- and when I say
 5 quarries, I mean gravel pits -- the environmental and
 6 economic consequences of quarry operations receive
 7 considerable attention, often in the form of "not in my
 8 backyard," or NIMBY, campaigns opposing quarry
 9 expansions or new sites.
 10 Choosing a quarry site is a delicate
 11 task. While a quarry may be best located far from
 12 residential density on NIMBY concerns, it also needs to
 13 be near the final point of demand due to its high
 14 transportation costs. Quarries, or gravel pits, must
 15 balance the need to be both near and far.
 16 And that's -- I would imagine in a very
 17 perfect world, the Trimbles would love to have their
 18 gravel pit somewhere else where it didn't impact on the
 19 view of their neighbors. But what needs to be kept in
 20 mind is the neighbors' view is not their right. They
 21 don't own the view of the Trimbles' land.
 22 There was talk tonight about putting some
 23 fences up on their property. And I honestly believe
 24 that when we come to some of these conditions for
 25 gravel pits, that that may be some conditions we can

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1 consider; however, that's not what the code allows.
 2 The code allows certain things. The Trimbles have met
 3 those requirements, and I would request that you
 4 approve their permit, thank you.
 5 **COMMISSIONER FOSTER:** Thank you. Are
 6 there any questions? Not at this time, thank you.
 7 Next testifier, please.
 8 **LYNN WHITMORE:** My name is Lynn Whitmore,
 9 I live in Anchor Point, and I'm the next door neighbor
 10 to the proposed gravel pit. And I brought an overhead
 11 presentation to make, but for the sake of expediency,
 12 it seems like it would be redundant to do it now and
 13 then do it again in the future.
 14 So I'd just like to maybe repeat
 15 something I've heard a couple times, in that when we
 16 got remanded back to you guys from this case, on this
 17 case, we asked the planning department to continue this
 18 until we got some of the neighbors back who are
 19 affected by this.
 20 A lot of the people are smarter old
 21 duffers than I am, and they have got their timing
 22 figured out and they are Outside at this time of year,
 23 and they come home. They have got their dream piece of
 24 property up there.
 25 And I think it would be really fair to

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1 get them here to speak their concerns. And we'll try
 2 to talk them into talking about the findings of fact
 3 and not to get too far outside of what we actually need
 4 to address.
 5 And I would hope that we could continue
 6 it to around May 28th and give us a chance to get
 7 everybody together, thanks.
 8 **COMMISSIONER FOSTER:** Thank you, Mr.
 9 Whitmore. Any questions? Thank you.
 10 Any more testifiers? Or do you want to
 11 wait until next time?
 12 **JOSH ELMALEH:** Hi, my name is Josh
 13 Elmaleh, and I live on Seabury Court not far from the
 14 planned gravel extraction site.
 15 There is a few things that I would like
 16 to point out, is you guys made an excellent decision
 17 last time that we had this meeting to deny Beachcomber,
 18 LLC the right to extract gravel, and the reasons for
 19 that were visual and noise impacts.
 20 I cannot see the property from my house,
 21 yet anytime they had a tractor or a Bobcat running, I
 22 was hearing it from my house, and that's over the hill,
 23 through trees, behind other neighbors' houses.
 24 And so normally I can't hear anything
 25 from my house in that distance, but I hear it clear as

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1 day. Whenever you hear a dump truck dump, or if they
 2 are going down a road, you hear their -- you hear their
 3 bed clang and clack and all that. That's going to
 4 happen whether or not it's on their property. It's a
 5 product of their excavation, it's a product of what
 6 they are going through.

7 There is a high wind in that area. That
 8 will kick up the dust that they are going to expose.
 9 That is going to create another visual impact because
 10 you're going to have people driving by, and then all of
 11 a sudden you have a cloud of dust blocking your vision,
 12 not necessarily all of your vision, but it does hinder
 13 it.

14 And then there is an impact on our road.
 15 So that is another visual impact. You're going to have
 16 high wear marks, high things -- a lot of stuff that's
 17 going to be happening. And it's not just that, okay,
 18 maybe they have to fix it on a weekly basis. I don't
 19 know.

20 But I'll tell you, I don't want this to
 21 go in, because it affects me, my family, my wife, my
 22 kids, my dogs.

23 You know, I try to keep my dogs at the
 24 house, you know. They are magicians. They find a way
 25 out. They are going to find a way to that pit. They

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1 are going to find a way, and then somebody is going to
 2 run them over, and I'm not going to have control over
 3 that, you know. I do my best.

4 And I know a lot of people might be
 5 better with their animals, but, you know, I grew up
 6 with them, and I've always learned, do your best and
 7 teach them and love them as best you can.

8 There is many -- in previous
 9 testimonies -- there is many visual impacts that are
 10 going to happen from it. You drive up the road, you
 11 drive down the road, you're going to see what the
 12 Trimbles are doing on that property. Yeah, it's their
 13 property, they should have a lot of rights to what they
 14 do to it.

15 But you guys have your six criteria they
 16 have to meet, you know that, it's redundant. But I
 17 agree with your initial findings of visual and sound
 18 impacts are not going to be met, no matter what they
 19 do, because they are in that bowl, and we all have a
 20 perched view right above them.

21 And there is a lot of people who are
 22 going to be affected, not just the neighbors, but the
 23 tourists, the people that are close by, people coming
 24 through.

25 I'm not going to mention property values,

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1 I'm not going to mention safety because that's all
 2 there, and it doesn't matter according to those six
 3 criteria.

4 And I will say this one thing, if
 5 anything, Mr. Emmitt Trimble has brought the community
 6 together, but not in his favor, but to resist the
 7 health and the noise impact that his proposed mine will
 8 bring about.

9 And a lady came up and she said something
 10 about vibration. That is absolutely correct. Anytime
 11 you have a truck going by, especially in that type of
 12 neighborhood, you're going to have that vibration going
 13 through. I mean, that's a physical impact. You're
 14 being physically impacted when something goes by.

15 You know, maybe sometimes you run fast
 16 and your heart starts beating a little bit. Well, you
 17 kind of get that if all of a sudden, whoa, the ground
 18 is moving. Some people are really affected by
 19 earthquakes. Not me because I grew up in California,
 20 lots of earthquakes, didn't really care about that too
 21 much.

22 So anyways, please stand to your initial
 23 findings, and I hope that you guys will enjoy part of
 24 the piece of Heaven that we have down there.

25 **COMMISSIONER FOSTER:** Thank you, any

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1 questions? Not at this time.

2 **LAUREN ISENHOUR:** I'm Lauren Isenhour. I
 3 live at 34737 Beachcomber Street. I'm just going to
 4 read my statement.

5 I believe that Anchor Point is a
 6 wonderful place to live for all the same reasons as
 7 these people here. I like having privacy and acreage,
 8 I like having control over what I can do on my own
 9 property. I love being able to walk to the beach and
 10 the river with my kids and not to be surrounded by lots
 11 of people.

12 The success and longevity of Anchor Point
 13 is extremely important to me and my family. We
 14 actually depend on it. Maintaining a successful town
 15 structure, meaning keeping businesses open, keeping
 16 Chapman school open, keeping Anchor Point a
 17 recreational destination, keeping property values high,
 18 these things are very important to my family and to our
 19 livelihoods.

20 I believe there is an attainable balance
 21 between keeping Anchor Point the quaint little town we
 22 all love while still allowing for the development that
 23 keeps our community viable.

24 I see the word development used with a
 25 negative connotation a lot, and I truly don't

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1 understand that. We all live in houses and drive on
2 roads, and that's development.
3 Anchor Point, due to its size and
4 economy, can only support a certain amount of
5 development, and I like that. With our construction
6 company, I could hire a crew and build ten houses a
7 year, only there just isn't the population to buy them.
8 In 2018 there were 30 home sales in
9 Anchor Point. That's a really small market. Currently
10 I'm building one to two houses a year, and that size of
11 development is a perfect fit for me and my family.
12 I'm proud of what I'm accomplishing and
13 for what I can help contribute to my town. I don't
14 want to build in Homer or anywhere else. I want to
15 live and work in Anchor Point.
16 At my last build I benefitted from
17 contributions from at least 20 local Anchor Pointers
18 employed through local contractors who work year round
19 and support their families with income they make right
20 here in our tiny town. Those laborers are the backbone
21 of our town. Without their year-round work and their
22 year-round contributions back and our community, our
23 town would dry up.
24 I believe my parents are the perfect
25 people to own this property for my neighborhood. They

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1 bought it because they love it and want to keep it
2 fully intact and want to be able to keep it in the
3 Trimble family for generations. They did not buy this
4 property with plans to develop it, they bought it to
5 keep it. But it's expensive.
6 I would rather see a controlled,
7 small-scale gravel pit that provides needed gravel and
8 jobs to local people and is then reclaimed to the
9 highest standards and be able to stay one large vacant
10 parcel maintained by the Trimble family for generations
11 than I would to see it subdivided. I don't want 27 new
12 neighbors with no regulations to control what they
13 build or do on their new properties.
14 Ironically, my family and the
15 neighborhood who oppose the permit both want the same
16 thing, which is for this beautiful parcel to remain
17 vacant and to remain one large piece of land. Once a
18 parcel is subdivided and homes are built, it will be
19 that way forever.
20 My parents are very interested in keeping
21 property values high. It benefits their real estate
22 business as a whole and benefits their own property
23 investments.
24 I've heard a number of comments that this
25 permit will lower the surrounding property values. I

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1 don't agree with that. There are no regulations on
2 anyone else's properties protecting us from our
3 neighbors potentially having junkyards or tarped roofs
4 or the like that we see. Gravel pits are strictly
5 regulated and monitored and required to be reclaimed.
6 All over Anchor Point are properties that
7 my parents have developed and sold, and without a
8 shadow of a doubt, each one has been radically improved
9 at their hand. This parcel is no exception.
10 Prior to my parents purchasing it, the
11 field behind my house was so littered with stumps and
12 slash you could hardly walk through it. My parents
13 spent over 60 grand to clean it up to the beautiful
14 state it's currently in.
15 That does not lend to the picture their
16 opposition tries to paint of them as greedy destroyers
17 of the land. They have been successful in land
18 development for 40 years, because they are
19 exceptionally excellent at it. They are meticulous and
20 deliberate in their stewardship of the land.
21 I have all the trust and confidence in
22 the world, not because they are my parents, but because
23 of their proven track record, that whatever areas of
24 this permitted land they do extract gravel from, it
25 will be reclaimed to the highest degree.

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1 The engineer who designed this permit
2 application testified that for a large pit in this type
3 of rural area, 10,000 cubic yards is a more realistic
4 amount of gravel to move a year.
5 As I stated before, Anchor Point is a
6 small community that can only support a small amount of
7 development. There just isn't the populous to purchase
8 my potential ten houses a year, and there just isn't
9 the populous to purchase 50,000 cubic yards of gravel a
10 year. That's the number that -- the maximum the permit
11 would allow. That's not a realistic extraction amount
12 in our community.
13 I'd also like to address the safety and
14 condition of the beach access road as stated. I do
15 walk the road with my kids, and during the summer
16 months there is a lot of traffic and boats and RVs,
17 bikes and walkers and constant vehicle traffic.
18 Wide-load boats drive very slowly, RVs drive very
19 slowly, and with a such a constant flow of vehicles,
20 traffic just moves slowly.
21 Gravel trucks also drive that road all
22 the time delivering gravel to the residents, and I
23 believe as a community we all work really well together
24 to keep everyone safe on a road. So yeah, when I'm
25 walking with my kids, we step off into the ditch and

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1 drivers do drive very slowly around us, and we all wave
2 at each other as we do this. And we've worked together
3 to keep everyone safe.
4 Gravel trucks drive no differently than
5 wide-load boats or RVs. And just to be clear, I
6 support the presence of RVs and boats as well as gravel
7 trucks. I believe there is an attainable balance
8 between all of us in the community to keep Anchor Point
9 the quaint town we love, yet also keep the responsible
10 amount of development that keeps jobs in our community.
11 **COMMISSIONER FOSTER:** Thank you very
12 much. Any questions for Ms. Isenhour? Not at this
13 time, thank you.
14 **LAUREN ISENHOUR:** Thank you.
15 **COMMISSIONER FOSTER:** Any more
16 testifiers?
17 **GINA DEBARDELABEN:** You managed to fill
18 up the whole sheet so far.
19 My name is Gina DeBardelaben, I'm with
20 McLane Consulting. Our engineering and surveying firm
21 was hired by Beachcomber, LLC to survey the property
22 and prepare the CLUP permit documents and exhibits.
23 Field work for the permit was completed
24 in May of 2018, and the CLUP application was submitted
25 in June of 2018. Since then -- I mean, that's -- we're

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1 almost working on a year at this point on this
2 application.
3 The site was previously utilized, and it
4 had a driveway on it and still has a driveway and a
5 small gravel pad and some berms established.
6 The material site, or the proposed
7 material site parcel has a lot of relief to it. And it
8 would require any type of -- for any type of
9 development some excavation and leveling for access,
10 residential or commercial construction, all of which
11 could have impacts similar to a material site. Just
12 something to keep in mind, that with an unlevel site
13 you always have larger impacts than a level site.
14 There were a few things brought before --
15 up in this plethora of written comments and public
16 testimony that I want to speak to. I know that some of
17 these are things that I regularly testify or say at
18 Planning Commission meetings for CLUPs, but I think
19 it's important that the commission hears it and the
20 public in attendance hear it.
21 One of them is noise concerns. It's
22 unrealistic to think that buffers will or should fully
23 eliminate impacts of noise or visual impacts. The code
24 and the proposed buffers would minimize or reduce
25 visual impacts and noise, and that's the requirement.

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1 The code provides these tools that are
2 already in the box that are supposed to be used for
3 buffers or barriers, and that's what an applicant has
4 to choose from at this point, and that's kind of the
5 way the code is written. So, you know, an applicant
6 does their best to pick from those tools that are
7 provided.
8 There's additional information provided
9 regarding site minimization by Geovera, so I don't want
10 to -- I'm not going to talk about that too much, but I
11 do want to talk about noise pollution a little more.
12 Noises can be deceiving. ANSI, MSHW, and
13 OSHA, they all have, like, great charts and comparative
14 data and studies on noise. I'm going to site some
15 docs, some noise -- some information on noise abatement
16 and some data, and that's all from a U.S. Bureau of
17 Mines report regarding noise abatement for construction
18 sites.
19 A front-end loader, which is our most
20 common piece of equipment in a material site, emits
21 between 85 and 91 decibels depending on the age of the
22 equipment and the material it's moving. It averages
23 about 88 decibels from where the operator sits.
24 As a comparison, a gas lawn mower
25 operates at 100 decibels, and a blow dryer operates at

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1 85 decibels, and an uninsulated dishwasher in your home
2 operates at 70 decibels.
3 Separation distancing and locating noisy
4 equipment behind a barrier are the two top
5 recommended -- recommendations for noise abatement. A
6 noise barrier, such as a spoils berm, drops the noise
7 level in a curvilinear rate relative to the distance
8 and the noise of the barrier.
9 But noise separation from a -- separation
10 of distance from a noise drops the impacts in a linear
11 fashion. So for every 10 feet of distance, the noise
12 drops approximately six decibels.
13 So between the curvilinear and the linear
14 analysis, a berm in combination with approximately 20
15 feet of separation, drops the decibel levels of a
16 front-end loader to that of a dishwasher. It gives you
17 an idea.
18 Decibels are always something that's a
19 little bit vague and how they drop across air and how
20 barriers affect noise abatement. So I just wanted to
21 bring it a little bit in perspective on what the
22 combination of distance and berms provide.
23 The other thing that's brought up is haul
24 routes. The Anchor River Road and the Old Sterling are
25 state maintained, and those meet what the requirements

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1 of a state road, four feet of road, are. Believe it or
 2 not, that's what the state requires -- that's what the
 3 state has provided, and they meet their standards.
 4 They also -- the Anchor River bridge has
 5 a gross to vehicle -- a GVW listed for it. Right now
 6 it's listed very low because the bridge is near being
 7 condemned or whatnot. It's damaged, and it is slated
 8 for replacement in 2020.
 9 All users of these roads need to abide by
 10 DOT requirements for GVW, speed, proper use of lanes,
 11 shouldering, et cetera. The health of the Anchor River
 12 Road to the borough permit is not -- the health and use
 13 of the Anchor River Road is not applicable to the
 14 borough permitting process.
 15 DOT's letter regarding line of site,
 16 landing length, sweeping, and traffic control permits
 17 are all standard to borough road, to DOT access points,
 18 and industrial traffic use.
 19 All borough material sites are also
 20 required to maintain their borough haul routes, which
 21 would be like a borough gravel road, and dust abatement
 22 for gravel haul routes. The material sites are
 23 required by borough code and by DEC BMPs for material
 24 sites.
 25 Quantity of extraction is another one

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1 that comes up. Gravel extraction per year is based on
 2 an unknown quantity of material sales. This CLUP
 3 application lists 50,000 yards maximum, when in
 4 reality, an extraction from a site like this is likely
 5 not to exceed 10,000 yards a year.
 6 For perspective, a large borough road
 7 capital improvement project, which would be a typical
 8 4,000-foot-long gravel road to be improved in this area
 9 wouldn't exceed 4,000 cubic yards for that project.
 10 Mr. Smith cited a very large project and
 11 cited, you know, 130,000 cubic yards for this whole
 12 project. That's over eight miles of new road
 13 construction. That's a huge project for our borough.
 14 It's not relative to a site like this or a project that
 15 would be supplied by a material site like this.
 16 So the 50,000 cubic yard maximum is
 17 something that we utilize because that's DNR's
 18 threshold for -- determines how material sites are
 19 required to report to the state for extraction and the
 20 state bonding for reclamation.
 21 So that 50,000 yards, if it's above that,
 22 they have different requirements than if it's under.
 23 So it's just kind of a -- it's kind of a cap to say
 24 that we're not going to be this huge extraction mining
 25 site.

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1 Ground water protection. The proposed
 2 extraction area is greater than 100 feet from all
 3 residential wells, surface wetlands, and flood
 4 boundaries as per the borough code. There is no
 5 extraction proposed below the table as part of this
 6 permit. Extraction will remain two feet above the
 7 ground water elevation as per the requirement.
 8 If the owner decides they want to try to
 9 extract below ground water, there's a whole nother set
 10 of requirements that they have to meet and another
 11 planning committee meeting.
 12 **COMMISSIONER FOSTER:** Thank you, could
 13 you tie this up?
 14 **GINA DEBARDELABEN:** I absolutely am, yep.
 15 Really quick, before I offer -- answer
 16 questions, Mr. Keenan [sic] has quoted multiple times,
 17 at least twice in meetings, something in an e-mail
 18 correspondence between Mr. Wall and I about -- and Mr.
 19 Wall asks -- he asked about proposing maybe a higher
 20 berm. And my response was simply after -- you know,
 21 how the vegetation is sparse or some -- there's
 22 vegetation in one corner and not all the way across, is
 23 we could propose a higher berm, but I'm not sure that
 24 makes sense either.
 25 So interpretation of that, of what I had

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1 to say, I guess Mr. Keenan's [sic] interpretation has
 2 been maybe skewed and not what the intent of the
 3 comment or the e-mail was.
 4 **COMMISSIONER FOSTER:** Thank you, are
 5 there any questions? Yes, Mr. Whitney.
 6 **COMMISSIONER WHITNEY:** Yeah, there's been
 7 a couple of comments made about a asphalt plant going
 8 in there. What's -- any word on that? Any truth to
 9 those rumors?
 10 **GINA DEBARDELABEN:** No. There's no --
 11 actually as far as I'm aware of, there is no planned
 12 sale for gravel from this site at all at this point.
 13 **COMMISSIONER FOSTER:** Ms. Ecklund.
 14 **COMMISSIONER ECKLUND:** Thank you.
 15 Through the chair, did you or your firm draft up the
 16 map on page 41.70 of our 332-page desk packet?
 17 **GINA DEBARDELABEN:** I might need help
 18 finding that.
 19 **COMMISSIONER ECKLUND:** Yeah, 41.70 --
 20 **GINA DEBARDELABEN:** Page 40?
 21 **COMMISSIONER ECKLUND:** -- of 332.
 22 **GINA DEBARDELABEN:** I'm getting close.
 23 No, that was prepared by Geovera, and that's another
 24 surveying firm out of Anchor Point.
 25 **COMMISSIONER ECKLUND:** Okay, okay. But

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1 you may be able to answer the question.
 2 **GINA DEBARDELABEN:** Sure.
 3 **COMMISSIONER ECKLUND:** The question I
 4 have is about distance, and the proposed site is how
 5 many miles from the Sterling Highway? How long of a
 6 drive is that? Not the Old Sterling Highway that's
 7 planning to be an exit site, but from the regular
 8 highway out there.
 9 **GINA DEBARDELABEN:** I don't know what
 10 that is. And then there's two routes to get to the
 11 Sterling Highway right now.
 12 **COMMISSIONER ECKLUND:** Right.
 13 **GINA DEBARDELABEN:** You can't take a
 14 loaded truck across --
 15 **COMMISSIONER ECKLUND:** The bridge.
 16 **GINA DEBARDELABEN:** -- the Anchor River
 17 bridge.
 18 **COMMISSIONER ECKLUND:** Right, okay. All
 19 right, thank you.
 20 **COMMISSIONER FOSTER:** Any more questions?
 21 Ms. Fikes.
 22 **COMMISSIONER FIKES:** So this applicant's
 23 proposal is for -- you're saying roughly estimated at
 24 10,000 cubic yards, is that your understanding for this
 25 permit for this location?

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1 **GINA DEBARDELABEN:** Well, the permit says
 2 less than 50,000 yards. In reality, gravel sales are
 3 based on -- excavation is based on gravel sales.
 4 10,000 yards is much more appropriate and likely in
 5 this neighborhood or this area.
 6 **COMMISSIONER FIKES:** And with that
 7 understanding, what would be realistic hours of
 8 operation for this particular site?
 9 **GINA DEBARDELABEN:** I don't know, but,
 10 you know, 10,000 yards isn't -- you know, that would be
 11 over two or three projects, most likely. And maybe a
 12 project would be four to six weeks depending on the
 13 size, and, you know, the crews -- it depends on what
 14 their delivery schedule needs to be.
 15 **COMMISSIONER FIKES:** Okay. Thank you.
 16 **COMMISSIONER FOSTER:** Any other
 17 questions? Not at this time, thank you. Any other
 18 testifiers?
 19 **ELDON OVERSON:** My name is Eldon Overson,
 20 and I have the piece of property that's on the corner
 21 of Danver and Seaward.
 22 So I'd like to thank the commissioners
 23 that on the July hearing that I think correctly denied
 24 the permit. The piece of property that I bought I just
 25 recently started framing up a little cabin to use in

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1 the summertimes, which I halted immediately once I
 2 found out this gravel pit was going to -- was being
 3 planned. So that pretty much halted my intended use of
 4 my property that I purchased that I paid quite a bit of
 5 money for.
 6 Also I'd like to kind of address some of
 7 the, I think, misinformation that you have received
 8 from the opposition.
 9 One, they say they're a mom and pop, you
 10 know, they're just going to take out a few yards here
 11 and there. When they were stopped from doing their
 12 additional two-and-a-half acre permit, they had a
 13 contract with Hilcorp to extract 12,000 yards. And
 14 that same 12,000 yards then was -- when they were
 15 stopped from doing that, was given to another gravel
 16 company, the Schafers, and they did that hauling of
 17 12,000 yards to Hilcorp, which is a, you know, longer
 18 distance away in just under a week-and-a-half. It took
 19 them about nine days.
 20 So the information that I think you're
 21 getting from the opposition is to paint this thing as
 22 kind of a small, no impact.
 23 My property sits exactly at the very top
 24 of the hill, and it is 50 feet above the material site.
 25 And it's also on the face where there is almost no

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1 vegetation. So that 50-foot vegetation buffer and --
 2 will do no good for me.
 3 And also the berm will do absolutely
 4 nothing, because I will have a complete line of sight
 5 of the crusher site and most of the excavation, even
 6 with Beachcomber's proposed moving the berm as they go.
 7 I will have -- I did submit a picture and
 8 kind of a site plan of where my property from -- the
 9 picture from my deck of my cabin that I was building,
 10 and it showed where the gravel pit was going to be.
 11 And a 12-foot berm with no trees in front of me in line
 12 of sight from the gravel pit, I will actually be --
 13 have a complete line of sight.
 14 So her testimony that the berm will knock
 15 down the sound, it won't because I will have a direct
 16 line of sight. It will not be -- the visual or the
 17 noise will not be stopped at my property because of the
 18 berm or the 50-foot buffer.
 19 So I would just hope that you would
 20 consider that and deny their permit again on those
 21 grounds. Thank you.
 22 **COMMISSIONER FOSTER:** Are there any
 23 questions? Not at this time, thank you.
 24 Is there anybody else who wants to
 25 testify at this time?

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1 **GREGG WIESER:** Good evening, my name is
 2 Gregg Wieser. I have two properties on Seabury Road.
 3 I just recently moved to Alaska after visiting for 25
 4 years, nine different vacations. Been all over the
 5 state on those vacations, but I did not go to all of
 6 those locations each and every vacation, or I -- but I
 7 always came back to Homer and Anchor Point every single
 8 vacation.
 9 And I fell in love with it, and I said to
 10 myself, "One day I'm going to live there." And that
 11 was my dream starting the very first time I came in
 12 1995.
 13 Some of the things that attracted me most
 14 to the area are the people and the community, and of
 15 course all of the different adventurous activities and
 16 the nature.
 17 Well, I finally was able to fulfill my
 18 dream, and this past October I purchased my two
 19 properties, which total a little over 10 acres on
 20 Seabury Road, seven-tenths of a mile from this proposed
 21 gravel site. So I was not included in any mailer or
 22 anything like that, because as I understand it, it was
 23 a half a mile, so I missed it by two-tenths of a mile.
 24 I was actually one property over according to the map I
 25 saw, the parcel.

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1 But basically I'm located between --
 2 well, it was a big surprise to me my very first week
 3 here, Hilcorp with their loud noise and wondering if
 4 those are the Northern Lights, but it's actually east
 5 and it was white lights. And that disturbance
 6 eventually stopped.
 7 But I'm closer to this proposed site on
 8 Danver, which would be even more noisy, I would
 9 imagine, with trucks. But now in this -- listening to
 10 everybody, I'm also hearing about, you know, crushing,
 11 and I don't even understand the definition, but it just
 12 sounds more impactful than just trucks going up and
 13 down the only recreational area in that part of the
 14 Kenai Peninsula for five campgrounds and a river with
 15 salmon and ends at a beach where you have thousands of
 16 tourists -- God bless you -- thousands of tourists that
 17 visit, like my son and I did this past July and again
 18 in August before we purchased the property, or I
 19 purchased the property. And went down to that beach
 20 and was able to enjoy low tide, you know, with all of
 21 the bald eagles.
 22 Well, Jean, the Eagle Lady, she's no
 23 longer around in Homer. The eagles left. So I took a
 24 few years since my last time in Alaska. When I was in
 25 Homer I noticed, "Where are all the eagles?" And they

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1 explained to me what happened. You've got to go to
 2 Anchor Point, you've got to go at low tide.
 3 So my son and I went for his 18th
 4 birthday over to Anchor Point low tide. I fell in love
 5 with the area, and I told my realtor, "You know what?
 6 I've been in real estate for over 10 years, and I'm
 7 finally able to retire young, and I'm moving to my
 8 favorite vacation place. My son is moving to the Air
 9 Force, I'm free, I can do what I want, and I'm moving
 10 to Alaska. And I don't have the light pollution, and I
 11 don't have the sound and the traffic and the horns and
 12 flaggers on the road. And I can enjoy clean air. And
 13 then I got bald eagles. And I can walk to the beach
 14 and not have to worry about getting run over by
 15 somebody and -- or -- but it's pretty strange that you
 16 sand the roads here instead of salt. How come?"
 17 "Oh, to protect the vegetation, to
 18 protect the wildlife. It doesn't eat up the roads as
 19 much. You've got to use sand."
 20 So I see the value, without a doubt, of
 21 having a gravel pit, of having sand, of having the
 22 ingredients, as one testifier said. But I think the
 23 location itself is just -- it's just not in the best
 24 interest of the community for those who actually have
 25 invested -- I paid cash. I don't have a mortgage. I

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1 paid it off on the spot. It was the greatest financial
 2 achievement of my life.
 3 But I didn't think that I'd be
 4 questioning whether I should expand and double the size
 5 of the place or triple the size of the place or to
 6 invest in the local business -- in the local Anchor
 7 Point community or not. And now it's a question of "or
 8 not," because it was a surprise with Hilcorp, and then
 9 I understand that stopped.
 10 But now there's the Chapman school that's
 11 maybe a wishy-washy thing on whether that's going to go
 12 through or not and it's going to close, and then now
 13 this. And I'm thinking, geez, all of that is within a
 14 mile-and-a-half of my new home, and that's not what I
 15 want.
 16 So I'm hesitant on reinvesting in my
 17 property, and I'm hesitant on going ahead and starting
 18 up a business in Anchor Point or something on the Spit.
 19 So I understand the facts, and, you know,
 20 emotional and all that, but if it's not on record, if
 21 it's not documented, it never happened. So thank you
 22 for your time and your consideration.
 23 And I definitely agree that there's a lot
 24 of people that maybe are not like me, their first year
 25 and go all out year round. Maybe they're snow birds

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1 and they don't have the opportunity to speak up and
 2 they didn't get the notice. I did not. I found out
 3 through the grapevine. So I think postponing it until
 4 they come back, like some of these experts that have
 5 been here a while know, would be in the community's
 6 best interest.
 7 But thank you for your time.
 8 **COMMISSIONER FOSTER:** Thank you, Mr.
 9 Wieser.
 10 **GREGG WIESER:** Yes.
 11 **COMMISSIONER FOSTER:** Any questions?
 12 Is there anybody else who wants to
 13 testify? And what I should probably ask is how many
 14 more are we going to have? We might have to take a
 15 break. We're going stop this at 11, but hopefully
 16 before that. But we will continue this.
 17 **JOSH ELMALEH:** I had a question -- or an
 18 answer to a question if you want it.
 19 **COMMISSIONER FOSTER:** I don't think right
 20 at this time here. What do you guys --
 21 **COMMISSIONER ECKLUND:** I think he just
 22 wants to respond to how far is the material site from
 23 the Sterling Highway.
 24 **COMMISSIONER FOSTER:** Oh, okay.
 25 **JOSH ELMALEH:** There's two routes one --

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1 **COMMISSIONER FOSTER:** Could you step up
 2 to the --
 3 **JOSH ELMALEH:** Sure. My name is Josh --
 4 **COMMISSIONER ECKLUND:** Specifically along
 5 Anchor Point Road. If you turn on Anchor Point Road
 6 and go to the material site, how far is that?
 7 **JOSH ELMALEH:** From Anchor Point Road to
 8 the material site is, like, three-quarters of a mile.
 9 Now, if you go from where it intersects
 10 with Old -- from the material site to the New Sterling
 11 along the route that you would have to take with a
 12 truck is approximately 10 miles. If you take it across
 13 the bridge, it's one mile. And if you go back to
 14 Anchor Point, it's between 15 and 18 miles.
 15 **COMMISSIONER ECKLUND:** Thank you.
 16 **COMMISSIONER FOSTER:** Well, I'm -- is
 17 there any more?
 18 **UNIDENTIFIED SPEAKER:** (Indiscernible).
 19 **COMMISSIONER FOSTER:** No, you've
 20 already -- you've already testified.
 21 **UNIDENTIFIED SPEAKER:** I just wanted
 22 (indiscernible).
 23 **COMMISSIONER FOSTER:** No, I'm sorry.
 24 You'll have a chance next time.
 25 Anybody new or something new?

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1 I would like to entertain a motion to
 2 continue until brought back by staff.
 3 **COMMISSIONER BOKENKO-CARLUCCIO:** So
 4 moved.
 5 **COMMISSIONER FOSTER:** Is it seconded?
 6 **COMMISSIONER ABRAHAMSON-BENTZ:** ^{Second.}
 7 **COMMISSIONER FOSTER:** Is there any
 8 opposition? Yes, Mr. Whitney, or discussion.
 9 **COMMISSIONER WHITNEY:** Well, the question
 10 is are you setting a date certain or --
 11 **COMMISSIONER FOSTER:** I said brought back
 12 by staff. I figured they'd set the date.
 13 **COMMISSIONER WHITNEY:** I would rather see
 14 a date certain, and I would say May 28th, assuming
 15 that's our meeting date.
 16 **COMMISSIONER FOSTER:** I'll check with
 17 staff on that.
 18 **MR. BEST:** That's correct. May 28th is a
 19 Planning Commission meeting, but it is on a Tuesday.
 20 **COMMISSIONER FOSTER:** Is that a motion?
 21 **COMMISSIONER WHITNEY:** Well, then I'd
 22 amend -- I would amend the motion to May 28th.
 23 **COMMISSIONER VENUTI:** I second that.
 24 **COMMISSIONER FOSTER:** Any discussion?
 25 **COMMISSIONER FIKES:** So we're postponing

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1 this until May, so --
 2 **COMMISSIONER FOSTER:** Not postponing,
 3 we're continuing so that -- we're continuing the public
 4 hearing. It's not even on the table.
 5 **MR. WALL:** Mr. Chairman, if I could add,
 6 I have a concern about May 28th in that I had planned
 7 my vacation schedule. I will be here on the 28th, but
 8 I'll be gone the four weeks prior to that. So I'm
 9 concerned about the continuity in processing the
 10 application if we were to have it on that date.
 11 **COMMISSIONER FOSTER:** So do you have a
 12 recommendation for a continuation?
 13 **MR. WALL:** The April 22nd date would be
 14 my recommendation.
 15 **COMMISSIONER FOSTER:** Yes, Ms. Ecklund.
 16 **COMMISSIONER ECKLUND:** Well, through the
 17 chair to staff, based on the applicant's representative
 18 tonight, they were ready to go forward with their
 19 discussion tonight. I believe we have all of the
 20 application materials prepared. I know we're going to
 21 have a lot more probably come in, maybe another 332
 22 desk packet by then, which we hope to get a little
 23 earlier. But I don't know that most of the work isn't
 24 already done. So take your four-week vacation, and
 25 let's do it on May 28th.

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1 **COMMISSIONER FOSTER:** Well, we have
 2 something on the floor right here, do we not? That we
 3 wanted to move it to the May 22nd and --
 4 **UNIDENTIFIED SPEAKER:** That's what she
 5 said.
 6 **MR. WALL:** May 28th.
 7 **COMMISSIONER FOSTER:** I mean April?
 8 **UNIDENTIFIED SPEAKER:** No
 9 (indiscernible).
 10 **MR. WALL:** No, May 28th.
 11 **COMMISSIONER FOSTER:** No, May 27 -- May
 12 28th? Okay.
 13 **COMMISSIONER BOKENKO-CARLUCCIO:** I think
 14 what she was saying is is that most of the work is
 15 done, that you should be able to prepare everything
 16 before you go on vacation and just slide in to the
 17 meeting.
 18 **COMMISSIONER FOSTER:** That's why I said
 19 let's bring it back when they bring it back to us, but
 20 it sounds like it may be --
 21 **UNIDENTIFIED SPEAKER:** It's too long a
 22 (indiscernible).
 23 **COMMISSIONER FOSTER:** -- too long a go,
 24 yeah.
 25 **UNIDENTIFIED SPEAKER:** Call for the

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1 question.
 2 **COMMISSIONER FOSTER:** Let's call for the
 3 question. We have to vote on whether we want to call
 4 for the question or not.
 5 So all those for calling for the
 6 question -- I guess roll call, please.
 7 **UNIDENTIFIED SPEAKER:** Chair, can you
 8 clarify?
 9 **COMMISSIONER FOSTER:** Yeah, in order to
 10 call for the question, we have to vote on that,
 11 otherwise we can keep the discussion going.
 12 **UNIDENTIFIED SPEAKER:** What are you
 13 calling the question on? That's what --
 14 **COMMISSIONER FOSTER:** That's the May
 15 20 -- the May 28th, bring about -- back for -- continue
 16 is until May 28th.
 17 **THE CLERK:** So this would be to continue
 18 on the May 28th Planning Commission meeting?
 19 **UNIDENTIFIED SPEAKER:** No.
 20 **COMMISSIONER FOSTER:** Yes.
 21 **UNIDENTIFIED SPEAKER:** It's to call the
 22 question.
 23 **COMMISSIONER BOKENKO-CARLUCCIO:** No, just
 24 to call the question.
 25 **COMMISSIONER FOSTER:** That's what the

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1 question is.
 2 **UNIDENTIFIED SPEAKER:** I'm so confused.
 3 **UNIDENTIFIED SPEAKER:** They're voting on
 4 the motion.
 5 **UNIDENTIFIED SPEAKER:** Okay, so...
 6 **UNIDENTIFIED SPEAKER:** We're voting on
 7 the motion, is that -- did that --
 8 **COMMISSIONER FOSTER:** Well, we can cut to
 9 the voting on the motion, yeah.
 10 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
 11 so --
 12 **COMMISSIONER FOSTER:** We're supposed to
 13 vote to decide whether we will vote. Yeah, that's part
 14 of the --
 15 **UNIDENTIFIED SPEAKER:** That's part of it.
 16 **COMMISSIONER FOSTER:** Yeah.
 17 **UNIDENTIFIED SPEAKER:** Yeah, you have to
 18 remember these (indiscernible).
 19 **UNIDENTIFIED SPEAKER:** I know
 20 (indiscernible).
 21 **COMMISSIONER FOSTER:** Yeah, so the idea
 22 is that when you -- when we're having a discussion and
 23 somebody calls for the question, then we have to vote
 24 whether we will stop our discussion and call for the
 25 question.

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1 If we all say yes, then we go for the
 2 vote. If somebody says -- you know, if the majority
 3 says no, then we still discuss.
 4 **THE CLERK:** So do you want to vote on the
 5 question?
 6 **UNIDENTIFIED SPEAKER:** Call for
 7 (indiscernible).
 8 **COMMISSIONER FOSTER:** Call for the
 9 question to vote on the question.
 10 **THE CLERK:** Okay, so call on the question
 11 to vote on the question?
 12 **COMMISSIONER FOSTER:** Yes, as ridiculous
 13 as it is.
 14 **THE CLERK:** All right, Carluccio?
 15 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes.
 16 **THE CLERK:** Fikes?
 17 **COMMISSIONER FIKES:** Yes.
 18 **THE CLERK:** Morgan?
 19 **COMMISSIONER MORGAN:** Yes.
 20 **THE CLERK:** Whitney?
 21 **COMMISSIONER WHITNEY:** Yes.
 22 **THE CLERK:** Bentz?
 23 **COMMISSIONER ABRAHAMSON-BENTZ:** Yes.
 24 **THE CLERK:** Ecklund?
 25 **COMMISSIONER ECKLUND:** Yes.

1 THE CLERK: Ernst?
 2 COMMISSIONER ERNST: Yes.
 3 THE CLERK: Venuti?
 4 COMMISSIONER VENUTI: Yes.
 5 THE CLERK: Foster?
 6 COMMISSIONER FOSTER: Yes.
 7 THE CLERK: Okay, it passed.
 8 COMMISSIONER FOSTER: Now we get to vote
 9 on whether it will be on the 28th.
 10 THE CLERK: Okay, so this is to continue
 11 the public hearing to the May 28th Planning Commission
 12 meeting.
 13 Ecklund?
 14 COMMISSIONER ECKLUND: Yes.
 15 THE CLERK: Carluccio?
 16 COMMISSIONER BOKENKO-CARLUCCIO: Yes.
 17 THE CLERK: Ernst?
 18 COMMISSIONER ERNST: Yep.
 19 THE CLERK: Fikes?
 20 COMMISSIONER FIKES: No.
 21 THE CLERK: Bentz?
 22 COMMISSIONER ABRAHAMSON-BENTZ: Yes.
 23 THE CLERK: Whitney?
 24 COMMISSIONER WHITNEY: Yes.
 25 THE CLERK: Morgan?

1 COMMISSIONER MORGAN: Yes.
 2 THE CLERK: Venuti?
 3 COMMISSIONER VENUTI: Yes.
 4 THE CLERK: Foster?
 5 COMMISSIONER FOSTER: No.
 6 THE CLERK: 2 to 7.
 7 COMMISSIONER FOSTER: So we are continued
 8 to the May 28th meeting.
 9 So at that time the public hearing will
 10 be -- remain open, and you can come back and talk about
 11 that and whatever else is new.
 12 If you have anything to turn in, that's
 13 for both the applicant and -- anything you have to send
 14 in, please get it in early.
 15 10:29:52
 16 (End of requested portion)
 17 10:36:28
 18
 19
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 22
 23
 24
 25

1 CERTIFICATE
 2 I, LEONARD J. DiPAOLO, Registered Professional
 3 Reporter, Certified Realtime Reporter, Certified CART
 4 Provider, and Notary Public in and for the State of
 5 Alaska, do hereby certify:
 6 That the tape recording, CD March 25, 2019 was
 7 transcribed under my direction by computer
 8 transcription; that the foregoing is a true record of
 9 the testimony and proceedings taken at that time to the
 10 best of my ability; and that I am not a party to nor
 11 have I any interest in the outcome of the action herein
 12 contained.
 13 IN WITNESS WHEREOF, I have hereunto set my
 14 hand and affixed my seal this 25th day
 15 of August, 2019.
 16
 17
 18
 19
 20
 21
 22
 23
 24 #3319
 25

LEONARD J. DiPAOLO, RPR, CRR, CCP
 Notary Public for Alaska
 My Commission Expires: 2-3-2020

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**VERBATIM TRANSCRIPT
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APRIL 8, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION**LOCATION**

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Monday, April 8, 2019
7:45 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 7, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Syverine Abrahamson-Bentz, Anchor Point/Ninilchik
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Robert Ernst, Northwest Borough
Blair Martin, Kalifornsky Beach
Dr. Rick Foster, Southwest Borough
Diane Fikes, City of Kenai
Virginia Morgan, East Peninsula
Franco Venuti, City of Homer
Robert Ruffner, Kasilof/Clam Gulch
Paul Whitney, City of Soldotna

Staff Present:

Max Best, Planning Director
Julie Hindman, Administrative Assistant
Holly Montague, Deputy borough Attorney
Bruce Wall, Planner
Scott Huff, Platting Manager

Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP

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1 PROCEEDINGS
 2 7:44:58 p.m.
 3 **CHAIRMAN MARTIN:** Good evening, everyone.
 4 I'd like to call to order tonight's meeting of the
 5 Kenai Peninsula Borough Planning Commission for April
 6 8th, 2019. Roll call, please.
 7 **THE CLERK:** Bentz?
 8 **COMMISSIONER ABRAHAMSON-BENTZ:** Here.
 9 **THE CLERK:** Brantley?
 10 **COMMISSIONER BRANTLEY:** Here.
 11 **THE CLERK:** Carluccio?
 12 **COMMISSIONER BOKENKO-CARLUCCIO:** Here.
 13 **THE CLERK:** Ecklund?
 14 **COMMISSIONER ECKLUND:** Here.
 15 **THE CLERK:** Ernst?
 16 **COMMISSIONER ERNST:** Here.
 17 **THE CLERK:** Fikes?
 18 **COMMISSIONER FIKES:** Here.
 19 **THE CLERK:** Foster?
 20 **COMMISSIONER FOSTER:** Present.
 21 **THE CLERK:** Martin?
 22 **CHAIRMAN MARTIN:** Here.
 23 **THE CLERK:** Morgan?
 24 **COMMISSIONER MORGAN:** Here.
 25 **THE CLERK:** Ruffner?

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1 **COMMISSIONER RUFFNER:** Here.
 2 **THE CLERK:** Venuti?
 3 **COMMISSIONER VENUTI:** Here.
 4 **THE CLERK:** Whitney?
 5 **COMMISSIONER WHITNEY:** Here.
 6 **THE CLERK:** A quorum is present.
 7 **CHAIRMAN MARTIN:** Thank you. At this
 8 time I'll entertain a motion for approval of consent
 9 and regular agenda.
 10 **COMMISSIONER BOKENKO-CARLUCCIO:** So
 11 moved.
 12 **COMMISSIONER ABRAHAMSON-BENTZ:** ^{Second.}
 13 **CHAIRMAN MARTIN:** Is there any discussion
 14 or addition? Is there any opposition? Seeing none,
 15 the motion passes unanimously.
 16 That takes us to item D with the public
 17 comment presentations, something not appearing on the
 18 agenda.
 19 (Audio pause)
 20 **CHAIRMAN MARTIN:** Yeah, please state your
 21 name and address at the microphone for the record.
 22 **EMMITT TRIMBLE:** Emmitt Trimble, P.O. Box
 23 193, Anchor Point. I'm not sure that this is the
 24 appropriate place to make this request. I called
 25 earlier today.

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1 At the last Planning Commission meeting,
 2 we had discussed procedures and the possibility of a
 3 continuation, which we were okay with and had talked
 4 about a date, April 22nd, and went into the meeting
 5 with that -- if that was -- that worked for us.
 6 At the late hour that it ended, there was
 7 a motion to continue to May 28th because a couple of
 8 our opponents had said they really wanted to see it on
 9 May 28th. That gave time for the snow birds to come
 10 back from Arizona and California, and they really
 11 needed to testify too.
 12 The motion passed unanimously without any
 13 question to us or finding out whether we were even
 14 going to be in the country at that time, and we're not.
 15 So we're not available for the continuation on May
 16 28th. We are available on April 22nd, which was kind
 17 of our agreement with staff and Mr. Foster, and -- or
 18 May 13th.
 19 So we're just respectfully requesting
 20 that we address that issue and try to change that date.
 21 We aren't going to change the date of our family
 22 vacation.
 23 **CHAIRMAN MARTIN:** Any questions at this
 24 time?
 25 **COMMISSIONER FIKES:** I would just like to

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1 point out it wasn't unanimous.
 2 **EMMITT TRIMBLE:** Thank you.
 3 **CHAIRMAN MARTIN:** Anyone else?
 4 **EMMITT TRIMBLE:** I have one more thing,
 5 if I may.
 6 **CHAIRMAN MARTIN:** Sure.
 7 **EMMITT TRIMBLE:** There was a fairly
 8 vicious attack of one of the planning commissioners in
 9 a written testimony from opponents during the time when
 10 Mr. Brantley recused himself. And it was requested
 11 that Mr. Venuti recuse himself because we were real
 12 estate brokers and he was an inspector.
 13 And I'd just like to apologize for the
 14 majority of Anchor Point for the suggestion that Mr.
 15 Venuti was unethical and nefarious. I was offended.
 16 **CHAIRMAN MARTIN:** Thank you for your
 17 testimony.
 18 Is there anyone else in the audience to
 19 bring up something that's not on tonight's agenda?
 20 So hearing and seeing no further
 21 requests, we'll address the request at this time. Is
 22 that -- Ms. Ecklund.
 23 **COMMISSIONER ECKLUND:** The process, I
 24 believe, to change a date that was a set date at a
 25 meeting is that we have to make a motion to amend after

1 adoption, and the discussion of the change would take
2 place at our next meeting. Not -- we don't make a
3 change to the date tonight, we just make a motion to
4 amend after adoption and then put the item on our next
5 meeting agenda for public notice.
6 **CHAIRMAN MARTIN:** Is now the time to take
7 that motion?
8 **COMMISSIONER ECKLUND:** I move that we
9 amend after adoption the date set for the Anchor Point
10 Trumbly [sic] material extraction site to be publically
11 noticed for discussion at our next meeting.
12 **COMMISSIONER FIKES:** Second.
13 **CHAIRMAN MARTIN:** Mr. Whitney.
14 **COMMISSIONER WHITNEY:** Just a question.
15 Would Mr. Brantley have to recuse himself on this also?
16 **CHAIRMAN MARTIN:** Mr. Brantley.
17 **COMMISSIONER BRANTLEY:** Yes, I would like
18 to recuse myself from this discussion.
19 **CHAIRMAN MARTIN:** So everybody
20 understands the motion? Is there any objection?
21 Hearing and seeing none, the motion passes unanimously,
22 bringing it up for discussion at our next meeting.
23 7:51:09
24 (End of requested portion)
25 7:58:14

1 **CERTIFICATE**
2 I, LEONARD J. DiPAOLO, Registered Professional
3 Reporter, Certified Realtime Reporter, Certified CART
4 Provider, and Notary Public in and for the State of
5 Alaska, do hereby certify:
6 That the tape recording, CD April 8, 2019 was
7 transcribed under my direction by computer
8 transcription; that the foregoing is a true record of
9 the testimony and proceedings taken at that time to the
10 best of my ability; and that I am not a party to nor
11 have I any interest in the outcome of the action herein
12 contained.
13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my seal this 25th day
15 of August, 2019.
16
17
18
19
20
21
22 LEONARD J. DiPAOLO, RPR, CRR, CCP
23 Notary Public for Alaska
My Commission Expires: 2-3-2020
24 #3319
25

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**VERBATIM TRANSCRIPT
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APRIL 22, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION

LOCATION

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Monday, April 2, 2019
7:28 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 23, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Robert Ernst, Northwest Borough
Diane Fikes, City of Kenai
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Paul Whitney, City of Soldotna

Staff Present:

Max Best, Planning Director
Julie Hindman, Administrative Assistant
Jordan Reif, Platting Technician
Tom Dearlove, River Center Manager
Bruce Wall, Planner
Scott Huff, Platting Manager

Others Present:

Emmitt Trimble
Mary Trimble
Pete Kinneen
Rick Carlton
Gary Sheridan
Eileen Sheridan
Hans Bilben

Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP

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1 PROCEEDINGS
 2 7:28:19 p.m.
 3 (This portion not requested)
 4 7:48:14 p.m.
 5 **CHAIRMAN MARTIN:** That will bring us to
 6 I-2 for the consideration of a motion to amend after
 7 adoption.
 8 **MR. WALL:** Yes, Mr. Chairman. This is to
 9 schedule the continuation of a hearing for a
 10 conditional land use permit for a material site. The
 11 applicant is Beachcomber, LLC.
 12 At your March 25th meeting the applicant
 13 had requested the hearing be continued. He had
 14 suggested April 22nd. At the conclusion of the
 15 meeting, the commission had scheduled it for May 28th.
 16 And the borough staff and the commission at that time
 17 failed to check with the applicant about his
 18 availability on that date. He has since indicated that
 19 he is unavailable, that he will be out of the country,
 20 and so the continuation date needs to be rescheduled.
 21 **CHAIRMAN MARTIN:** Okay, thank you. So at
 22 this time, how many people have a comment that they are
 23 interested in presenting tonight? All right, first
 24 commenter, please.
 25 **COMMISSIONER BRANTLEY:** Excuse me.

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1 Before we start, I need to recuse myself from this.
 2 **CHAIRMAN MARTIN:** So noted and ordered.
 3 **HANS BILBEN:** Thank you to the chair and
 4 the commissioners for allowing us to discuss this.
 5 In your packets for tonight you have 19
 6 or 20 letters from Anchor Point residents who are
 7 opposed to the rescheduling of the Planning Commission
 8 hearing to any date prior to the current scheduled time
 9 on May 28th.
 10 The justification given for the
 11 continuance to May 28th was to allow neighboring
 12 property owners who are not available prior to that
 13 time an opportunity to arrange their schedules
 14 accordingly in order to give in-person testimony at the
 15 hearing.
 16 As you can see in the letters that were
 17 submitted, several neighbors have now made their travel
 18 arrangements and will be here by May 28th.
 19 You also have a letter in your packet
 20 from a Kasey Baker [sic] who is the applicant's former
 21 attorney. In her letter she talks about commissioners
 22 who are guilty of delaying, postponing, or rescheduling
 23 the application process because they just don't like
 24 gravel.
 25 Let's talk about delaying. We were all

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1 prepared for the March 25th hearing, we were kind of
 2 looking forward to it. Six days prior to the scheduled
 3 March 25th hearing, Kasey Baker [sic] personally
 4 requested a delay or a continuance for mysterious,
 5 unforeseen circumstances. No reason given. But more
 6 than likely it was because two of the three
 7 commissioners who supported the application at the July
 8 2018 hearing would be excused from the March 25th
 9 hearing.
 10 The delay was requested by the
 11 applicants' attorney; the delay was granted by the
 12 Planning Commission.
 13 Even more mysterious, at the March 25th
 14 meeting, here comes Kasey Baker, the attorney, the
 15 applicants, their out-of-town gravel buddies, they all
 16 showed up ready to proceed.
 17 Which commissioners does she want to
 18 blame for that one?
 19 Postponing. I think she just threw that
 20 one because it sounded good, but I don't recall of any
 21 postponement that's gone on so far in this process.
 22 That leaves rescheduling. We're here
 23 today because of a request from the applicants to
 24 reschedule, not because of a request from anybody on
 25 the commission or anybody that's opposing this. It was

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1 the applicant that requested this reschedule. I don't
 2 believe this request came from any gravel-hating
 3 commissioner, it came from the applicant.
 4 Yes, Kasey Baker [sic] is correct, there
 5 have been delays and a request to reschedule. Both
 6 were initiated by the applicant and/or his attorney.
 7 Kasey Baker [sic] seems to be of the same
 8 mindset as the applicant, in the only -- in that the
 9 only people with rights are material extraction
 10 applicants.
 11 I just want to say thank you to all of
 12 the commissioners who are not willing to rubber stamp
 13 every application that comes before them.
 14 Thank you to those of you who realize
 15 that material site -- a material site that is
 16 improperly conditioned can have long-lasting negative
 17 effects to families, neighborhoods, and communities.
 18 Thank you to all of those who insist that an
 19 application is accurate and that all conditions and all
 20 standards are met before accepting or approving any
 21 permit.
 22 The entire process is unfortunately
 23 stacked against neighboring property owners and in
 24 favor of the applicants, but there are protections
 25 spelled out in the code, and it's the job of this

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1 Planning Commission to ensure that those protections
2 are afforded to neighboring property owners, even if it
3 means denying a permit at some time -- point in time.
4 This hearing should remain on the
5 schedule for the May 28th date, and if the applicant
6 can't find a way to break free from his busy schedule,
7 then it should be moved to June. May 13th will not
8 work for several neighboring property owners who have
9 made travel plans that coincide with the Planning
10 Commission's March 25th decision, and that was to hold
11 it on May 28th.
12 Additionally, on the -- the applicant
13 will likely be pushing for the May 13th Planning
14 Commission hearing. At that hearing we will have
15 neither a planning director or a planner. So who is
16 going to be here to answer technical or procedural
17 questions when the commission has questions or when the
18 opponents or the applicant have questions? So the May
19 13th date does not work.
20 This hearing should either be May 28th --
21 somebody suggested June of 2050, I'm kind of with that
22 one, too, but I don't think we'll go that far. But
23 that's all I have, thank you.
24 **CHAIRMAN MARTIN:** Are there any
25 questions? None at this time. Next, please.

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1 **ILENE SHERIDAN:** I'm Ilene Sheridan, and
2 I live right in the area there. I can't give you --
3 it's 32 -- what's our address? 32860 Seabury Court,
4 and that's -- we're secondary to this area, but we're
5 still within that half mile, and I'm already getting a
6 little dust in our homes from this.
7 We are wishing that you would wait to not
8 change the date to the 20 -- any earlier or later --
9 that May 28th is the date that we've planned on, that
10 we've been working towards, and we appreciate what
11 you've all done for us. Thank you.
12 **CHAIRMAN MARTIN:** Next.
13 **LYNN WHITMORE:** My name is Lynn Whitmore,
14 and I live next door to the proposed gravel pit.
15 And when we set the schedule for May
16 28th, I made business plans for the times prior to
17 that, and those are obligations I'd like to keep. And
18 to have this thing keep moving and keep moving, it
19 makes it really difficult for any kind of planning if
20 you're still doing business.
21 And even though we don't always agree
22 with what the planning department has to say about this
23 whole thing, anything that we do in this approval
24 process, it's going to affect them down the line. So
25 it seems just to make sense to have one or both of

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1 those guys available for decisions that might be
2 upcoming like this one, thanks.
3 **CHAIRMAN MARTIN:** Thank you. Next
4 testifier, please.
5 **EMMITT TRIMBLE:** I'm Emmitt Trimble, the
6 applicant from Anchor Point.
7 We really wanted this to be done back in
8 July when all of these people who are going to be
9 coming this summer were here. Everyone had a fair
10 opportunity to testify at that original public hearing.
11 We wanted it to happen in February.
12 There were scheduling problems for staff, so there were
13 reasons given to us that we had to move along.
14 So on the March 25th, I believe it was,
15 meeting when we came, we had requested -- the attorney
16 had requested postponement, and that wasn't possible.
17 Right away immediately we received a
18 notice from the staff that that was not possible, but
19 what could happen would be a continuation.
20 And so when we came, we were prepared
21 that night to go through with the process of the public
22 hearing.
23 We met prior to the meeting with planning
24 staff, Mr. Best and Mr. Wall, and the acting chairman,
25 Dr. Foster. They'd made some changes to procedures,

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1 and they wanted us to be aware of them.
2 And we listened to that and went away
3 from that meeting of how things were going to go.
4 Regarding scheduling, is that all of the testimony
5 would be allowed, and at the end of public testimony,
6 that they would ask for a continuation, and that that
7 would be the end of the public testimony.
8 And that starting on April 22nd, which
9 was the date that was presented by staff and Dr.
10 Foster, that it would begin with our rebuttal. And all
11 of that sounded fine to us, and so we agreed to that.
12 As often happens at 11 o'clock when
13 everybody is ready to go home, and after lots and lots
14 of redundant testimony, a motion was made to continue.
15 But during the meeting, individual testifiers were told
16 that they would be able to testify again. And that
17 certainly wasn't our understanding.
18 And so I think at least two people said,
19 "Well, we'll hold what we've got to say until the next
20 meeting," for whatever reason. So obviously it wasn't
21 going to start with our rebuttal at the April 22nd
22 meeting. Okay, that's fine.
23 Then Mr. Foster, as he had said he would
24 do, requested a motion for continuation, and that
25 happened. And someone said, "Well, what day?" And

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1 though we had talked about April 22nd, and that wasn't
 2 something we proposed, it was something that staff
 3 and -- proposed, and it was acceptable to us.
 4 But during testimony people were saying,
 5 "Since this is going to be continued, I won't give my
 6 testimony tonight, I'll give it later. And we would
 7 like to see this until at least May 28th so that the
 8 snow birds can be here."
 9 So those are people who don't live here,
 10 but they are people who were here in July in the
 11 original hearing, and they have had a year to testify
 12 in writing, telephonically, many, many opportunities.
 13 So someone said, "Well, let's make it May
 14 28th," because Dr. Foster said we would leave that to
 15 staff, and that's where the April 22nd we supposed
 16 would come from. It didn't happen.
 17 Someone said, "I move that it's the 28th,
 18 because that's what these people said they want for the
 19 snow birds to be able to get here." I thought that was
 20 not a really valid reason for doing that.
 21 That was the vote. Two people voted no
 22 and everybody else voted yes, and that was it.
 23 At the end of that we had no place other
 24 than to stand up and interrupt the meeting to say,
 25 "We're not going to be here on that date." And I don't

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1 know where the conspiracy theories have come of out of
 2 country. Yeah, we have a planned vacation, not out of
 3 country, out of state.
 4 And the next day we talked to staff and
 5 said, "We're not going to be here on that date, you
 6 know, we were -- we had agreed on the 22nd."
 7 "Well, we can't do anything until the
 8 next meeting. You'll have to come and request a
 9 change."
 10 Okay, so we made the trip up here and we
 11 requested that. "No, we can't address that tonight.
 12 You've got to come back two weeks later."
 13 So none of these delays were something we
 14 wanted. We should have had the permit in July. So we
 15 won't be here on May 28th. We will be here on May
 16 13th. And it seems like staff will be here also. So
 17 that would be acceptable to us in case someone had any
 18 concern about whether the applicant would be here or
 19 not, thank you.
 20 **CHAIRMAN MARTIN:** Is there anyone else in
 21 the audience? Seeing none, we'll continue the -- we
 22 have a question for Mr. Trimble.
 23 **EMMITT TRIMBLE:** Yes, sir.
 24 **COMMISSIONER RUFFNER:** Through the chair.
 25 Thanks, Emmitt. So, I mean, you heard the testimony

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1 the same as I did tonight.
 2 **EMMITT TRIMBLE:** Yes, I did.
 3 **COMMISSIONER RUFFNER:** Yeah, so I guess
 4 what I would like to know from you is if -- you know,
 5 none of us have talked to each other, so we don't
 6 know -- we're being pretty careful on this case about
 7 making sure we follow the rules.
 8 **EMMITT TRIMBLE:** Uh-huh.
 9 **COMMISSIONER RUFFNER:** But just if the
 10 discussion comes up about a date later than the 28th,
 11 are you going to be here in June?
 12 **EMMITT TRIMBLE:** That's not acceptable to
 13 me.
 14 **COMMISSIONER RUFFNER:** Yes, so you'd
 15 rather that not happen?
 16 **EMMITT TRIMBLE:** No, I'd rather that not
 17 happen. This has gone far enough.
 18 **COMMISSIONER RUFFNER:** Right. I clearly
 19 get that perspective from you, but I just want to know
 20 if you're going to be here or not.
 21 **EMMITT TRIMBLE:** As far as I know, I'll
 22 be here in June, yeah. Yeah, the season is here, we're
 23 working.
 24 **COMMISSIONER RUFFNER:** Right. Okay, that
 25 was the --

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1 **EMMITT TRIMBLE:** It's just on that -- we
 2 were going to be gone for a week, and that May 28th
 3 happened to be smack in the middle of that. Nobody
 4 asked me.
 5 **COMMISSIONER RUFFNER:** Right, yeah, I got
 6 that part.
 7 **EMMITT TRIMBLE:** I could have said that
 8 earlier.
 9 **COMMISSIONER RUFFNER:** I got that you're
 10 going to be here on May 13th.
 11 **EMMITT TRIMBLE:** Yes.
 12 **COMMISSIONER RUFFNER:** Okay, and that's
 13 your preference?
 14 **EMMITT TRIMBLE:** Yes.
 15 **COMMISSIONER RUFFNER:** Yeah, okay, I got
 16 it.
 17 **EMMITT TRIMBLE:** Thank you.
 18 **CHAIRMAN MARTIN:** Thank you. Discussion
 19 on the date? Ms. Ecklund? Did you miss your chance to
 20 talk?
 21 **UNIDENTIFIED SPEAKER:** He did. I don't
 22 think you closed it.
 23 **GARY SHERIDAN:** Thank you, Mr. Chairman.
 24 I'm Gary Sheridan --
 25 **COMMISSIONER BOKENKO-CARLUCCIO:** Hit the

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1 button.

2 **GARY SHERIDAN:** I'm Gary Sheridan from

3 Anchor Point. And I just want a note of clarification

4 about the dates that are in the staff report that was

5 handed out to us.

6 And I just heard the testimony saying

7 that it appears that May 13th would be acceptable to

8 everybody, and I'd be concerned about that because it

9 says that Max Best, planning director, and Bruce Wall,

10 planner, will both be unable to attend the meeting.

11 And for the efficiency of the whole

12 process we're here, I think both of those gentlemen

13 have a real significant say in clarification of some of

14 the points that will probably come up in some of the

15 deliberations, thank you.

16 **CHAIRMAN MARTIN:** Thank you. Please

17 state your name and address for the record.

18 **PETE KINNEEN:** I just came by to address

19 the motion for reconsideration.

20 **CHAIRMAN MARTIN:** We need your name and

21 address on the microphone.

22 **PETE KINNEEN:** Pete Kinneen in Anchor

23 Point. And I just wanted to express concern about the

24 constant -- it's the applicant, actually, that is

25 pushing the dates back and forth, it's nobody else.

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1 And so I'd like to weigh in on the date

2 being as we set it, the 28th of next month. And if

3 that's not available -- I mean, it is available, but it

4 would either be May 28th or a following date for the

5 reasons that I think some of the other people have

6 already covered. So I just wanted to weigh in on that,

7 thank you.

8 **CHAIRMAN MARTIN:** Thank you. Next

9 person. Was there somebody else?

10 **RICK CARLTON:** Yeah, my name is Rick

11 Carlton. I'm from Anchor Point also.

12 **CHAIRMAN MARTIN:** And your address.

13 **RICK CARLTON:** And I pretty much just

14 have a question, couple questions, actually. We've

15 heard some conflicting testimonies, or things that were

16 said here, and I just would kind of like a

17 clarification.

18 One of which, why would the applicant

19 have not said something at that meeting that he wasn't

20 going to be here when it was passed and approved that

21 they were going to move the meeting to the 28th?

22 That's my first question.

23 And the other question was, when are Mr.

24 Best and Mr. Wall going to actually be here? I've

25 heard that they are not going to be here this date and

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1 they are not going to be here that date. So could we

2 get those two questions answered?

3 **CHAIRMAN MARTIN:** I'm sure that will come

4 up in discussion.

5 **RICK CARLTON:** Thanks.

6 **CHAIRMAN MARTIN:** Thank you. Anyone

7 else? Last call. I'll close public comment, bring it

8 to the commission for discussion.

9 Do we need a motion to get this ball

10 rolling? Ms. Ecklund.

11 **COMMISSIONER ECKLUND:** Do we make a

12 motion to consider a motion, is that the --

13 **UNIDENTIFIED SPEAKER:** You have to amend

14 the motion.

15 **COMMISSIONER ECKLUND:** Okay. I move that

16 we consider a motion to amend after adoption of the

17 hearing continuance date for a conditional land use

18 permit application for material extraction by the

19 applicant Beachcomber, LLC.

20 **COMMISSIONER RUFFNER:** Second.

21 **CHAIRMAN MARTIN:** Now we can discuss it.

22 Ms. Ecklund.

23 **COMMISSIONER ECKLUND:** Yeah, my question

24 was already asked by the public. The dates in our

25 packet lists reasons why April 22nd is not an option

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1 because public notice would not have been able to be

2 provided.

3 May 13th, neither Mr. Best or Mr. Wall

4 will be able to attend the meeting, is that correct?

5 **MR. WALL:** That's correct. We will both

6 be out of town on that date.

7 **COMMISSIONER ECKLUND:** Okay. And on May

8 28th, the applicant will not be available; June 10th,

9 Mr. Best won't be available; and June 24th, Mr. Wall

10 won't be available.

11 That moves it into July when, I believe,

12 the borough attorney, who has been handling this

13 primarily, will no longer be with the borough. So

14 we're just going to have to pick the least worst date

15 it looks like.

16 **CHAIRMAN MARTIN:** Ms. Ecklund stated --

17 Mr. Wall.

18 **MR. WALL:** Mr. Chairman, if I could.

19 **CHAIRMAN MARTIN:** Please.

20 **MR. WALL:** There is no reason for Mr.

21 Best and myself both to be here. So we feel that

22 either of those dates in June would work.

23 **CHAIRMAN MARTIN:** Thank you. Ms. Fikes.

24 **COMMISSIONER FIKES:** Do we have an

25 obligation to take an action, or can we take no action?

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1 What are our options?
 2 **CHAIRMAN MARTIN:** Mr. Ruffner.
 3 **COMMISSIONER RUFFNER:** Thank you, Mr.
 4 Chair. Yeah, no, we could leave it as scheduled on the
 5 28th. So the motion is that we take this up. And so
 6 unless somebody (indiscernible) that they are date
 7 specific, you know, that's where we stand procedurally,
 8 I believe.
 9 So it is possible, but I think, you know,
 10 referencing the dates of who is here and who is not
 11 here and the fact that the applicant is not here is one
 12 of those things we have to consider.
 13 **CHAIRMAN MARTIN:** Ms. Carluccio.
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** Well, I
 15 think that the applicant should be here on the day that
 16 we discuss his application. Normally when we get down
 17 to this, there is some give and take with the applicant
 18 at that time when it comes to some requirements we
 19 want. And it's going to be kind of hard to have that
 20 give and take if he's not here.
 21 So I think that we should consider moving
 22 it forward, even though I know he didn't want us to, he
 23 wanted us to do it on the 13th. Since neither Max Best
 24 nor Bruce Wall are here, I think that it would be -- it
 25 wouldn't be in our best interest to discuss it at that

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1 time. They're our experts on this, and we need at
 2 least one of them.
 3 **CHAIRMAN MARTIN:** Mr. Ruffner.
 4 **COMMISSIONER RUFFNER:** Thank you, Mr.
 5 Chair. So, I mean, I think we all recognize we're in a
 6 little bit of a pickle.
 7 I wasn't here at the last meeting when
 8 the date was set, so, you know, I'm trying to take in
 9 everything that I've heard to decide when the best time
 10 to be -- you know, typically what I recall with other
 11 applications that come in and the applicant requests to
 12 postpone or stuff, we generally honor that. But at the
 13 same time, we've already -- we've also made a statement
 14 as to -- we were scheduled on May 28th, and so that
 15 puts the other side at -- you know, feeling like they
 16 have been disenfranchised by moving the date again.
 17 So I think my preference would be to hold
 18 it on May 13th, but for the fact that both the director
 19 and the planner that have handled this are not here,
 20 I'm going to move to amend the motion to set the date
 21 for June 10th.
 22 **COMMISSIONER BOKENKO-CARLUCCIO:** I'll
 23 second it.
 24 **CHAIRMAN MARTIN:** Discussion on the
 25 amendment? Mr. Whitney.

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1 **COMMISSIONER WHITNEY:** If it is moved to
 2 the June 10th date, would there be public testimony
 3 allowed during that hearing?
 4 **CHAIRMAN MARTIN:** Yes.
 5 **MR. WALL:** We did announce at the last
 6 meeting that we would allow additional public
 7 testimony.
 8 **COMMISSIONER WHITNEY:** Thank you.
 9 **COMMISSIONER FIKES:** Is there anyone from
 10 administration that could step in for Max or Bruce in
 11 their absence?
 12 **MR. WALL:** Marcus Mueller will be here at
 13 that meeting.
 14 **CHAIRMAN MARTIN:** I think the question
 15 was the May 13th meeting? Okay. And what -- you guys,
 16 you feel that Mr. Mueller could fill in in your stead?
 17 **MR. WALL:** He's the land management
 18 officer. He deals with borough lands. He's not
 19 familiar with the material site ordinance.
 20 **CHAIRMAN MARTIN:** Thank you. Further
 21 discussion on the amendment, June 10th? Is there any
 22 opposition to the motion to amend? Seeing none, that
 23 passes unanimously. Therefore the consideration is set
 24 for June 10th.
 25 **UNIDENTIFIED SPEAKER:** Do we need to vote

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1 one more time on that?
 2 (Whispered discussion - indiscernible)
 3 **CHAIRMAN MARTIN:** Mr. Best.
 4 **MR. BEST:** Thank you, Mr. Chairman. The
 5 original motion was to amend the date, is that what
 6 your motion was?
 7 **CHAIRMAN MARTIN:** So we amend the date.
 8 Now we approve the --
 9 **COMMISSIONER RUFFNER:** So the first
 10 motion was consideration of a motion to amend after
 11 adoption kind of just as written in the staff packet.
 12 And so that motion was made, and then I made an
 13 amendment to set a specific date to that.
 14 **UNIDENTIFIED SPEAKER:** Now you need to
 15 vote on that main motion.
 16 **COMMISSIONER RUFFNER:** Yeah, that's what
 17 I thought. And I think the roll call.
 18 **CHAIRMAN MARTIN:** Roll call, please.
 19 **THE CLERK:** This was for a motion to
 20 amend a hearing date after adoption for a conditional
 21 land use permit for a material site for the applicant
 22 Beachcomber, LLC amended to a June 10th hearing date.
 23 Ernst?
 24 **COMMISSIONER ERNST:** Yes.
 25 **THE CLERK:** Whitney?

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**VERBATIM TRANSCRIPT
&
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JUNE 10, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION

LOCATION

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Monday, June 10, 2019
7:30 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 172, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Syverine Abrahamson-Bentz, Anchor Point/Ninilchik
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Robert Ernst, Northwest Borough
Dr. Rick Foster, Southwest Borough
Diane Fikes, City of Kenai
Blair Martin, Kalifornsky Beach
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna

Staff Present:

Julie Hindman, Administrative Assistant
Jordan Reif, Platting Technician
Dan Conetta, Land Management Agent
Charlie Pierce, Kenai Peninsula Borough Mayor
Bruce Wall, Planner
Scott Huff, Platting Manager

Others Present:

Emmitt Trimble
Mary Trimble
Stacey Stone
Paul Morino
Judy Aaron
Linda Bruce
Mark Claypool
Christina Elmaleh
Teresa Jacobson
Pete Kinneen
Lynn Whitmore
Allison Trimble Papparoa
Gary Sheridan
Richard Carlton

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1 Others Present, Continued:
 2 Todd Bareman
 3 Ryan Muzzarelli
 4 Ed Martin III
 5 Vickey Hodnik
 6 Rick Oliver
 7 Richard Cline
 8 Charity Jacobson
 9 Jim Reid
 10 Roger McCampbell
 11 Larry Smith
 12 Chris Crum
 13 Hans Bilben
 14 Ann Cline
 15 Lauren Isenhour
 16 Buzz Kyllonen
 17 Tom Clark
 18 Angela Roland
 19 Josh Elmaleh
 20 Katie Elsner
 21
 22 Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP
 23
 24
 25

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1 was conducted on March 25th and continued to this date.
 2 Excerpts from the hearing officer's
 3 decision is included in the staff report, and copies of
 4 the decision is contained in Volume 2 of your packet
 5 beginning on page 2.
 6 All of these other page references that
 7 I'm going to give you are in Volume 1. And because
 8 this is a continuation of the March meeting, there is
 9 not a new staff report done. The staff report from the
 10 March meeting begins on page 222 of Volume 1.
 11 The resolution beginning on page 77 has
 12 been updated to reflect today's meeting. The draft
 13 resolution contains staff recommended buffers. Those
 14 buffers are illustrated on a map on page 238. Staff is
 15 recommending different buffers than what is shown on
 16 the applicant's site plan and different from the
 17 staff's recommendation in July.
 18 On page 18 of your packet -- hang on,
 19 nope, forget that last reference.
 20 A waiver is being requested for the
 21 300-foot processing distance requirement from the
 22 property line. Staff does not recommend approval of
 23 the processing distance waiver request. There is room
 24 elsewhere on the property for processing that meets the
 25 300-foot setback requirement. The draft findings in

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1 PROCEEDINGS
 2 7:28:15 p.m.
 3 (This portion not requested)
 4 7:32: 35 p.m.
 5 **CHAIRMAN MARTIN:** That brings us to item
 6 F-3, continuation of the March 25th, 2019 public
 7 hearing for the CLP in the Anchor Point area. Staff.
 8 **COMMISSIONER BRANTLEY:** May I?
 9 **CHAIRMAN MARTIN:** Yeah, please.
 10 **COMMISSIONER BRANTLEY:** I just wanted to
 11 remind the commission that I've recused myself from
 12 this.
 13 **CHAIRMAN MARTIN:** So noted. Whenever
 14 you're ready, Mr. Wall.
 15 **MR. WALL:** Thank you, Mr. Chairman.
 16 This is an application for a conditional
 17 land use permit for a material site in the Anchor Point
 18 area. It is located at 74185 Anchor Point Road, Parcel
 19 No. Is 169-010-67. The applicant is Beachcomber, LLC.
 20 This application was heard by the
 21 Planning Commission on July 16th, 2018 where the
 22 application was denied approval. This decision was
 23 appealed and was reviewed by a hearing officer.
 24 The hearing officer has remanded the
 25 application to the Planning Commission where a hearing

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1 the resolution support the denial of the waiver.
 2 Julie has provided the commission members
 3 with an index for where other items are located in the
 4 packet. However, if you have difficulty finding the
 5 document during the meeting, feel free to ask me to
 6 help you locate it. It is quite a large volume, so I
 7 understand that it's cumbersome to get through.
 8 The new comments that have come in since
 9 the March meeting begin on page 84. You also have
 10 several letters in your desk packet, including a letter
 11 from an adjacent property owner requesting that his
 12 previous objections to the proposal be disregarded.
 13 There are also two letters on your desk
 14 that came in after the desk packet was published. The
 15 Planning Commission -- or actually make that -- I think
 16 it's three letters that's come in since the desk packet
 17 was prepared.
 18 The Planning Commission should review the
 19 application, site plan, staff report, and comments
 20 received and determine if the mandatory conditions
 21 contained in KP 21.29.050 will be met.
 22 The planning department recommends that
 23 the Planning Commission deny the processing distance
 24 waiver request, approve the conditional land use permit
 25 with listed conditions, and adopt the findings of fact

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1 subject to the requirements contained in the staff
 2 report. And that's the end of my report.
 3 **CHAIRMAN MARTIN:** Thank you. Before I
 4 open public comment, I'll read the rules by which these
 5 hearings will be conducted.
 6 Anyone wishing to testify must wait for
 7 recognition by the chair and state their name and
 8 address for the record at the microphone provided for
 9 public comment.
 10 Each speaker is limited to five minutes
 11 unless they have a prepared statement, in which case
 12 they may request additional time. All questions will
 13 be directed to the chair. All questions and comments
 14 will be kept to the subject at hand and shall not deal
 15 with personalities.
 16 The public shall maintain decorum at all
 17 times and treat testifiers with respect. No applause
 18 or verbal outbursts will be allowed.
 19 And the hearing procedure -- well, the
 20 chair introduces the agenda item, like I just did;
 21 staff presents a report and a recommendation; and
 22 presentation by the applicant and their
 23 representatives; and then followed by testimony by
 24 members of the public.
 25 Then we go to response by staff and

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1 testimony that was given and an opportunity for the
 2 commission to ask questions of the staff, rebuttal by
 3 the applicant. The applicant can rebut evidence or
 4 testimony but should not present new testimony or
 5 evidence.
 6 The person -- the chairperson closes the
 7 hearing and then entertains a motion. The commission
 8 deliberates and makes a decision.
 9 So I think Mr. Venuti has a comment.
 10 **COMMISSIONER VENUTI:** Mr. Chair, I would
 11 like to make a motion that we limit testimony tonight
 12 to new information rather than rehashing all the
 13 information we received already.
 14 **COMMISSIONER FOSTER:** I'll second that.
 15 **CHAIRMAN MARTIN:** Discussion? Mr.
 16 Whitney.
 17 **COMMISSIONER WHITNEY:** Yeah, I would
 18 object to that. At the last meetings and in previous
 19 meetings, everyone who has testified was told they
 20 would be able to testify again at the next hearing,
 21 being this particular one here, with no limitations or
 22 curtailment of their testimony. So they are being
 23 denied something that basically they walked out of here
 24 with a promise that they would be able to do.
 25 And I have a question of staff. I'm

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1 wondering if the change in the height requirements is
 2 different than the presentation that we had at the --
 3 the recommendations we had at the March 25th meeting?
 4 If so, that's a change to the process.
 5 **MR. WALL:** The staff recommendation has
 6 remained the same from the March 25th meeting. One of
 7 the neighbors has proposed alternate buffers, and maybe
 8 that's what you're thinking of. But the staff
 9 recommendation has not changed from the March meeting.
 10 **COMMISSIONER WHITNEY:** Well, I still have
 11 that objection.
 12 **CHAIRMAN MARTIN:** Thank you. Ms.
 13 Carluccio.
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes, I
 15 wouldn't support that either. Because one of the other
 16 things that was brought up at the last meeting was that
 17 there would be a number of people here tonight who were
 18 not in residence at that time, and they have no idea
 19 what was testified or not testified. And so I think
 20 that telling them that they couldn't repeat something
 21 that they don't even know about is, you know, beyond
 22 what we should do.
 23 **CHAIRMAN MARTIN:** Any other discussion?
 24 Roll call, please.
 25 **THE CLERK:** The motion was to limit

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1 testimony to new information only.
 2 Foster?
 3 **COMMISSIONER FOSTER:** No.
 4 **THE CLERK:** Venuti?
 5 **COMMISSIONER VENUTI:** No.
 6 **THE CLERK:** Brantley -- sorry. Ernst?
 7 **COMMISSIONER ERNST:** No.
 8 **THE CLERK:** Whitney?
 9 **COMMISSIONER WHITNEY:** No.
 10 **THE CLERK:** Carluccio?
 11 **COMMISSIONER BOKENKO-CARLUCCIO:** No.
 12 **THE CLERK:** Fikes?
 13 **COMMISSIONER FIKES:** No.
 14 **THE CLERK:** Bentz?
 15 **COMMISSIONER ABRAHAMSON-BENTZ:** No.
 16 **THE CLERK:** Ecklund?
 17 **COMMISSIONER ECKLUND:** No.
 18 **THE CLERK:** Martin?
 19 **CHAIRMAN MARTIN:** No.
 20 **THE CLERK:** Unanimous.
 21 **CHAIRMAN MARTIN:** Thank you. So at this
 22 time I will open public comment. Please state your
 23 name and address at the microphone provided, and sign
 24 in as well. And push the button at the bottom of the
 25 microphone to get it started.

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1 **EMMITT TRIMBLE:** My name is Emmitt
 2 Trimble --
 3 **CHAIRMAN MARTIN:** Hit the mic, please.
 4 **EMMITT TRIMBLE:** My name is Emmitt
 5 Trimble. I live at P.O. Box 193, Anchor Point. I
 6 personally will be pretty brief because I've lost my
 7 voice.
 8 This is our attorney of record, Stacey
 9 Stone, and we have a video that we hope to be able to
 10 play for you that unfortunately I know that it's hard
 11 for you folks to get down and take a look at sites that
 12 you're talking about.
 13 So you've looked at lots of pictures, and
 14 we just have a little video that may be helpful when
 15 we're having a discussion about things later on.
 16 I personally would like to leave you just
 17 with a couple of thoughts, phrases that are very
 18 relevant.
 19 Substantial evidence; findings of fact.
 20 Like Sergeant Friday said in Dagnet many years ago,
 21 "Just the facts, ma'am."
 22 **STACEY STONE:** Thank you, my name is
 23 Stacey Stone. I'm an attorney at Holmes, Weddle &
 24 Barcott at 701 West 8th Avenue, Suite 700 in Anchorage,
 25 Alaska, 99501.

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1 As you all have before you today, you
 2 have the remand that was passed back from the hearing
 3 officer. Within that remand, she identified the charge
 4 that's before this commission as set forth in the Kenai
 5 Peninsula Borough code.
 6 The charge to this commission is very
 7 limited in scope, and it's set forth in the code
 8 itself. It sets forth what this commission has the
 9 authority to do and what the commission has the
 10 authority not to do.
 11 It also helps to extrapolate on what the
 12 purpose of a conditional land use permit within the
 13 Kenai Peninsula Borough is, because this is not your
 14 standard -- as she referenced, this isn't where we have
 15 a residential property and they are looking for a
 16 conditional land use permit for an exemption to have a
 17 daycare in a residential area where they are running
 18 business; rather this is something that's allowable,
 19 and the borough assembly has chosen to codify how these
 20 are done legally.
 21 Essentially someone has the authority to
 22 do this on the land, and if the government is going to
 23 come in with a restriction, that restriction has to be
 24 limited by law.
 25 The law is set forth. It provides very

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1 specific conditions. If everyone checks -- if the
 2 applicant checks all of the boxes that are set forth
 3 within the code, which indeed my client has done, then
 4 it's up to this commission to look and see if there are
 5 appropriate conditions that need to be placed, and if
 6 there are appropriate conditions, then they need to be
 7 instituted and then the permit needs to be approved
 8 unless it's lacking.
 9 And we maintain that the permit -- every
 10 box has been checked. There are appropriate conditions
 11 that have been set forth, and therefore tonight this
 12 commission should approve the permit for the
 13 conditional land use.
 14 **CHAIRMAN MARTIN:** Thank you. Are there
 15 any questions from commissioners?
 16 **EMMITT TRIMBLE:** Mr. Chairman?
 17 **CHAIRMAN MARTIN:** Yes, sir.
 18 **EMMITT TRIMBLE:** If we could, with your
 19 permission, the video that we would like to play. And
 20 if the sound isn't working, my daughter who took the
 21 video will narrate it for you. And I'm done, with your
 22 permission.
 23 **CHAIRMAN MARTIN:** Yes, sir.
 24 (Whispered discussion off the record)
 25 **MR. WALL:** Mr. Chairman, while that's

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1 coming up -- never mind, it's up. So I'll --
 2 (Whispered discussion off the record)
 3 (Video played - not transcribed)
 4 **COMMISSIONER ECKLUND:** Mr. Chairman?
 5 **CHAIRMAN MARTIN:** Yes? Could you pause,
 6 please? Ms. Ecklund.
 7 **COMMISSIONER ECKLUND:** Yes, excuse me.
 8 When you say, "Looking across," could you say which
 9 direction you're looking, north, east, west -- I mean,
 10 you're saying --
 11 **ALLISON TRIMBLE PAPAROA:** Northwest. So
 12 kind of from the Danver side, like if you're up in the
 13 upper portion -- maybe you can help clarify.
 14 **COMMISSIONER ECKLUND:** The northern
 15 portion of Danver?
 16 **EMMITT TRIMBLE:** She was standing at the
 17 intersection of Kyllonen and Danver. You're looking to
 18 the west here, due west.
 19 **COMMISSIONER ECKLUND:** And that's in this
 20 one. The one where you say you're looking towards your
 21 sister's house --
 22 **ALLISON TRIMBLE PAPAROA:** I was standing
 23 just right over there. If you're looking, I was right
 24 here. So this is --
 25 **COMMISSIONER ECKLUND:** And you were

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1 looking which direction at that point?
 2 **ALLISON TRIMBLE PAPAROA:** I was looking
 3 north.
 4 **COMMISSIONER ECKLUND:** North, okay.
 5 **EMMITT TRIMBLE:** Northwest.
 6 **COMMISSIONER ECKLUND:** Okay, all right,
 7 thank you.
 8 **EMMITT TRIMBLE:** Towards my daughter's
 9 house.
 10 **UNIDENTIFIED SPEAKER:** Yeah, I don't know
 11 where that is.
 12 (Video played - not transcribed)
 13 **EMMITT TRIMBLE:** Here is looking south
 14 again. This is Kyllonen Drive.
 15 (Indiscernible-simultaneous talking while video is
 16 playing)
 17 **EMMITT TRIMBLE:** Looking north on Danver.
 18 There is the berm. You can barely see through the
 19 trees, the vegetated buffer.
 20 This is now the ingress to the pit. This
 21 berm was along there at the request of Mr. Wall and the
 22 reseeding at the request of planning.
 23 **ALLISON TRIMBLE PAPAROA:** Facing north.
 24 **EMMITT TRIMBLE:** Mr. Brantley's
 25 properties are on the other side of that berm. Mr.

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1 Whitmore's properties are right there. Mr.
 2 (Indiscernible) property is right there. This is where
 3 Mr. Bilben and others are, up in that area. This is
 4 the area that was stripped by CIC Construction. And
 5 the floor of the pit would be 25 feet below that level.
 6 This is from the beach road looking south
 7 on Danver.
 8 This is Mr. Brantley's so-called business
 9 where the sign is.
 10 **ALLISON TRIMBLE PAPAROA:** There is one
 11 final one --
 12 **CHAIRMAN MARTIN:** One final one.
 13 **ALLISON TRIMBLE PAPAROA:** That just shows
 14 across the property.
 15 **EMMITT TRIMBLE:** This is the area of the
 16 proposed Phase 2 many years down the road, if at all.
 17 Thank you for your consideration. I
 18 appreciate it.
 19 **CHAIRMAN MARTIN:** Ms. Ecklund.
 20 **COMMISSIONER ECKLUND:** Thank you. If
 21 your daughter would sign in, then she would be a person
 22 of record since she spoke, and that might be beneficial
 23 to you. And I do have some questions for you, Mr.
 24 Trimble --
 25 **EMMITT TRIMBLE:** Yes, ma'am.

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1 **COMMISSIONER ECKLUND:** -- if you don't
 2 find.
 3 **EMMITT TRIMBLE:** I think she's intending
 4 to testify as well.
 5 **COMMISSIONER ECKLUND:** Oh, later on?
 6 **EMMITT TRIMBLE:** Yeah.
 7 **COMMISSIONER ECKLUND:** Okay. Just so
 8 long as you get --
 9 **ALLISON TRIMBLE PAPAROA:** You betcha.
 10 **COMMISSIONER ECKLUND:** -- your record.
 11 **ALLISON TRIMBLE PAPAROA:** Do you have
 12 questions for me as well during this time?
 13 **COMMISSIONER ECKLUND:** No, no thank you.
 14 Mr. Trimble, in that video you were
 15 talking about that you were looking -- or the road was
 16 the beach road. And on the permit maps that are in
 17 this current 400-some page packet, it doesn't show
 18 that.
 19 So my question is, how far is your
 20 property line from beach -- from the beach, from Cook
 21 Inlet, from water?
 22 **EMMITT TRIMBLE:** From the western
 23 boundary of Phase 3 in this permit, it's probably 700
 24 feet to the beach line, more or less.
 25 **COMMISSIONER ECKLUND:** Or to mean high

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1 water, or whatever.
 2 **EMMITT TRIMBLE:** Right, yeah.
 3 **COMMISSIONER ECKLUND:** Thank you.
 4 Through the chair, could I ask some additional?
 5 On your permit application, there was a
 6 spot for listing voluntary permit conditions, and one
 7 thing that we've been asking of past gravel pit
 8 applicants or material site applicants was to
 9 voluntarily use the white noise backup alarms. And
 10 we've talked about this --
 11 **EMMITT TRIMBLE:** Yes, ma'am.
 12 **COMMISSIONER ECKLUND:** -- and it isn't
 13 added into this new application, which I think is your
 14 original. But would you be amenable to adding the
 15 white noise backup to your equipment?
 16 **EMMITT TRIMBLE:** Yes, ma'am, as long as
 17 it's my equipment I have control over. The people that
 18 I've been hiring have had their backup beepers
 19 disabled.
 20 **COMMISSIONER ECKLUND:** Okay.
 21 **EMMITT TRIMBLE:** And I have no problem
 22 with that, no.
 23 **COMMISSIONER ECKLUND:** Additional? Thank
 24 you, chair.
 25 On the map on page 71 of 438, in packet 1

1 it shows an existing stripped area, which I think was
2 all you had done at the time you first applied. But
3 you've received a counter permit since then. So there
4 is some -- that area is bigger now, the area that's
5 been stripped with the counter that had approval.

6 **EMMITT TRIMBLE:** A couple clarifications.

7 **COMMISSIONER ECKLUND:** Okay.

8 **EMMITT TRIMBLE:** When I first started
9 before I even considered a conditional use permit or
10 anything, we were just under the one-acre thing.

11 **COMMISSIONER ECKLUND:** Right.

12 **EMMITT TRIMBLE:** I had moved in in what
13 looked like uplands. And I've had a delineation done,
14 by the way, and it is, in fact, uplands.

15 But Mr. Wall pointed out that that area
16 that I had built a substantial gravel pad so trucks
17 could get in and turn around, it's on my property, he
18 pointed out that the hundred year floodplain map and
19 the riparian wetlands map, whether or not they are
20 accurate, that the permit that I got, the counter
21 permit, required that we stayed a hundred feet away
22 from those lines.

23 I said, "Yes, sir. Can I have the
24 coordinates?" He sent me the coordinates. I said,
25 "I'm going to do exactly what you tell me." We went

1 **EMMITT TRIMBLE:** No, I have no problem.
2 We just haven't changed the application.

3 **COMMISSIONER ECKLUND:** Right, right. I
4 just -- based on the staff report, and he -- Mr. Wall
5 mentioned that, the waiver again --

6 **EMMITT TRIMBLE:** Yes, ma'am.

7 **COMMISSIONER ECKLUND:** -- I just wanted
8 to make sure that you --

9 **EMMITT TRIMBLE:** No problem.

10 **COMMISSIONER ECKLUND:** -- were ready to
11 go forward with changing your processing area.

12 **EMMITT TRIMBLE:** Sure.

13 **COMMISSIONER ECKLUND:** Okay, thank you.

14 **CHAIRMAN MARTIN:** Are there any other
15 questions for Mr. Trimble? Mr. Whitney.

16 **COMMISSIONER WHITNEY:** There was some
17 indication in the material we received that there was
18 plans to do some rock crushing there. Is that a fact?

19 **EMMITT TRIMBLE:** There is no plans to do
20 that now, but it's certainly something that would be
21 permissible with the permit. It would just need to
22 have a processing location that met the conditions that
23 we're willing to agree to.

24 **COMMISSIONER WHITNEY:** But that's
25 something that could happen in the future?

1 out there, and that's what that one berm was.

2 And then we reseeded the entire -- we put
3 four inches of topsoil down and reseeded it, I don't
4 know, 6- \$7,000 worth of stuff.

5 **COMMISSIONER ECKLUND:** Okay, let me see.
6 Oh, one final one. The staff is recommending that we
7 don't approve your waiver for your processing area to
8 be less than 300 feet from the property line.

9 And I see that you've got it marked on
10 your permit map, but it is 300 feet from, like, the
11 center of Danver Road.

12 Would you be able to move that so that
13 you're within the 300 feet from your boundary, from
14 your property boundary?

15 **EMMITT TRIMBLE:** Yes, ma'am. I don't
16 have any problem with the waiver not being approved.
17 It was something the engineer recommended. You know,
18 it's 200 feet from Mr. Brna's property, I understand
19 that.

20 As is pointed out in the staff report,
21 there are many other areas to the west in Phase 2 and
22 Phase 3 where if there was a need to be 300 feet away,
23 it's possible. So I don't have any problem with that.

24 **COMMISSIONER ECKLUND:** Okay. And you
25 could move that back?

1 **EMMITT TRIMBLE:** Absolutely it could
2 happen. It's not something I've got planned, but it's
3 something that could happen.

4 Normally in a pit this size, if something
5 happens -- so maybe you have a screen or a crusher -- I
6 don't have a lot of experience with it -- there will be
7 some people testifying here that could maybe answer
8 better than I, but maybe two weeks out of the year.
9 Very limited situation. This is not a major industrial
10 pit.

11 **MR. WALL:** Mr. Chairman, would it be
12 possible for me to ask a clarifying question?

13 **CHAIRMAN MARTIN:** Please.

14 **MR. WALL:** Mr. Trimble, at the last
15 meeting you talked about the rolling berm, the moving
16 berm.

17 **EMMITT TRIMBLE:** Yes, sir.

18 **MR. WALL:** And the way that the condition
19 is written in the staff report and in the resolution,
20 it would require a 50-foot vegetated buffer with a
21 12-foot-high berm between the buffer and the
22 excavation. And that would certainly allow the moving
23 berm, but it doesn't require it the way that it's
24 worded.

25 Is it your intention to volunteer that as

Page 22

1 a condition, that you will have a moving berm, a
 2 rolling berm so --
 3 **EMMITT TRIMBLE:** Absolutely.
 4 **MR. WALL:** -- it would be --
 5 **EMMITT TRIMBLE:** I think that's the way
 6 to best minimize any effects of any kind, have the berm
 7 close to where you're working.
 8 In a small-scale operation -- I mean, the
 9 area that you saw there that's been stripped is a half
 10 acre. And that would be a long time.
 11 You know, people talk about 50,000 yards
 12 of material. You know, if you sold 10- or 15,000 yards
 13 a year, that's monumental for someone this size. And
 14 we had the opportunity to do that, but it was taken
 15 away from us.
 16 So the rolling berm is -- you'll see
 17 these LIDAR drawings, and they say, "Well, it would
 18 have to be 50 feet if it's over here." Okay, well,
 19 it's not going to be over there, it's going to be right
 20 here. It's going to be right next to where we're
 21 working, and then we would be 25 feet below the base of
 22 that 12-foot berm. So 37 feet.
 23 **CHAIRMAN MARTIN:** Ms. Ecklund.
 24 **COMMISSIONER ECKLUND:** I found one more
 25 note, through the chair, for Mr. Trimble.

Page 23

1 Part of the permit process is that you
 2 designate your haul route. And your haul route has
 3 been designated as Danver Street. But then from Danver
 4 then where are you going to go?
 5 **EMMITT TRIMBLE:** Well, I won't go
 6 anywhere.
 7 **COMMISSIONER ECKLUND:** Or whoever is
 8 hauling your gravel.
 9 **EMMITT TRIMBLE:** Yeah. Anyone that's
 10 hauling, unless they were going north up Danver to some
 11 of these folks, they would be going south a few hundred
 12 feet to the intersection, turning right, and going
 13 towards the Old Sterling Highway. At this time you
 14 can't go across the bridge.
 15 **COMMISSIONER ECKLUND:** Right.
 16 **EMMITT TRIMBLE:** Okay, so if anything was
 17 moving that way, it would be moving towards Homer on
 18 the Sterling Highway.
 19 **COMMISSIONER ECKLUND:** Okay.
 20 **EMMITT TRIMBLE:** I mean, that's one of
 21 the things that happened with -- the opposition caused
 22 Hilcorp to pull out of a deal they had with us. And so
 23 instead of running two miles on the beach road and the
 24 Old Sterling Highway, they got them to go 22 miles one
 25 way on the beach road, the Old Sterling Highway, the

Page 24

1 new Sterling Highway, and the North Fork Road. Maybe
 2 it wasn't as safe as the other option.
 3 **COMMISSIONER ECKLUND:** Just to clarify,
 4 since I'm not familiar with the area.
 5 You would go always -- if you had to get
 6 out to the new Sterling Highway, you would use the Old
 7 Sterling Highway as the haul route, not Anchor Point
 8 Road?
 9 **EMMITT TRIMBLE:** Yes, ma'am.
 10 **COMMISSIONER ECKLUND:** Okay, thank you.
 11 **CHAIRMAN MARTIN:** Is there any more
 12 questions for the applicant? We're not going to -- we
 13 have to keep the meeting better than this. Everybody
 14 is going to get their turn.
 15 **MR. WALL:** Mr. Chairman.
 16 **CHAIRMAN MARTIN:** Mr. Wall.
 17 **MR. WALL:** Just for clarification. I
 18 think Mr. Trimble misunderstood the question or
 19 something. Because in order to get to the Old Sterling
 20 Highway from Danver Street, you need to go on Anchor
 21 Point Road.
 22 **EMMITT TRIMBLE:** Yes, that's how you get
 23 to the bridge, yeah. Oh, I'm sorry, I misunderstood.
 24 That's obvious. You're going to turn off of Danver,
 25 turn right on the beach road to the Old Sterling

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1 Highway. Thank you for the clarification.
 2 **COMMISSIONER ECKLUND:** Okay, followup,
 3 please.
 4 **CHAIRMAN MARTIN:** Please.
 5 **COMMISSIONER ECKLUND:** How many miles or
 6 feet would you be on Anchor Point Road to get to Old
 7 Sterling Highway.
 8 **EMMITT TRIMBLE:** Less than a mile, or
 9 approximately a mile.
 10 **COMMISSIONER ECKLUND:** Less than a mile.
 11 Okay, thank you.
 12 **CHAIRMAN MARTIN:** Any other commissioner
 13 questions? None at this time.
 14 **EMMITT TRIMBLE:** Thank you, I appreciate
 15 your consideration.
 16 **CHAIRMAN MARTIN:** Next testifier, please.
 17 **PAUL MORINO:** Hello, thank you ladies and
 18 gentlemen. My name is Paul Morino. I reside at Silver
 19 King RV Village at basically the corner of Ann Street
 20 and Anchor Point Road.
 21 I'm one of at least 70 residents that
 22 reside on Anchor Point Road within that one mile from
 23 Danver Street to the Old Sterling Highway.
 24 Silver King RV Village incorporates 88
 25 individual lots with approximately 70 residential

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1 owners. Many of us live there throughout the entire
 2 summer and into late September and even in April.
 3 I wasn't at the last meeting, so you
 4 probably discussed the noise concerns earlier, but I
 5 want to bring up something that the applicant's
 6 daughter pointed out of the 27 four-wheelers not going
 7 up and down the road.
 8 One truck going up and down that road
 9 equals the noise of 32 cars, and that was from a study
 10 done in 2000 by the Canadian government. So we may not
 11 have 27 four-wheelers, but there is going to be -- for
 12 each truck going down that road, the noise level is
 13 going to be equivalent of 32 cars.
 14 One thing I'm concerned about is a
 15 statement by the applicant that says that, "Just the
 16 facts." Well, yeah, Jack Webb said, "Just the facts,"
 17 but there is also just the amount of people involved
 18 just on the one mile of the Anchor Point Road.
 19 I don't know how many tourists and
 20 tourist dollars are spent on that one mile of road
 21 alone with the three or four state campgrounds just on
 22 the other side of Silver King RV Village. But if not
 23 over a thousand people, it's got to be close to a
 24 thousand tourists coming there and camping and residing
 25 there throughout the entire summer.

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1 Again, I don't know how big of an issue
 2 the noise is in the scheme of things, but for anybody
 3 who resides right there on that road, the trucks, the
 4 truck noise is going to be pretty loud.
 5 And how many trucks are there going to
 6 be? I mean, the applicant says that there's going --
 7 it's going to be a small operation. What's a small
 8 operation? How many trucks are going up and down that
 9 road? I don't know.
 10 Anyway, that's my major concern is just
 11 the amount of traffic on that roadway and the amount of
 12 noise on that roadway and what it's going to do to all
 13 the people that visit that area, that one small
 14 stretch. That's all I have.
 15 **CHAIRMAN MARTIN:** Thank you. Any
 16 questions? Ms. Ecklund.
 17 **COMMISSIONER ECKLUND:** Do you have the
 18 title of that 2000 study that you referenced?
 19 **PAUL MORINO:** There is a U.S. DOT 1995
 20 noise report that stated one truck traveling 55 miles
 21 an hour equal 28 cars. And the one from --
 22 **COMMISSIONER ECKLUND:** How many miles per
 23 hour, sir, excuse me?
 24 **PAUL MORINO:** 55. And of -- the speed
 25 limit on that road is 25.

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1 **COMMISSIONER ECKLUND:** Yeah, okay.
 2 **PAUL MORINO:** But the other study, if I
 3 could quickly look real quick, it's a Transit Canada
 4 2000 Noise Centre, C-e-n-t-r-e, BC Transit. I didn't
 5 write down the website.
 6 **COMMISSIONER ECKLUND:** Okay, thank you.
 7 **PAUL MORINO:** Yep.
 8 **CHAIRMAN MARTIN:** Any other questions for
 9 our testifier? Seeing none, thank you.
 10 **PAUL MORINO:** Thank you.
 11 **CHAIRMAN MARTIN:** Next, please.
 12 **JUDY AARON:** It was already on, sorry.
 13 My name is Judy Aaron, and I live on 73691 Ann Court.
 14 I also live in the Silver King RV park, and I'm
 15 thankful that you let us speak up today. I was not
 16 able to attend any of the previous meetings.
 17 I share the same concerns about the
 18 amount of noise when it talks especially about the
 19 buffer zones and the noise on the road and the amount
 20 of trucks going up and down. That's a very small road.
 21 And just the maintenance of both -- and then the state
 22 maintenance and the borough maintenance. And that's
 23 all.
 24 **CHAIRMAN MARTIN:** Thank you. Mr. Whitney
 25 has a question.

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1 **COMMISSIONER WHITNEY:** From where you're
 2 located in the RV park, can you hear any of the
 3 operation that's going on in the current gravel site?
 4 **JUDY AARON:** I don't think -- I don't
 5 know if they are really operating right now. But I can
 6 hear the road traffic.
 7 **COMMISSIONER WHITNEY:** Thank you.
 8 **JUDY AARON:** But currently I don't see
 9 vehicles going back and forth for the gravel operation.
 10 **CHAIRMAN MARTIN:** Any other questions?
 11 None at this time, thank you. Next testifier, please.
 12 **LINDA BRUCE:** My name is Linda Bruce.
 13 And let's see if I can't get this done really quick.
 14 And I live at Post Office -- well, I
 15 don't live at Post Office Box. My address is Post
 16 Office Box 39004, and that's Ninilchik, Alaska 99639.
 17 And I have not been at any of the
 18 previous meetings. So I do know some of the input
 19 that's been done, but I -- and hopefully I won't touch
 20 on it, but I haven't -- you know, I haven't been here.
 21 We own property down in Anchor Point,
 22 which is practically adjacent to the gravel pit. We
 23 bought that property from Emmitt and Mary Trimble a
 24 long time ago. And Emmitt -- I'll touch on the
 25 newspaper article, but first I want to touch on the

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1 video.

2 The video, I'm not sure what the specific

3 point of the video was, but if it's to show the gravel

4 pit or what it was there for, but if it was to

5 demonstrate the pristine and lovely nature of the area,

6 it did that. And that the gravel pit is right in the

7 middle of that pristine and lovely area, it succeeded

8 at that, it was great for that.

9 But I will touch on the newspaper article

10 that recently came out that was talking about the

11 40-year trust that -- and these are quotes from Mr.

12 Trimble -- the 40-year trust relationship with the

13 people of Anchor Point, my parents being two of those

14 people, my husband and I being two more of those

15 people, and selling and buying property.

16 And my feeling now is that Mr. Trimble

17 has broken that trust. And in the newspaper he talked

18 about the properties, the gravel pit being in an

19 unincorporated, unzoned area.

20 You know, I thought that was really

21 interesting, because that's the very reason that most

22 of us here bought there. We buy there because it's

23 outside the city, it's outside all the craziness that's

24 in Anchorage or Wasilla or Girdwood or wherever, it's

25 outside all of that. It's outside Soldotna, it's

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1 outside Kenai. And we've had an apartment building for

2 years in Kenai, and trust me, Ninilchik is a lot

3 quieter than Kenai.

4 So I understand the unincorporated,

5 unzoned area. But then to play that card, to ask for a

6 permit for a gravel pit in that pristine area is really

7 an insult. At that critical point in Anchor Point,

8 it's really an insult to all of us who have put our

9 trust in Mr. Trimble and then to have a gravel pit in

10 our backyard. It really is insulting.

11 And he says that in 15 years they will

12 rebuild, they will make it all great. Well, some of

13 the gravel pits around here, in fact, one in Ninilchik

14 has been going for 40 years. So 15 years is a really

15 aggressive target, and quite truthfully, some of you

16 are younger than me, but I can tell you right now, if I

17 live the 15 years, I may not live long enough to see

18 that gravel pit be reconstituted to something really

19 great. And so I don't want to wait 15 years to see

20 Anchor Point rebuilt to something really great.

21 So I really -- I mean, I think you would

22 know that I object to this. But what my question to

23 you is, do we -- is there a point to public input?

24 Does public input -- because I saw Mr. Trimble's

25 attorney get up here and say, "We've met all the

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1 conditions and we should be granted the permit."

2 So does public input, the letters,

3 everything, does that really have any bearing on this

4 process? And I don't know who can answer that or if

5 all of you can answer that, but does it have any

6 bearing, or are we all just wasting our time because

7 the permit is going to be granted because the

8 conditions have been met? And that's really all.

9 **CHAIRMAN MARTIN:** Thank you. Any

10 questions? None at this time, thank you, ma'am.

11 Next testifier, please.

12 (Indiscernible - whispered conversation)

13 **CHAIRMAN MARTIN:** Are we ready for the

14 video over there? Will you let us know when it's --

15 your request? Thank you, whenever you're ready, sir.

16 **MARK CLAYPOOL:** My name is Mark Claypool.

17 I'm the president of the association at Silver King RV

18 Village Association. I have two things.

19 Number one, Mr. Whitney's question about

20 the noise. We hear the surf from where we're at, so

21 there is no doubt in my mind we're going to hear what

22 comes from that gravel pit.

23 Number two, if the haul road, meaning

24 Anchor Point river road cannot be safe with these

25 trucks running up and down and permission not be

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1 granted -- I'm surprised that Mr. Trimble didn't

2 mention this road, he's lived here for so many years.

3 But that's all I've got.

4 **CHAIRMAN MARTIN:** Any questions? Not

5 now, thank you. Next.

6 **CHRISTINA ELMALEH:** Hi, my name is

7 Christina Elmaleh, I live at 34885 Seabury Court, which

8 is kind of up and above the gravel pit. And I just

9 want to testify to the noise.

10 I quit my job about a year ago to stay

11 home with our then two-month old. We have a couple

12 kids, and I could hear the noise from the operations at

13 the gravel pit throughout the day, so much so that any

14 time my dog could hear it, she was freaking out and

15 barking, so that just kind of added to it.

16 But we can definitely hear the noise from

17 where we're at. It's a bit of, like, an amphitheater

18 that kind of magnifies it up to our house.

19 The reason we bought where we bought was

20 actually to be away from gravel pits. We didn't look

21 at anything near a gravel pit at the time to keep that

22 kind of noise away from our young -- two young kids and

23 to be in a safe, open area. So I just wanted to

24 testify that we can hear it from our house, and that I

25 am against the gravel pit.

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1 **CHAIRMAN MARTIN:** Thank you. Any
2 questions? Mr. Whitney.
3 **COMMISSIONER WHITNEY:** How far away from
4 the pit are you actually?
5 **CHRISTINA ELMALEH:** A quarter -- like a
6 quarter mile.
7 **COMMISSIONER WHITNEY:** Okay, thank you.
8 **CHAIRMAN MARTIN:** Any other questions?
9 None at this time, thank you. Next testifier, please.
10 **TERESA JACOBSON GREGORY:** Hi, I'm Teresa
11 Jacobson Gregory, and that poster is a picture of my
12 neighborhood.
13 **UNIDENTIFIED SPEAKER:** Excuse me, Julie,
14 could you just stand it up a little bit more because
15 it's glaring and we can't really see it. Thank you.
16 **TERESA JACOBSON GREGORY:** And if you look
17 in your packet on page 343, there is a map of -- with
18 red area that shows a small portion of this picture,
19 and it also shows where the gravel pit -- the full
20 gravel pit will be.
21 And I just want to thank you all for
22 serving and being a member of this Planning Commission
23 for each of our communities in the Kenai Peninsula
24 Borough. Also being willing and already willingly
25 denying this conditional use permit and then hearing us

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1 again after the appeal.
2 I question the fact that a conditional
3 land use permit was denied and then the director and
4 the planner approved a two-and-a-half acre
5 over-the-counter gravel permit for Beachcomber, LLC
6 immediately after the denial that does not have to
7 require a public comment.
8 There have been several written comments
9 about the Planning Commissioners. On March 25th, 2019
10 at the Planning Commission meeting Mary Trimble stated,
11 quote, "The staff is recommending approval. The
12 planning director Bruce and the borough attorney have
13 all visited the site and saw no issues with our plan.
14 The borough attorney has, in her briefs, interpreted
15 the code and stated case law to back up her position
16 that the permit should be granted.
17 These are professional, educated people
18 who represent the borough interests and who interpret
19 and enforce the code," end quote.
20 And then in -- another letter addressed
21 to you as the Planning Commissioners for this meeting
22 was from Allison Trimble, their daughter. "When the
23 Planning Commission denied the application last year,
24 you did so against the recommendation of the staff and
25 in direct violation of your duties," unquote.

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1 I looked up the Planning Commission
2 administration codes, and 2.4.005 [sic] and 2.4.007
3 [sic], you as Planning Commissioners have investigation
4 and recommendation authority. Also, you have approval
5 or -- you can approve or rejection, you have that
6 authority. So when they tell you that you don't have
7 any right to do these borough codes, that's not so.
8 Now we're back to the main point where
9 the borough ordinances are -- I know that you can only
10 act on certain codes in the borough, which is
11 minimizing off-site dust movement, which, if you go out
12 and look at my car right now, you'll see after the
13 borough graded the roads, we're all yellow from Anchor
14 Point.
15 Minimizes noise disturbance to other
16 properties, minimizes visual impacts, and while the
17 first one was protects against physical damage, which I
18 believe will be physical damage to our property as far
19 as value.
20 The definition of minimize is to reduce
21 something -- especially something unwanted or
22 unpleasant to the smallest possible amount or degree.
23 The codes are set up for guidelines for all of the
24 Kenai Peninsula Borough residents.
25 I live about a hundred feet above this

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1 area for the conditional lands permit, and there is no
2 way that it's possible to minimize the noise
3 disturbance.
4 I called and invited Mr. Wall to come and
5 sit on my deck and listen when they first started back
6 in August after they gave them the two-and-a-half acre
7 permit, but I mostly wanted him to hear the quiet, the
8 sounds of the ocean, and then the racket of the Cats
9 and the trucks moving dirt. He didn't come. And I
10 invite any of you to come to my deck and listen, and I
11 hope at least that you've seen this area for yourself.
12 And as you can see in that picture, there
13 is no gravel pit within a long area of that one.
14 I quote again from Mary Trimble's
15 statement on March 25th of 2019 in the Planning
16 Commission meeting, "Emmitt and I believe in rights and
17 responsibilities. This is a situation where we are
18 agreeing to take on responsibilities in exchange for
19 the right to excavate gravel on our property. The
20 opposition, quote, has the right to protect their
21 property, but are unwilling to accept the fact that
22 they have a responsibility to do what they can to
23 minimize visual and noise, if it is bothersome, by
24 building a fence or a berm on their property or
25 installing blinds that rise up from the bottom so that

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1 they will still have an inlet view. They do not have
 2 right to our land, so we should not bear all the
 3 responsibility for mitigating their perceived
 4 discomfort," unquote.
 5 **CHAIRMAN MARTIN:** Could you please
 6 summarize.
 7 **TERESA JACOBSON GREGORY:** Sure. Mary and
 8 Emmitt do not live on that property. They live five
 9 miles north from this property. And it's been said
 10 many times that this is their legacy property, which
 11 nobody lives on the land right now, and that they
 12 bought it three-and-a-half years ago.
 13 We as residents live on our property, and
 14 it's truly our legacy that we moved there. We bought
 15 here and there was no gravel pits. This gravel pit is
 16 located in our neighborhood, which is beautiful and
 17 pristine, as you can see.
 18 One other point, today, right on the end
 19 of Danver Road where the dump trucks will exit, it
 20 takes 29 seconds to get to the first campground on the
 21 left of Anchor Point Road where I saw a tent just from
 22 me to you.
 23 So I hope you will not let your -- my
 24 husband and I have lived here for 23 years, and during
 25 that time we have met people from all over the world

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1 right here on the Anchor River and the Anchor Point
 2 beach, Finland, Sweden, Germany, China, Japan, many,
 3 many others, all the Alaskans, all the people from the
 4 Lower 48.
 5 Please don't let your names go on record
 6 that you approved this conditional land use permit, and
 7 it stays with this property and will not go away.
 8 Thank you.
 9 **CHAIRMAN MARTIN:** Thank you. Any
 10 questions? None at this time, thanks for your
 11 testimony. Next person, please.
 12 **PETE KINNEEN:** My name is Pete Kinneen,
 13 and I live on Danver. I forgot to sign in here.
 14 **CHAIRMAN MARTIN:** And your complete
 15 address, please.
 16 **PETE KINNEEN:** It's 34969 Danver. And
 17 does the five minutes start when I walk up here? So
 18 the sign-in takes out of the --
 19 **THE CLERK:** No, I paused it while you
 20 signed in.
 21 **PETE KINNEEN:** Huh?
 22 **THE CLERK:** I paused it while you signed
 23 in. But I'll just (indiscernible).
 24 **PETE KINNEEN:** Thank you. I totally
 25 agree with the speaker before me. And frankly this

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1 whole thing is a head-on collision. The tension -- let
 2 me just define it very quickly. The tension is between
 3 the interpretation of the existing law.
 4 The ordinance is very clear, and there
 5 has been a lot of effort to mesmerize you into
 6 believing that the laws -- that the ordinance says
 7 something that it doesn't.
 8 The Planning Commission is a higher
 9 authority. You are the judge, you are the jury, not
 10 the department. They are here to support you, not to
 11 oppose you.
 12 The default position -- this is extremely
 13 important. Almost nothing else really matters.
 14 Everything else is the details, but the clear legal
 15 default position here is denial.
 16 There is a lot of silliness, nonsense
 17 about land owners have rights to extract gravel. That
 18 is absolutely not true.
 19 Land owners have rights to do certain
 20 things. They have rights to do everything that is not
 21 excluded. A land owner, including this land owner,
 22 could put in an automotive junk yard, they could raise
 23 pigs, there is all kinds of different things they could
 24 do.
 25 But under the borough ordinance, living

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1 outside a zoned area is not living in the Old West, it
 2 is not living in unrestricted areas.
 3 The whole reason you're here, the
 4 conditional land use permit, the CLUP, is the people
 5 voting through the assembly to tell you that there are
 6 certain things that are not a right, they are a
 7 privilege.
 8 If they meet certain conditions and come
 9 to you and you agree that they -- that the conditions
 10 meet the standards, then you are authorized to grant a
 11 permit. It is not a default position.
 12 The exclusion anywhere in the borough,
 13 including in the zoned or the outzoned areas, is you do
 14 not have a right to extract gravel. You must come in
 15 and go through this process. You are charged with
 16 looking at the very clear standards written in plain
 17 English that start with the intent. And the intent is
 18 to protect the existing neighborhood.
 19 And if the applicant can meet certain
 20 conditions to meet those standards, then you are
 21 authorized possibly to grant the permit; otherwise,
 22 again, default position is denial.
 23 And that is where we are right now. The
 24 standards cannot be met on this particular site for all
 25 the reasons that have been given to you because of the

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1 topography and the unique geography of it. And you
 2 know that this is not the right place for a gravel
 3 mining operation. You've been quoted as saying that.
 4 And there has been a lot of confusion
 5 about you have to approve this because, as the first
 6 speaker said, the applicant [sic] has been made and the
 7 box has been checked. True, they have. They have been
 8 checked, but they haven't been -- they do not meet the
 9 conditions. They cannot meet the conditions under the
 10 borough ordinance and the definitions of the conditions
 11 meeting the standards.
 12 You're going to find some great
 13 information tonight from the borough's own technology,
 14 which will demonstrate to you that this applicant
 15 cannot meet the conditions or the standards, it must be
 16 denied.
 17 The first attorney who spoke tonight, a
 18 lot of smoke, made a bad conclusion. It's a
 19 misstatement of the law, read it. I mean, I'm happy to
 20 answer any questions into detail of any of that, thank
 21 you.
 22 **CHAIRMAN MARTIN:** Thank you. Any
 23 questions for Mr. Kinneen? Ms. Carluccio.
 24 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes,
 25 thank you. In your speaking and us seeing that graph

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1 up there, is that part of your speech?
 2 **PETE KINNEEN:** That's -- yeah. What that
 3 shows is that when I wake up in the morning, I look out
 4 the bedroom window. And the graphic that was brought
 5 up by the applicant shows a, whatever, a 12-foot berm
 6 or something. I'm 70 feet above that. And I look
 7 right over it as if it wasn't there.
 8 This is the equivalent -- the
 9 amphitheater effect is the equivalent of living in a 7,
 10 8, 10, 12-story building, and there is something going
 11 on right downstairs. You can't put a berm up.
 12 So yeah, to -- under the regulations,
 13 to -- what does that say, the berm would have to be 43
 14 feet tall to meet the conditions, to meet the
 15 standards. And if they want to build that, then you
 16 can authorize it. But a 6 foot or 12 foot or 14 foot
 17 doesn't do anything at all.
 18 **COMMISSIONER BOKENKO-CARLUCCIO:** Through
 19 the chair. One of the things that Mr. Trimble said
 20 when he started off was that from where it is now it's
 21 going to potentially go down another 25 feet.
 22 **PETE KINNEEN:** Right.
 23 **COMMISSIONER BOKENKO-CARLUCCIO:** What
 24 difference would that make to your graph?
 25 **PETE KINNEEN:** It wouldn't make any

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1 difference. For example --
 2 **COMMISSIONER BOKENKO-CARLUCCIO:** Well, if
 3 he goes -- if he drops down 25 feet --
 4 **PETE KINNEEN:** It's still -- imagine I'm
 5 in a 7th floor apartment and he's just a few hundred
 6 feet out. I'm going to watch him dig down over 15
 7 years, dig down from that elevation to 25 feet deeper.
 8 And the noise is horrendous.
 9 And also the dust -- in his pictures,
 10 he's showing -- to answer your question, he hasn't
 11 vegetated anything, he hasn't thrown any grass seeds
 12 out, and every time the wind blows, it blows the dust
 13 off of that up into the hills and into my house and
 14 everybody else's house. And it's just -- you can't do
 15 it, really.
 16 **COMMISSIONER BOKENKO-CARLUCCIO:** One more
 17 question. Is how far -- you probably said it, but I'm
 18 sorry, I don't remember -- how far from the gravel pit
 19 are you?
 20 **PETE KINNEEN:** Across the street. I'm on
 21 Danver. So however wide Danver is, I guess, is how far
 22 I am away from it.
 23 **COMMISSIONER BOKENKO-CARLUCCIO:** 30 feet?
 24 **PETE KINNEEN:** Yeah.
 25 **COMMISSIONER BOKENKO-CARLUCCIO:** 50 feet?

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1 **PETE KINNEEN:** 50 -- let's call it 50.
 2 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
 3 thank you.
 4 **PETE KINNEEN:** You're welcome.
 5 **CHAIRMAN MARTIN:** Any other questions?
 6 Mr. Foster.
 7 **COMMISSIONER FOSTER:** Sir, Mr. Kinneen, I
 8 don't want to be disrespectful, but I just was
 9 thinking, you know, I wanted an unobstructed view of
 10 the ocean, and the only way I could do that is buy it
 11 right on the bay.
 12 And I was just wondering if -- you
 13 indicated or somebody else said that there is no zoning
 14 against a junkyard or a car lot or something like that.
 15 **PETE KINNEEN:** Right.
 16 **COMMISSIONER FOSTER:** And so if rather
 17 than a gravel pit he had just brought in acres and
 18 acres of pigs, we're going to have a smell, we're going
 19 to have nothing to good [sic] look at, but there is
 20 really nothing you can do here.
 21 Here we do have some little bits of
 22 things that we can try to do, and that's -- just be
 23 aware that we're trying to do everything we can. But
 24 there is not so much you can do with this grand view
 25 that we're looking at.

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1 **PETE KINNEEN:** Wait, with the what?
 2 **COMMISSIONER FOSTER:** A grand view. You
 3 know, you're looking at this from the 7th floor or that
 4 kind of a thing.
 5 **PETE KINNEEN:** Good question, if I can
 6 answer that, thank you. No discussion here about the
 7 grand view. The ordinance is very clear, it's not
 8 about the grand view, it's not about taking their view,
 9 their view shed or anything.
 10 The ordinance speaks entirely to
 11 shielding us from seeing the actual operation, and
 12 that's what the fence is about.
 13 Like on a junkyard you put up a fence,
 14 you drive down, you know there is a junkyard over
 15 there, but you can't see it.
 16 So the only view consideration is to
 17 shield us from the ugliness of this open pit mine. It
 18 doesn't have anything to do with the rest of the view,
 19 which is there.
 20 And the addressing your valid concerns
 21 about, well, he could put in a pig farm. So he's not
 22 putting in a pig farm, so why not just take the gravel?
 23 I wish we were in college and I could
 24 debate you, that would be fun, in that because he's not
 25 cutting off my left arm, it's okay for him to cut off

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1 my right arm? No. Are we in agreement, that's not a
 2 good argument? Okay, all right, then I won't debate
 3 it.
 4 What was your other point?
 5 **COMMISSIONER FOSTER:** That's all.
 6 **CHAIRMAN MARTIN:** Mr. Wall.
 7 **MR. WALL:** Mr. Chairman, yeah, thank you,
 8 Mr. Chairman.
 9 For clarification, Mr. Kinneen, how many
 10 lots are between your residence and the proposed gravel
 11 pit?
 12 **PETE KINNEEN:** How many lots?
 13 **MR. WALL:** Yeah. I mean, you said --
 14 **PETE KINNEEN:** A single lot.
 15 **MR. WALL:** Okay, I just wanted to make
 16 sure that was clarified. Okay, thanks.
 17 **PETE KINNEEN:** Sure.
 18 **CHAIRMAN MARTIN:** All right, Mr. Whitney.
 19 **COMMISSIONER WHITNEY:** Who prepared that
 20 diagram?
 21 **PETE KINNEEN:** I'm sorry?
 22 **COMMISSIONER WHITNEY:** Who prepared that?
 23 **PETE KINNEEN:** Mr. Whitmore, who has got
 24 experience in dealing with this. This is the borough's
 25 technology. We're taking this right from the borough.

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1 And again, you'll see it, it demonstrates
 2 that this mine cannot be permitted under the existing
 3 law. It's very clear.
 4 **CHAIRMAN MARTIN:** Any other questions for
 5 Mr. Kinneen? None at this time, thank you. Mr.
 6 Whitmore.
 7 **LYNN WHITMORE:** It would probably help if
 8 I explain what we have here. This is the borough's GIS
 9 system utilizing their LIDAR. We're going to have a
 10 few more of these to show, so it's probably a good idea
 11 for everybody to understand how I came up with these.
 12 And I worked with Chris Clough back when
 13 he first started to do the GIS, and I worked with him
 14 non-stop. And I've worked with the borough's GIS
 15 system for quite a few years in a professional
 16 engineering business.
 17 So what you do with the borough's system
 18 is you start right here and you run a transect to a
 19 certain point. And it's going to -- you click a
 20 button, and it's going to give you a side elevation
 21 view of that layout.
 22 What I did was converted that to AutoCAD,
 23 and then put it to scale so I could measure things and
 24 put it in the proper perspective.
 25 Each house floor is about ten feet in

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1 height, including the floor trusses -- the floor
 2 joists. And so everything here should be pretty much
 3 to scale.
 4 And as we go on, it probably would be
 5 fair, because there is going to be a moving berm
 6 process here, and we've all talked about that with our
 7 group. And, in fairness, it seems like if I'm going to
 8 demonstrate the moving berm and we're going to talk
 9 about it, it seems like the applicant should be able to
 10 interact somewhat with this, too, to show us what his
 11 plans are. But we haven't had a chance to run that by
 12 everybody yet, and he may not want to, but I suspect he
 13 might. Thank you.
 14 **CHAIRMAN MARTIN:** So is that the end of
 15 your presentation? You're just going to be here in
 16 case you can support some of the other testifiers?
 17 **LYNN WHITMORE:** I don't mean that to be
 18 my presentation, I mean that to be an explanation of
 19 what I have here.
 20 **CHAIRMAN MARTIN:** Okay.
 21 **LYNN WHITMORE:** Thanks.
 22 **CHAIRMAN MARTIN:** So we'll bring up
 23 another testifier.
 24 **LYNN WHITMORE:** Please.
 25 **CHAIRMAN MARTIN:** Yes, ma'am.

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1 **ALLISON TRIMBLE PAPAROA:** My name is
 2 Allison Trimble Paparoa, I live at 3020 Upland Way,
 3 Ferndale, Washington, and I've also recently purchased
 4 a home on Kyllonen Drive. I'm also a, you know,
 5 multiple decade property owner in the borough and
 6 taxpayer.
 7 I'm going to speak to a couple things
 8 that I think I'm qualified to speak to. I've written
 9 more in my letter. The first thing I'm going to speak
 10 to is that on June 1st we opened up the property to the
 11 entire public to be there, to ask questions, to look at
 12 the site, to talk to our family, and to have a good
 13 barbecue.
 14 Three people from the opposition took
 15 advantage of that. None of the three people are in
 16 this room. Of the three parties, two have since
 17 changed their position after being there, and the third
 18 didn't really have a strong position.
 19 What I would like to read from you is
 20 from the letter that was submitted to you by Lee and
 21 Mark Yale. It says, "My wife Lee and I would like to
 22 withdraw our objections to the proposed gravel pit,
 23 which includes all oral and written correspondence.
 24 Through our conversations, we are satisfied that the
 25 KPB will protect our interests as tax paying property

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1 owners.
 2 We also have had several conversations
 3 with Mr. and Mrs. Trimble and took advantage of the
 4 Trimbles' hospitality of the open house on June 1st.
 5 The current berm on the two-and-a-half acres displays
 6 the type of berm and use. I cannot see the surrounding
 7 homes out of the pit as it is now.
 8 Our only other concern was the
 9 reclamation of the property as this could affect
 10 surrounding property values. Upon our tour of the
 11 property, Mr. Trimble showed us where he has reseeded
 12 and reclaimed an area which was done very well. We
 13 also realized to not reclaim this property upon
 14 termination of mining activity would be a mistake as
 15 the property would not have the value as it is in a
 16 pristine location."
 17 We just would like to extend a thank you
 18 to the people who did show up with an open mind, asked
 19 us questions, and were there in the spirit of
 20 compromise, because that really was what we were
 21 attempting to do with that.
 22 We rolled open the doors and invited
 23 everybody to come, and I think the people who came felt
 24 that they were well received.
 25 The other thing I'd like to speak to, I

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1 own a real estate brokerage in Washington state. I am
 2 the president-elect of our Whatcom County Association
 3 of Realtors, and my job as such is to deal with land
 4 use and the loss of private property rights.
 5 In my brokerage I work largely in rural
 6 areas, meaning outside of the city limits, trying to
 7 help property owners navigate the mounting regulations
 8 in order to utilize their properties for even
 9 residential purposes.
 10 What we love about Alaska is the ability
 11 to live and let live and actually own our property, the
 12 bundles of rights attached and intact.
 13 This is a slippery slope, with the next
 14 step being borough-wide zoning with restrictions on all
 15 properties, including residential.
 16 One of the scare tactics that has been
 17 brought up is that there is going to be a devaluation
 18 of property, the property values around a gravel pit.
 19 The borough assessor claims that they have no -- they
 20 do not devalue properties or change the assessments
 21 based on them being located near a gravel pit. And for
 22 their practical use shows that there have been two
 23 sales recently at full asking price in the area, and
 24 there is a third one that's pending.
 25 I called and spoke to the listing agent.

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1 I asked him if there was any impact that he believed on
 2 his sale from the adjoining properties, to which he
 3 asked me, "Do you have the property that has the old
 4 Connex butted up against it?" And I said, "No, we have
 5 the gravel pit down below." And he said, "It was never
 6 mentioned and didn't seem to have an effect on it."
 7 And he did say it was a solid sales price.
 8 You were also provided with a letter from
 9 Marjo Cardon, a realtor at the Kachemak Group, stating
 10 she was solicited by a complainant to give a CMA on
 11 their property because they were intending to sell it.
 12 They led her to believe that she would be listing the
 13 property, but on her arrival only talked about the
 14 gravel pit, twisting it to fit the narrative and did
 15 not list the property. She referred to their tactic as
 16 panic pedalling, and shared with you her experience
 17 with property values next to gravel pits.
 18 So I just want to state that there isn't
 19 any truth to the fact that it's going to devalue these
 20 properties, and as property owners ourselves, that
 21 would be the last thing we would be trying to do in
 22 that area. We have not made our living as gravel pit
 23 owners, we have made it as property owners.
 24 And they pointed out very clearly, we
 25 have sold a lot of the properties in this area and are

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1 very proud of it and have done a good job of being good
2 stewards of the land.
3 I really struggled with what to say
4 because it's really easy to get caught up in trying to
5 respond to the inaccuracies and misinformation and
6 defamation from opposition.
7 What it comes down to is that your duty
8 and your charge is to deal with what is set forth in
9 the CLUP, and that's been said. The superseding code
10 to be met is set forth in this ordinance. In all three
11 recommendations from staff, my parents have voluntarily
12 met or exceeded the required standards.
13 As the Planning Commission, it's a
14 thankless and difficult position, especially when faced
15 with these sorts of antics; however, what you're
16 charged with is to follow the codes and ordinances that
17 are set for all of us through legislation. In this
18 situation it's simple. The conditions have been met
19 and the permit must be issued.
20 It's also time that this decision is made
21 tonight to stop unnecessary use of taxpayer dollars and
22 to end the damages being done to the applicant.
23 **CHAIRMAN MARTIN:** Thank you. Any
24 questions? Mr. Whitney.
25 **COMMISSIONER WHITNEY:** On the Yales'

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1 property on the letter you mentioned, what level are
2 they -- their property? Is it on the same level as the
3 pit, or is it up in the -- up above it or just where --
4 **ALLISON TRIMBLE PAPAROA:** They are on the
5 same level as the pit, and they would be bordering
6 Phase 3. So they would have direct impact from Phase
7 3.
8 **COMMISSIONER WHITNEY:** So they would be
9 on the same level, and they would be just looking at
10 the berm?
11 **ALLISON TRIMBLE PAPAROA:** Yes, they are
12 adjoining the property, correct.
13 **COMMISSIONER WHITNEY:** Thank you.
14 **CHAIRMAN MARTIN:** Anyone else? No
15 further questions at this time, thank you. Next
16 testifier, please.
17 **GARY SHERIDAN:** My name is Gary Sheridan,
18 and I'm in Anchor Point. I live at 34860 Seabury
19 Court, and I'm probably a secondary, you might say, lot
20 away from the view down into the gravel pit as some of
21 the other people here.
22 But there has been quite a bit of back
23 and forth about statement of fact, and I would like to
24 present some statement of fact that you can look at.
25 Earlier I had the clerk hand out a packet

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1 of photos that show the Anchor River Road, and there
2 are -- some of those photos are in your other packets,
3 but I just gave you the whole -- all the photos that I
4 took.
5 The Anchor River Road is -- which is --
6 the proposed gravel pit owner will use as part of his
7 haul route is in terrible condition. In a letter to
8 Bruce Hall -- Wall, excuse me, Bruce -- KPB Planning
9 Department dated March 21st, 2019, State of Alaska,
10 Department of Transportation, Joselyn Biloan, area
11 planner DOT stated, "Anchor River Road is in extremely
12 poor condition, and additional heavy truck travel will
13 only hasten further deterioration." And that letter is
14 in your packet as well.
15 The Beachcomber, LLC gravel pit
16 application states they plan to haul 50,000 cubic yards
17 of gravel each year for 15 years from the proposed pit
18 on Danver Road. The only access to other destinations
19 for Danver Road is the Anchor River Road.
20 If we estimate the pit operation to have
21 a five-month season to move 50,000 cubic yards of
22 gravel, that would equal approximately 5,000 cubic
23 yards per day, a hundred day season assuming. A gravel
24 truck will carry in excess of 10 cubic yards per load,
25 which means the pit operation under the proposed gravel

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1 pit application would haul about 50 gravel truck loads
2 on the Anchor River Road per day.
3 In addition, that would mean there would
4 be 50 empty trucks returning. So that's the number of
5 a lot of gravel trucks.
6 Gary Cullip, a long-time highway
7 construction contractor in Anchorage has stated the
8 present condition of the Anchor River Road simply won't
9 hold up to this kind of heavy gravel truck traffic.
10 In a recent public hearing at the
11 material site workgroup meeting, the owner of the
12 proposed gravel pit stated that they decided to limit
13 their annual production to 10,000 cubic yards of gravel
14 per season. This is rather curious as their gravel pit
15 application states that they plan to haul up to 50,000
16 cubic yards.
17 But at any rate, 10,000 cubic yards of
18 gravel being hauled over the Anchor River Road means
19 that 10 heavily loaded gravel trucks will travel the
20 Anchor River Road one way each day and return empty for
21 a total of 20 gravel truck trips per day.
22 I spoke to Mr. Cullip about the lesser
23 hauling. He stated that even 20 gravel trucks per day
24 will seriously further damage the Anchor River Road.
25 It has been stated in written testimony

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1 by Mary Trimble, Beachcomber, LLC, in a letter May
2 31st, 2019, the Anchor River Road is not in horrible
3 condition any more than most paved roads in our local
4 area, Homer or the road to Anchorage.
5 Just as an aside, I submit to you that
6 the pictures I laid out to you there don't look
7 anything like the road between here and Anchorage.
8 I took 95 photos of the Anchor River
9 Road, documented its present condition. I found
10 serious deterioration the complete length of the road.
11 Payment slumping along the sides of the road is evident
12 nearly the whole length. The slumping in the worst
13 case is about six-inch deep by about two-feet wide.
14 Concrete slumping is a result of heavy traffic causing
15 the roadbed to depress below the concrete.
16 The concrete is broken in many locations.
17 Significant cracking is noted throughout the roadway,
18 which will further deteriorate within -- with increased
19 heavy truck traffic.
20 Further in the letter to DOT to Bruce
21 Wall March 21st, it states, "We request the Kenai
22 Peninsula Borough, Item 4, require pavement repair on
23 the Anchor River Road by the Kenai Peninsula Borough in
24 the event truck hauling creates obvious pit holes,
25 rusting -- rutting, and pavement damage."

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1 The fact that DOT will hold the Kenai
2 Peninsula Borough responsible for any damage to the
3 Anchor River Road is rather a sobering fact.
4 **CHAIRMAN MARTIN:** Could you summarize,
5 please.
6 **GARY SHERIDAN:** You bet. We consulted
7 with a highway construction owner who estimates the
8 rebuilding of the Anchor River Road could cost KPB
9 between \$175,000 to \$300,000.
10 As an aside, just a quick note, the
11 Department of Transportation recently did some ditching
12 along the sides of the Anchor River Road and ended up
13 with a shoulder from 12 to 15 inches wide. So those
14 people that are concerned about safety have serious
15 reason to be concerned. Thank you very much.
16 **CHAIRMAN MARTIN:** Any questions? None at
17 this time, thank you.
18 **GARY SHERIDAN:** Thank you.
19 **CHAIRMAN MARTIN:** Next testifier, please.
20 **RICHARD CARLTON:** My name is Richard
21 Carlton. And my wife kind of pulled up lame, so she's
22 not going to be able to be here. She had something she
23 wanted to say, so I'm filling in for her.
24 There was -- somebody said earlier
25 that -- it's actually 1.2 miles, that road that Gary

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1 was just talking about. And there is five campgrounds,
2 212 campsites in there, and that's not including the
3 Silver King homes that are up there on the side of the
4 hill there.
5 So the density of people in that area is
6 really -- can really be high, especially holidays and
7 things like that. And that little side, 12 to 15
8 inches that Gary was talking about, is truly a hazard,
9 because a lot of people use it to walk and, you know,
10 get to the beach and come back, and of course head down
11 to go fishing, one thing or the other.
12 Gravel is something we need, I mean, it
13 really is. And I can see why our laws -- or the way
14 everything is worded and everything is that way.
15 You've had people that -- I mean, we've needed gravel.
16 I mean, the ground around Anchor Point, my area in
17 particular, I'm just kind of up on the hill there, and
18 man, things move around. I mean, it's just like a
19 peat, I guess you might say, and mud and everything,
20 and just now is really drying out to where you can do
21 things.
22 But so anyway last July the planning
23 department presented you with an application that was
24 grossly incomplete due to buffers and berms and were
25 designed using only subjective guesswork. You

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1 correctly denied the application.
2 Tonight it's a replay of that submission
3 because the application again indicates berms that are
4 totally subjective, arbitrary, and unable to provide
5 the protections that are mandatory conditions and
6 standards spelled out in the KPB's code.
7 By using KPB's own GIS technology, we
8 have produced substantial evidence to prove that once
9 again you are being pressured by staff to approve an
10 incomplete application. Staff seems to be of the
11 opinion that you should just ignore the obvious, that
12 being the large percentage of the neighboring property
13 owners who have little or no screening from the noise
14 and visual impact, and then vote to approve the permit.
15 Your function is to act as the judge in
16 this case and ensure that meager protections afforded
17 the residents in the Kenai Peninsula are guarded and
18 upheld.
19 I have a recording I'd like to play.
20 Really, I do. Well, it worked earlier. Basically it
21 was just Emmitt talking about what was previously
22 stated. It was in print that, you know, really it's up
23 to the people that live around there to protect
24 themselves from the offensive -- things that they find
25 offensive about a gravel pit. That includes building a

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1 fence or buying nice blinds that you can bring up from
 2 the bottom to block out the gravel pit and then still
 3 see your view. And so it was basically in his own
 4 words, but I'm not very good at technology. So that's
 5 all I have.

6 **CHAIRMAN MARTIN:** Thank you. Are there
 7 any questions? Seeing none, thanks for your testimony.
 8 Next, please.

9 **TODD BAREMAN:** Name is Todd Bareman. I
 10 live at 73300 Tryagain Ave. In packet No. 1 on pages
 11 79 and 80 under findings of fact, 15, the buffer zone,
 12 I have some questions that I would like to direct
 13 through the chair to Mr. Wall.

14 The following letters -- items mention
 15 the word "adjacent," letters B, C, D, E, H, I, and Q.
 16 Why would the code require that all property owners
 17 within one half mile of a proposed material site be
 18 notified when the findings of fact are written by the
 19 planning department? It appears that only adjacent
 20 property owners will be afforded any of the mandatory
 21 protections.

22 The only reference to "adjacent" in KP
 23 21.29.040 is the protection against physical damage to
 24 adjacent properties.

25 Is it the intent of this application to

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1 only provide visual and noise protections to adjacent
 2 properties when the code in 21.29.040, the six
 3 standards, specifically says, "other properties."
 4 These findings of fact seem to indicate that the
 5 planning department has taken it upon themselves to
 6 change the code and ignore the other property owners.

7 In this neighborhood there are many other
 8 properties that would be severely impacted if buffers
 9 and berms are not of sufficient height and density,
 10 provide visual and noise screening as required in KP
 11 21.29.050.

12 Letter Q in the same section states that
 13 each piece of real estate is uniquely situated, and a
 14 material site cannot be conditioned so that all
 15 adjacent parcels are equally screened by the buffers.
 16 The different elevations of the parcels, varying
 17 vegetation on the surrounding parcels in the material
 18 site, the distance of the material site from the
 19 various surrounding parcels necessarily means that the
 20 surrounding parcels will not be equally impacted, nor
 21 can they be equally screened from the material site.

22 Where in the code does it say that only
 23 some of the neighboring properties need to be protected
 24 by buffers and berms of sufficient height and density?
 25 The applicant has publically declared that neighbors

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1 who don't like what they see and hear coming from his
 2 mine should utilize window shades, hearing protection,
 3 and fences.

4 Who makes the decision as to who gets
 5 sufficient visual and noise screening as is required in
 6 the code, and who gets to pull their shades and wear
 7 ear plugs in their own homes for the next 15 years?

8 Everything that's spelled out in fact Q
 9 is the exact reason that this particular material site
 10 application needs to be denied. If mandatory
 11 conditions cannot be met, then the commission is
 12 required in KP 21.25.050 to deny the permit, not just
 13 to disregard the obvious deficiencies in this
 14 application and allow an industrial gravel mine of this
 15 magnitude in the center of a residential and
 16 recreational neighborhood.

17 One last comment. Vacation time is
 18 precious to everyone. If you were camping and at any
 19 time of the day had to listen to gravel being
 20 processed, whether it be screening, crushing, or
 21 loading trucks, would you ever come back to that
 22 campground or RV park? There is a hundred campsites, a
 23 hundred RV sites within earshot of this proposed site.

24 I'm not trying to take away potential
 25 income from one man, I'm trying to save a recreation

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1 area that thousands of people use. Unfortunately, this
 2 doesn't seem to matter. Thank you.

3 **CHAIRMAN MARTIN:** Thank you. Any
 4 questions? None at this time.

5 **RYAN MUZZARELLI:** I'm Ryan Muzzarelli,
 6 P.O. Box 170, Anchor Point. One second here. And I
 7 live on Kyllonen Drive. I was one of the cabins you
 8 could see in the video, just kind of right behind Rick
 9 Oliver's, if you look up there. And I'm here just to
 10 testify in favor of private property rights and my
 11 neighbors' rights to make a living.

12 I've spoken to Emmitt and Mary about the
 13 property on multiple occasions, and they are incredibly
 14 proud of it, and I'm confident that they will not only
 15 maintain the property, but also provide a lot of value
 16 to the community. Thank you.

17 **CHAIRMAN MARTIN:** Any questions? Not at
 18 this time, thank you. Next testifier, please.

19 **ED MARTIN, III:** Hi, my name is Ed
 20 Martin, III. I reside at 37200 Thomas Street,
 21 Sterling. I'm the president of the Kenai Peninsula
 22 Aggregate and Contractors Association. It's comprised
 23 of almost 60 professional contractors all doing
 24 business in the KP.

25 Over the past year we've been involved in

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1 scrutinizing the material site regulations for the
 2 borough. I've personally put in hundreds of man hours
 3 in research regarding all the facets that make up our
 4 current code. Tonight I'd like to speak on one
 5 particularly, that is the view.
 6 View shed, the regulation of and the
 7 rights pertaining to it are commonly misunderstood,
 8 also commonly thought of as an entitlement. A good
 9 part of my weeks of research were dedicated to just
 10 this debate. What I found was probably not what many
 11 people want to hear, but it is fact.
 12 There are only three ways a right to a
 13 view can be regulated, taken from, or given to an
 14 individual across this nation. One, the federal
 15 government holds view shed rights for our national
 16 parks; two, some cities and first class governments
 17 regulate view shed over large areas by way of zoning,
 18 including all lots or parcels within that area; and
 19 finally, three, view shed rights may be given from one
 20 entity to another by way of a purchase or contract.
 21 There is no precedence of regulation on an individual
 22 parcel of land. None of these options can apply to our
 23 second class borough.
 24 I have in my possession a copy of the OLR
 25 report in which I provided to all of you. After hours

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1 of research, it is the most complete explanation of the
 2 precedence of these rights. I would like for all of
 3 you to read it. Also, as this issue goes beyond what's
 4 in front of you today, I would encourage all of you not
 5 to take my word for it, but do your own research.
 6 I would ask that you rule in favor of the
 7 applicant tonight as the vast majority of the
 8 opposition is opposed to the application because they
 9 just don't want to see it. I've heard hours of their
 10 testimony stating that sentiment. It doesn't change
 11 the fact that they just don't have the right to the
 12 view over their neighbors' property. It also doesn't
 13 change the fact that that right may not be granted to
 14 them by our current governing body.
 15 I will be encouraging the KPB Planning
 16 Commission and assembly to strike any language of view,
 17 visual impact, or view shed from their current and
 18 future ordinance. Thank you.
 19 **CHAIRMAN MARTIN:** Any questions? None at
 20 this time, thank you.
 21 **VICKEY HODNICK:** Hi, my name is Vickey
 22 Hodnick from Anchor Point. My address is 35031 Moffit
 23 Lane. I really appreciate the fact that you're all
 24 here and that we can be here to present some of our
 25 concepts to you.

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1 I have to take exception to Mr. Martin's
 2 remarks. I've been a resident on the Peninsula for 30
 3 years, and I think I was assessed on my view property
 4 down in Homer.
 5 And this -- the majority of the people
 6 other than the visitors that come during the summer or
 7 come camping and fishing are -- most of us are senior
 8 citizens, this is our final home down there.
 9 And something that's kind of disturbing
 10 is that we're going to spend our final retirement years
 11 being entertained by Caterpillars and gravel trucks and
 12 all the other things that are involved. We can't send
 13 the grandkids out to ride their bike on the road during
 14 the time that they are visiting us.
 15 We certainly believe that you delivered
 16 the correct conclusion on July 16th last year, and
 17 although it was remanded back to you for adequate
 18 findings of fact, we feel that the same evidence
 19 prevails today.
 20 We're here to remind you that we love our
 21 homes. We love our community. There are many
 22 legitimate reasons to not deny this permit, which are
 23 not presently covered in the code. Some of these
 24 things should be covered in the code because there is
 25 very few things that we can find that actually protect

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1 us as law abiding citizens of the borough.
 2 Kenai Peninsula code 21.29.040 states the
 3 standard for the material sites. These material site
 4 regulations are intended to protect against aquifer
 5 disturbances, road damage, physical damage to adjacent
 6 properties, dust, noise, visual impact.
 7 Only the conditions set forth in the code
 8 21.29.050 may be used or imposed to meet these
 9 standards. However, the prelude to these standards is
 10 clarified, which is to protect the existing surrounding
 11 land uses against the negative impacts of material site
 12 operations. A standard is added for providing
 13 consistency with the borough comprehensive plan, which
 14 we're not hearing anything about.
 15 In other planning documents it says land
 16 use regulations are required by the Alaska state law to
 17 be consistent with the borough comprehensive plan. A
 18 simple rule of thumb would be if there is a house,
 19 don't start a gravel pit. If there is a gravel pit,
 20 don't build a house.
 21 We had a -- we spent -- most of us in our
 22 neighborhood spent the last winter going to the
 23 material site meetings as they were developing new
 24 restrictions and regulations for gravel mining. And
 25 there was a gentleman there from the Valley that came

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1 down and said, "Just because there is gravel, it
2 doesn't mean you have to dig it."
3 And I think just because there is a
4 history in a community, like a former gravel pit, it
5 doesn't mean that everybody is entitled to have a
6 gravel pit thereafter.
7 Things change and communities change, and
8 when families move in and create a settlement, even in
9 a residential -- a rural residential area, I think it
10 needs to be considered.
11 This community hosts five state
12 campgrounds, three private campgrounds, 70 or 88 unit
13 summer residential park, and 50 to 60 permanent private
14 homes close to the proposed site, a tractor launch, and
15 an only road that is determined a tsunami exit road.
16 There are also moose, fish, nesting eagles, a rickety
17 bridge, and a narrow road.
18 The DNR recognizes that this site hosts
19 archeological and historical artifacts and cemeteries.
20 The proposed mine site has established homes like --
21 located on three sides of it, and on the fourth side is
22 Cook Inlet itself.
23 A 15-year permit for this gravel pit will
24 drop our property values and disrupt the quality of
25 life for hundreds, if not thousands of people due to

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1 noise, dust, traffic issues, and visual blight.
2 The impact of the health of Anchor River
3 is potentially devastating. It could damage the fish
4 population in the future. Please note that none of
5 these concerns are really noted in the code.
6 The mandate to the Planning Commission as
7 spelled out in the Kenai Peninsula code 21.25.050 is to
8 approve, deny, or modify the application. Approval is
9 only allowed when the minimum requirements of the code
10 are met. Anything short of that would allow the
11 commission to modify the application to a state that
12 would meet the requirements, or to deny the application
13 for the fact it would be considered an incomplete
14 application.
15 In July of last year this commission
16 rightly denied an obviously incomplete application and
17 failed to design a buffer zone that complied with
18 conditions that are set forth in code 21.29.050. And
19 as a result it failed to meet the mandatory standards
20 of code 21.29.040.
21 Tonight, we, the neighboring property
22 owners, are here to prove once again that the arbitrary
23 numbers used to design the buffer zone in this
24 application are totally inadequate resulting in this
25 application being declared incomplete and therefore

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1 should be denied once again. Thank you very much.
2 **CHAIRMAN MARTIN:** Thank you. Any
3 questions? Ms. Fikes.
4 **COMMISSIONER FIKES:** Through the chair.
5 You stated that your view is assessed by the borough.
6 So how many lots are your property --
7 **VICKY HODNICK:** I'm not sure about --
8 what we're on, we're on four acres right now. When I
9 was in Homer I had 30 acres.
10 **COMMISSIONER FIKES:** And do you have
11 waterfront view, is that what the assessment --
12 **VICKY HODNICK:** I did, uh-huh.
13 **COMMISSIONER FIKES:** So what you're
14 referencing is waterfront view?
15 **VICKY HODNICK:** Yes.
16 **COMMISSIONER FIKES:** And you're not
17 certain how many lots are between you and the proposed
18 pit?
19 **VICKY HODNICK:** We are about a thousand
20 feet away, and we're on the same level.
21 **COMMISSIONER FIKES:** Okay, thank you.
22 **CHAIRMAN MARTIN:** Ms. Ecklund.
23 **COMMISSIONER ECKLUND:** Through the chair.
24 Thank you for your testimony. You mentioned the
25 archeological site possibility and a cemetery

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1 possibility --
2 **VICKY HODNICK:** Right.
3 **COMMISSIONER ECKLUND:** -- which we have
4 heard in prior testimony.
5 Have you contacted anyone to look into
6 that and --
7 **VICKY HODNICK:** Yes, I have.
8 **COMMISSIONER ECKLUND:** -- and research it
9 and determine if it is so?
10 **VICKY HODNICK:** It is recorded. And most
11 of the people were thinking I was looking for some kind
12 of a grant in order to save that particular site, and I
13 did tell them it was on private property. And the
14 response from the state and even the national level was
15 a little interesting.
16 But going back to thinking about what we
17 want to keep and the history we want to maintain in the
18 state itself, I think these are important things to
19 think about before just having them dug up and become
20 part of a gravel pit.
21 **COMMISSIONER FIKES:** Thank you.
22 **CHAIRMAN MARTIN:** Any other questions?
23 At this time I'll institute a five-minute recess.
24 We'll reconvene in five minutes.
25 (Recess)

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1 **CHAIRMAN MARTIN:** Are you ready? All
2 right, you're free to go.
3 **RICK OLIVER:** My name is Rick Oliver. I
4 don't live in a Post Office Box. I live at 34880
5 Denver Street, which is right on the corner of Kyllonen
6 and Denver.
7 We've spoken many times to -- as to who
8 can see just what from where and what the setbacks
9 should and could be and how high are the berms.
10 Apparently, this has been considered a
11 subjective subject, and no one here other than Mr.
12 Walls [sic] has come to look, to my knowledge.
13 It appears that the borough's idea of
14 minimizing the view, dust, noise, is a random tree here
15 and there. What we would like to show you here is hard
16 evidence from the data, again provided by the borough's
17 own technology.
18 We have this evening several profiles,
19 one of which is from my house. All the other profiles
20 and most of the affected neighboring properties are at
21 a much higher elevation than mine. We have a visual
22 presentation we can show you, a profile from the
23 affected home sites to areas within the proposed mining
24 site. This will also help to dispel the effectiveness
25 of the ludicrous concept of moving berms as the sight

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1 levels can be shown from all appropriate angles.
2 Hopefully this can minimize the
3 subjectivity and provide clear and indisputable
4 evidence showing this application can never meet all
5 the borough standards.
6 That's really all I have to say other
7 than -- well, speaking to the presentation before by
8 Mr. Trimble, it amazes me to think that -- it is
9 lovely, lovely property, all beautifully maintained,
10 he's done a fantastic job in presenting all of these
11 lovely trees. And where are all these lovely trees
12 going to go when we start mining gravel?
13 And we're going to have a berm
14 that's going to be -- or he's going to be mining 25
15 feet below a berm. Where does the 25-foot hole come
16 from? I don't -- well, I know where it is. But
17 anyway, that's all I have to say.
18 **CHAIRMAN MARTIN:** Any questions? Not at
19 this time, thank you.
20 **RICK OLIVER:** Thank you.
21 **CHAIRMAN MARTIN:** Next testifier, please.
22 **RICHARD CLINE:** First of all, thanks.
23 Good evening, and thanks for your service. We
24 appreciate your time and effort that you have to put in
25 for this.

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1 I'm Richard Cline, my wife and I live at
2 34926 Denver Street. And Lynn has a profile of our
3 spot as well.
4 First, though, I'd like to tell you
5 that -- I like to learn something every day, and today
6 I did learn something. I learned that putting a gravel
7 pit in a neighborhood doesn't decrease property values.
8 I would have never thought that on my own, so I'm glad
9 I came tonight to learn that part.
10 We directly overlook the material site,
11 even though we're not adjacent. So when Todd brought
12 that up about adjacent versus other, that's a very,
13 very meaningful thing to me, because we will see not
14 the view shed, we'll always be able to see Mt. Redoubt
15 and Mt. Iliamna, which is the view shed, our view, but
16 we will see -- we will have a negative visual impact,
17 which is the wording of the code, the visual impact,
18 not the view shed. So we don't have to worry about the
19 national parks guys interfering with anything we're
20 going to do.
21 I do have some questions, and these are
22 hypothetical, just think about them later on. I just
23 want to know why everybody in the borough that I've
24 talked to in the planning department and elsewhere that
25 said the permit is going to be granted. That was right

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1 from day one when I got notified last year that this is
2 in the works.
3 And I call up, I say, "Hey, tell me more
4 about this." They said, "Doesn't matter what you
5 think, what you do, and how much money or time or
6 effort you put into it, just take it for granted that
7 it will be approved." So I just -- that's a question I
8 have, why is that an automatic thing?
9 Which leads to something that's kind of
10 curious to me and something you might want to think
11 about yourselves. If that is true, if no matter what
12 we do here we're just spinning our wheels, then why do
13 you allow us, why does the borough allow us, the
14 commission, the assembly, to waste our time, our
15 effort, and our money in this process at all? It's
16 just curious.
17 It would seem to me that you would be
18 opening yourselves up for liability in that regard
19 somehow. Because as you can tell, we've put a lot of
20 time, effort, and money into it. Doesn't this make you
21 guys susceptible to some kind of liability? Something
22 to think about.
23 No one here denies a need for gravel.
24 We've heard that from everybody, the gravel guys of
25 course, but then us as well. We know what it's all

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1 built on. We just deny that it has to come from the
 2 middle of our well-established and ecologically fragile
 3 neighborhood.
 4 With Lynn's help you can see from our
 5 deck, and I know that Emmitt and Mary are very familiar
 6 with this because my security cameras caught them on
 7 our deck, when we were not there, taking movies and
 8 making snide comments.
 9 And you can see over -- right over the
 10 top of the berm. We basically will need a 43-foot berm
 11 to conceal the -- to basically minimize the visual
 12 impact of just one portion of their pit.
 13 A 43-foot berm -- I'm not an earth mover,
 14 but I'm pretty sure that that's an unworkable berm.
 15 And I kind of like the idea of a 43-foot berm on the
 16 far end with a 25-foot hole behind it, and then I want
 17 to watch how he moves that towards my house in the
 18 rolling berm kind of deal.
 19 Another problem with the topography of
 20 this location, you can see it's highlighted in that
 21 elevation, is that entire area acts like a mega phone.
 22 Everything just blasts up the hills to us, to Rick, to
 23 my neighbor Steve Thompson. And Lynn can put up
 24 Steve's.
 25 Poor Steve, he needs a 53-foot berm to

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1 hide his because he's a little bit closer to it. And
 2 that's just one -- you know, these are just some of the
 3 things, some of the houses that are up the hill from
 4 there.
 5 This is your own technology, this is the
 6 borough's technology. We didn't make this up. This is
 7 not smoke and mirrors, this is math.
 8 Our cabin sits, you know, a bit higher
 9 than Rick's. Poor Rick is right across the street from
 10 it.
 11 One argument that there is no way a berm
 12 could ever work is not really true. They can build a
 13 berm high enough, I guess it's physically possible,
 14 it's just unrealistic, okay.
 15 And if you want to put it -- you know,
 16 the limitations or you want to put some kind of a
 17 modification to the requirements, the mandatory
 18 conditions, then you can say, "Okay, I want a 43-foot
 19 berm or a 53-foot berm." That's going to -- you know,
 20 would that satisfy me? No, obviously. But if it keeps
 21 the pit from being built, then of course it would
 22 satisfy me. But that is within your power. Just
 23 saying no berm would ever do it is not really true on
 24 the face of it, but it's true in the reality of it.
 25 The permit as submitted is flawed, it's

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1 incomplete at the least, and it's totally unacceptable
 2 on its own. We respectfully ask the commission to act
 3 on behalf of not only the small group here -- and I'll
 4 wrap this up -- facing the total destruction of our
 5 neighborhood, but the countless other citizens of the
 6 borough who could soon see the same thing in their
 7 front yard.
 8 We ask that you deny this permit on the
 9 grounds that the true findings of fact, supported by
 10 overwhelming substantial evidence, shows that the
 11 mandatory standards will not be satisfied in this
 12 permit's application. Thank you.
 13 **CHAIRMAN MARTIN:** Thank you. Any
 14 questions? None at this time, thank you.
 15 Next person, please. The young lady
 16 coming towards the back was -- she beat you to the
 17 punch.
 18 **JIM REID:** Oh, I'm sorry, I didn't see
 19 you.
 20 **CHARITY JACOBSON:** Hi. Hi, my name is
 21 Charity Jacobson. I live at 72150 Griner Avenue. We
 22 are about three miles from the proposed gravel pit.
 23 It might not be too relevant, but we can
 24 hear a rock crusher that is seven miles away from us to
 25 the other side out of the North Fork Road. So if this

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1 proposed pit goes in and all the operations were right
 2 in between and -- it's going to be twice as loud.
 3 Also in the ordinances for a gravel pit,
 4 it is not a one size fits all. For each area and
 5 location, this should be looked into as far as
 6 residential areas, recreational areas, state land, you
 7 know, because if it was out in the middle of nowhere,
 8 it wouldn't apply to some of these regulations.
 9 Also it's been stated that a gravel pit
 10 does not have any physical damage on the adjacent
 11 properties, but would you or anyone knowingly purchase
 12 a retirement home with an active gravel pit between a
 13 hundred and thousand feet away from you for the next
 14 foreseeable future? That's all, thank you.
 15 **CHAIRMAN MARTIN:** Thank you. Are there
 16 any questions? None at this time. Next testifier,
 17 sir.
 18 **JIM REID:** I've got to see if there is
 19 somebody else coming down the aisle.
 20 Hi, my name is Jim Reid, and I live at --
 21 where do I live? 73820 Seaward Avenue. Okay, I live
 22 right above it.
 23 Anyway, I only have a couple questions,
 24 but my question would be to the planning staff, maybe
 25 they can answer it. What does a natural berm consist

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1 of? What is a natural berm? What's the definition of
 2 a natural berm?
 3 **CHAIRMAN MARTIN:** Go ahead.
 4 **MR. WALL:** Yeah, and I'm not quite sure
 5 where you're going with that, because our code does not
 6 talk about a natural berm.
 7 **JIM REID:** Let's just put it this way.
 8 Emmitt has already stacked up a bunch of logs and stuff
 9 from -- debris from, looks like, a lot clearing thing.
 10 He stacked it up about 15, 20 feet along Denver.
 11 And I just -- my question was, what does
 12 a natural berm consist of? Because if it consists of
 13 live trees growing, we can all go home because it's
 14 going to be 30 years before he gets to 25-foot trees.
 15 **MR. WALL:** What the code requires is an
 16 earthen berm with a 2 to 1 slope.
 17 **JIM REID:** An earthen berm. Does that
 18 mean it's a bunch of logs and debris and then they
 19 cover it over with some dirt, is that considered a
 20 natural berm?
 21 **CHAIRMAN MARTIN:** Sir, I think your
 22 question has been answered. We're getting -- it's an
 23 earthen berm, not a natural berm.
 24 **JIM REID:** Oh, well, I was told it was a
 25 natural berm, but that's okay.

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1 Anyway, it's an earthen berm, so that
 2 means it has to be dirt, it can't be a bunch of logs
 3 and stuff stacked up and dirt over it?
 4 **CHAIRMAN MARTIN:** Within reason. We're
 5 not limiting it to every last piece of wood, yes, sir.
 6 **JIM REID:** Oh, okay. Well, all right
 7 then.
 8 And you know the other thing, of course,
 9 is I realize the gravel -- I was a builder down south,
 10 so I know we have to have rock and gravel and whatever.
 11 But I don't understand the part when you bring the
 12 gravel in -- we have a gravel pit within two miles of
 13 our house right there up on old Seaward. It's way over
 14 there. But I didn't move next to a gravel pit, because
 15 my theory is if you move next to a gravel pit or you
 16 move next to an airport, don't cry. You knew it, you
 17 moved there. But when a whole residential area is
 18 there and it moves next to you, well, then that's a
 19 different situation.
 20 You know, it's like they said the other
 21 day, all gravel pits can't be under the same rules. I
 22 mean, they are different. This gentleman right there
 23 said, "Hey, you go over on the other side over there,
 24 nobody cares about noise and dust because there is no
 25 houses over there, there is no people."

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1 So here we are in a situation where all
 2 these people live there and use this area and now we're
 3 going to move a gravel pit in. Anyway, that's it. Let
 4 me sign my name.
 5 **CHAIRMAN MARTIN:** Any questions? Seeing
 6 none, next testifier, please.
 7 **ROGER McCAMPBELL:** Let me see if I can
 8 get my technology to work better than Rick. Can you
 9 hear that while I sign my name? Anybody identify those
 10 birds? Excuse me, 7345 -- my name is Roger McCampbell,
 11 I live at 73450 Seabury. My mailing address is still
 12 in Homer. I'll turn this off now. Just about a year
 13 ago I bought this piece of property.
 14 After coming up and looking all over
 15 Homer, I could buy anywhere I wanted in this state.
 16 I've lived in Homer for 31 years. I've loved the
 17 Anchor River valley since I moved down here, and that
 18 area. I spent the night on that front porch for the
 19 peace and quiet over Memorial Day weekend because I
 20 knew that would be the weekend of the most noise and
 21 disturbance.
 22 And the reason I know that is I was the
 23 district supervisory park ranger for the southern Kenai
 24 Peninsula for 31 years, and I kind of know that area
 25 pretty well. I know Emmitt pretty well, a great deal

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1 of respect for him and his family.
 2 But this is the wrong gravel pit at the
 3 wrong place. It's not about -- I don't see it from my
 4 place. I live four-tenths of a mile away from it. I
 5 can hear the waves breaking on the ocean at night or in
 6 the morning when it's peaceful and quiet. Those birds,
 7 most of those are about 150 to a hundred yards away. I
 8 like my peace and quiet. That's why I moved there.
 9 I retired five years ago. It's not about
 10 the scene. I don't see it, I drive by it. I don't
 11 particularly like to look at gravel pits, I don't know
 12 who does, unless they turn into giant swimming and
 13 fishing holes later.
 14 Now, I own a lot of heavy equipment
 15 myself. I run a cattle ranch. My family, we have
 16 cattle ranches down in northern California where I'm
 17 originally from. Everybody says don't Californicate
 18 Alaska, and that's exactly what we're doing. It's
 19 usually from the people that are doing it, because I
 20 grew up there five generations.
 21 Our neighboring ranch has a rock crusher.
 22 I can hear that when I'm down there sitting around my
 23 campfire, and it's 15 miles away. So yeah, I can hear
 24 it, I can hear the rocks, I can tell when the gravel
 25 trucks -- I also own two gravel trucks. I had a couple

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1 bulldozers and back scrapers, so, you know, I'm not
 2 opposed -- nobody I think is opposed to gravel pits.
 3 And, in fact, I was looking at several of
 4 the lots around me to buy and develop and do some
 5 rental units, but I've been in the business long enough
 6 and most of the people that I know in the rec -- that
 7 want to come up here and stay in an AirBNB, they want
 8 peace and quiet, too.
 9 Most of those campgrounds, Halibut and
 10 Slide Hole when we developed those, our socioeconomic
 11 look at those was for family camping. People come up
 12 there to -- you know, Memorial Day weakened is crazy,
 13 there is no doubt about it. But after Memorial Day
 14 weekend -- the fishing is lousy, but the beer drinking
 15 is good. So, you know, but after that it pretty well
 16 calms down. There is always a yahoo, there is always a
 17 yahoo on the dirt bike with the muffler off or the
 18 four-wheeler.
 19 By the way, the Anchor Point beach road
 20 is an ominous road. It is state park land at the edge
 21 of the pavement. State Parks allowed DOT to dig out
 22 those culverts this year because of drainage issues and
 23 the saturation underneath the road was causing it to
 24 buckle even more.
 25 But DOT, if anybody is thinking, "Oh, we

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1 can now excuse to widen that road and make it safer,"
 2 you're going to have to battle with DNR and State Parks
 3 on that, because that easement is only pavement to
 4 pavement, it is not an extended easement off that.
 5 You know, since we permitted Todd years
 6 ago, or long before him for the tractor launch
 7 operation, it increased the visitation on the beach
 8 area, a lot more charters, and they are not little
 9 charter boats, they are 32 foot, 10-foot beams, and
 10 that's a wide load. And trying to pass on that road,
 11 trying to have kids ride their bike, walk up and down
 12 that road.
 13 Now, it would be nice if the borough and
 14 the city or -- Anchor Point community has been fighting
 15 for a pedestrian path and bike path down there. That
 16 would be really nice, that would take some of the
 17 pressure off. I'm the first one to admit that.
 18 But I don't want to hear it, that's my
 19 simple point. There is more to visual. I don't care
 20 about views. I own view property. I never looked at
 21 it, I'm too busy. You know, I'm doing things. I'm out
 22 in the view, that's where I want to be.
 23 But I like to sit on my front porch at
 24 night and not hear -- oh, you're -- let's see, Item 15
 25 on this whereas and wherefore document, Item E, these

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1 parcels are less impacted by the material site than the
 2 adjacent (indiscernible) site as sound dissipates over
 3 distance. Yeah, but not four-tenths of a mile, not 15
 4 miles.
 5 So I think it's rather disingenuous to
 6 say that these buffers -- it's just going to echo up.
 7 If I can hear waves breaking and the seagulls down on
 8 the beach, then I've certainly -- I've already heard
 9 the -- speaking of which, Old Sterling is right behind
 10 my house. So when the gravel trucks go out, go down
 11 the beach road, then they turn around and they come
 12 right up behind. So I can hear Jake brakes, I can hear
 13 anybody messing around behind there, too. So it's a
 14 noise issue for me. Thank you.
 15 **CHAIRMAN MARTIN:** Any questions? None at
 16 this time. Next, please.
 17 **ROGER McCAMPBELL:** Very good. I hate
 18 answering questions.
 19 **LARRY SMITH:** My name is Larry Smith. I
 20 reside at 320 Artifact Street, Soldotna.
 21 I thought this was an opportune time for
 22 me to come up here because Mr. McCampbell mentioned the
 23 Slide Hole Campground. I constructed the Slide Hole
 24 Campground in 1992 back before the Anchor Point Road or
 25 the anchor beach road or whatever it's called today was

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1 paved. It was a narrow, nasty little gravel road back
 2 then, but we bought our gavel from Mr. Kyllonen at the
 3 little gravel pit at the top of the hill, and we
 4 constructed the campground. And we didn't hear a lot
 5 of opposition back then to the gravel trucks traveling
 6 down the Anchor Point Road or anchor beach road.
 7 Anyway, just so there is no mistake, I'm
 8 here to support Emmitt and Mary Trimble in their
 9 request for this gravel material site application.
 10 I have spent a great deal of time in the
 11 last year or so studying the Kenai Peninsula Borough
 12 gravel ordinances, and I've got a real education. I
 13 thought I knew something about gravel. I own a
 14 construction company, I own three gravel pits. I
 15 bought gravel from most or many of the gravel owners
 16 throughout the borough, including the State of Alaska,
 17 U.S. Forest Service, Kenai Peninsula Borough.
 18 I was born in Seward and raised in Cooper
 19 Landing, and back when I was a young man, gravel wasn't
 20 a dirty word. It seems to have become a dirty word
 21 now, even though every one of us is in a building
 22 that's built out of concrete that has gravel.
 23 We traveled on paved roads that are --
 24 the asphalt is made out of gravel. Our foundations of
 25 our houses are made out of gravel, or under our houses.

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1 Our driveways are made out of gravel. There is no
 2 doubt that gravel is important to all of our lives. It
 3 always has been, always will be. But I don't think Mr.
 4 and Mrs. Trimble should be penalized for asking for a
 5 gravel pit on their property.
 6 I agree with Mr. Martin who was up here
 7 before me. View shed, visual impact, I know that's
 8 some language that's inside the borough ordinance, and
 9 it's a feel-good term. But there is no -- there is no
 10 case law having to do with -- or very little, I won't
 11 say no -- there is very little case law having to do
 12 with view shed and visual impact.
 13 I happened to ask Mr. Kinneen at a
 14 meeting earlier this year if he had the right to the
 15 view shed over his neighbors' property, and he told me
 16 he did, it was an absolute right. I don't believe
 17 that.
 18 I certainly empathize with those who
 19 don't want to look at a gravel pit. And this is not
 20 going to be a popular comment, but if you don't want to
 21 look at the gravel pit, buy the land. Offer Emmitt and
 22 Mary Trimble some money for their property and then it
 23 can become your property and you can turn it into a pig
 24 farm or a junkyard or a car junkyard or whatever you
 25 want to turn it into.

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1 And the other last thing I want to
 2 comment on is if you don't like the ordinance, change
 3 the ordinance. But the ordinance as it exists today,
 4 the requirements for the material site have been met.
 5 I believe it's the duty of the Planning Commission to
 6 approve that application.
 7 And I'm a realist. You have a thankless
 8 job, because I believe that no matter what you do, this
 9 is going to end up in litigation. But anyway, I would
 10 urge you to support their application, thank you.
 11 **CHAIRMAN MARTIN:** Thank you. Any
 12 questions? Mr. Whitney.
 13 **COMMISSIONER WHITNEY:** I want to make
 14 sure I heard you right. You said you built the
 15 campground in 1992, was that it?
 16 **LARRY SMITH:** I believe it was 1992. We
 17 built the -- we had a contract with DNR, Parks and
 18 built the Slide Hole. It was an addition to the Slide
 19 Hole Campground.
 20 **COMMISSIONER WHITNEY:** Using Anchor --
 21 the --
 22 **LARRY SMITH:** Using gravel -- Mr.
 23 Kyllonen had a gravel pit right up the Anchor River
 24 Road, across the bridge, above the bridge, right above
 25 the bridge. And we bought gravel from him and we built

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1 the campground.
 2 **COMMISSIONER WHITNEY:** Was the area as
 3 built up then as it is now?
 4 **LARRY SMITH:** Pretty much, yeah, it
 5 was -- well, I guess not.
 6 Well, you know, here is the thing. You
 7 know, we're talking about safety and about all this
 8 stuff on this road, and these 40-foot motor -- you
 9 know, diesel powered land yachts that they come up here
 10 with from the Lower 48, Anchor Point Road is a
 11 dangerous road, but it's not going to be any more
 12 dangerous with the gravel trucks than it is to all the
 13 tourist traffic that's going on today. Thanks a lot,
 14 Mr. Chairman.
 15 **CHAIRMAN MARTIN:** We want to keep a
 16 polite meeting. This is the second warning, that we
 17 need to maintain decorum. Everybody deserves respect.
 18 Next testifier, please.
 19 **CHRIS CRUM:** Hi, my name is Chris Crum.
 20 I live at 72485 Ester Avenue in Anchor Point. My
 21 husband and I and our five children have lived there
 22 since 1987.
 23 Like I said, we raised five kids there.
 24 I taught school at Chapman school for 25 years, since
 25 retired. All of our children went to Chapman school,

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1 graduated from Homer High School, went outside to
 2 college, and came back to Alaska because there is no
 3 other place. And they all have employment in Wasilla,
 4 unfortunately, but if they could, they would be down
 5 here. They absolutely love it.
 6 My husband and I have done nine
 7 transactions with Emmitt and Mary through Coastal
 8 Realty over the last 25 years. And I just want to say
 9 that they are very professional, and they got what they
 10 wanted and we got what we wanted. So all the
 11 disparaging comments about them and their
 12 professionalism, like Larry said and Roger said, they
 13 are very, very nice people.
 14 I've sat through two hearings, and I came
 15 to the realization that this is really not about a
 16 permit. Emmitt and Mary and Beachcomber, LLC, I've
 17 read all of the regulations, read the codes. They have
 18 done everything that has been required of them and gone
 19 beyond. And this is about "not in my backyard." And I
 20 understand that, I certainly do I understand that.
 21 It's also about private property rights.
 22 So I just -- thinking about this, I was
 23 thinking what I've heard so far about the rock crusher.
 24 One of the meetings there was a rock crusher, a D9
 25 dozer, a grizzly, and a big operation, which was not

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1 factual, there has never been.
 2 Every day I go down to feed my horses on
 3 that property. So I go down there on Beachcomber road,
 4 I pass Danver, and there has never been anything like
 5 that down there.
 6 The second thing is, yes, the road is in
 7 bad shape. We have lived in Anchor Point for 30 plus
 8 years. It's always been sort of a dangerous road, you
 9 know, for kids, and moms and babies pushing -- moms
 10 pushing strollers. There is no sidewalk.
 11 But the road started to deteriorate 15 or
 12 20 years ago when the tractors came in and took over
 13 our beach. We have huge charter boats, 10-plus wide,
 14 up to 11 wide traveling on that road every single day
 15 of the summer starting May, ending around Labor Day.
 16 Yes, they are big. They should not be
 17 going across the bridge, some of them. People are
 18 concerned about trucks on the road and the bridge. The
 19 bridge is rated for 11 tons. Loaded gravel trucks
 20 should not be on that bridge. They have to turn right
 21 and go around on the Old Seward Highway. That is what
 22 they are going to be doing. So that's a fact.
 23 I also want to give a shout out to the
 24 truck drivers in Anchor Point. The majority of the
 25 business, the majority of the employment in Anchor

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1 Point, majority meaning over 50 percent, is trucking,
 2 hauling dirt, gravel, and gravel pits. We need the
 3 business, we need the money. We can't live without it.
 4 So those people that are saying the
 5 business is going to be deteriorating in Anchor Point,
 6 it will be -- it will be increasing if you have more
 7 trucks hauling gravel and dirt.
 8 I just want to say the Trimbles have done
 9 what you required of them. Gravel pits are regulated
 10 by the Kenai Peninsula Borough and your statutes, the
 11 State of Alaska, and MSHA, which is Mine Safety and
 12 Health Administration. They have good policing
 13 abilities. The noise, the dust, and the safety all
 14 have to be complied with in a gravel pit.
 15 So in closing, I know it's going to be a
 16 hard decision. You have the ordinances and the
 17 regulations in front of you. You have the application
 18 for the permit. I'm just asking you to weigh heavy on
 19 how it's been written, how it's been followed, what's
 20 been done, and do the right thing.
 21 **CHAIRMAN MARTIN:** Thank you. Any
 22 questions? None at this time.
 23 **HANS BILBEN:** Hi, my name is Hans Bilben,
 24 35039 Danver Street in Anchor Point. Rick Carlton was
 25 having some trouble with his audio. I'm going to see

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1 if I can do it for him here.
 2 (Audio played - not transcribed)
 3 **HANS BILBEN:** Okay, that was the
 4 applicant telling us how we could protect ourselves
 5 from his gravel pit. So who gets to do that? I don't
 6 know, but I don't want to have blinds closed, I don't
 7 want to wear hearing protection in my own house, and I
 8 don't think I need to build a fence to protect myself.
 9 A couple corrections. The applicant
 10 talked about a 25-foot deep hole. The application
 11 calls for an 18-foot excavation, 20 feet to water.
 12 He's got to stay two feet above it.
 13 Yes, he's checked all the boxes, but he
 14 hasn't met the conditions of the code. So that's what
 15 we're trying to decide tonight: Has he met the
 16 conditions of the code?
 17 You talk about a charter boat going
 18 across the bridge. I ran a charter boat for 16 years.
 19 A heavy charter boat would be about 10,000 pounds
 20 versus an empty dump truck at about 22,000 pounds, and
 21 you double that for a loaded dump truck.
 22 Last July you correctly voted to deny
 23 this application, and you made the findings of fact
 24 that said the noise will not be sufficiently reduced
 25 with any buffer or berm that could be added. The word

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1 "any" there is kind of the key.
 2 While the intent of these findings is
 3 abundantly clear, they are lacking any reference to
 4 specific sections of the code that define the mandatory
 5 conditions, and they are lacking supporting evidence.
 6 The hearing officer on appeal ruled that
 7 the commission exceeded the scope of its authority in
 8 denying this permit based upon its determination that
 9 the conditions would not afford adequate protection
 10 from noise and visual blight.
 11 I absolutely agree with the hearing
 12 officer. The findings of fact had some problems. The
 13 planning department seems to be of the opinion that
 14 because the hearing officer said that, that this is
 15 proof positive that you as commissioners must approve
 16 this application.
 17 To the contrary, the hearing officer did
 18 not rule that the commission lacked the authority to
 19 deny the application. To do so would be counter to the
 20 code, which in KPB 21.25.050 says that you have three
 21 possible outcomes. You can approve, deny, or modify an
 22 application.
 23 A very important point here is that she
 24 did, in fact, affirm the denial. She did not say give
 25 them the permit. She affirmed the denial, and here we

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1 are today.
 2 The authority granted to the commission
 3 in 21.29.050 is to ensure that buffers and berms are of
 4 sufficient height and density to provide visual and
 5 noise screening of the proposed use. That's what we
 6 need to determine tonight. Are they of sufficient
 7 height and density to provide visual and noise
 8 screening of the proposed use? And if it can't do
 9 that, then you can't approve it.
 10 Buffers and berms are the industry
 11 standard, and if properly designed they should protect
 12 neighboring properties from noise and visual blight.
 13 The key words here are "properly designed." That's
 14 what this GIS technology is all about.
 15 You guys have a heck of a job if you're
 16 trying to determine what are these buffers and berms
 17 all about. Because every time they come in they say,
 18 "Six-foot berm, 50-foot buffer." Okay, what does that
 19 do? Well, you don't know what it does.
 20 With that technology that is borough
 21 technology, all you have to do is look at it and say,
 22 "Yeah, it works," or, "No, it doesn't work." I don't
 23 know why the borough is so hesitant to get into that.
 24 Yes, you probably exceeded the scope of
 25 your authority by saying that there wouldn't be any

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1 buffers and berms that could screen the proposed use,
 2 but you did not exceed the scope of your authority by
 3 your denial.
 4 A better finding of fact might have been
 5 that the application was not of sufficient height or
 6 density to provide visual and noise screening. You
 7 needed to tie your findings of fact to the code, and
 8 that's what we're here for today.
 9 So the hearing officer sent us back here
 10 tonight, and this is what she wanted us to do, list
 11 findings of fact referencing the mandatory conditions
 12 listed in KPB 21.29.050 and detail the substantial
 13 evidence that supports those findings.
 14 The evidence we're going to give you
 15 here, the findings of fact are in your packet, and
 16 another person will speak to that.
 17 Obviously, we feel that putting this
 18 large-scale mining operation in the heart of a
 19 recreational and residential area should be denied for
 20 a multitude of legitimate reasons, but more important
 21 it must be denied because it doesn't meet the mandatory
 22 conditions of the code.
 23 In KPB finding of fact 15 Q, it states
 24 all of the reasons that this can't meet the code. One
 25 of the previous speakers talked about 15 Q in the

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1 findings of fact from the staff. They are basically
 2 saying a large percentage of the neighbors in that area
 3 cannot be protected, but yet they want to give you --
 4 issue this permit anyway.
 5 Just in closing, what the applicant
 6 claims -- or the applicant claims that this is just a
 7 mom and pop operation and that they are not going to --
 8 maybe move maybe 10,000 yards a year.
 9 But what they say or may not say is
 10 irrelevant. What is relevant is the fact that this
 11 permit, if approved, would allow for mining of up to
 12 50,000 cubic yards per year for 15 years on 27 acres of
 13 commercial mining that cannot be sufficiently screened
 14 from neighboring properties.
 15 Like most of us, they are claiming this
 16 is a legacy property. Well, like most of us in this
 17 room, our home, property, and quality of life is our
 18 legacy, and we would like to protect it. Thank you.
 19 **CHAIRMAN MARTIN:** Thank you. Any
 20 questions?
 21 **HANS BILBEN:** I had to go pretty fast on
 22 that.
 23 **CHAIRMAN MARTIN:** Good job, thank you.
 24 **HANS BILBEN:** That's your pen.
 25 **CHAIRMAN MARTIN:** Next, please.

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1 **ANN CLINE:** Good evening. My name is Ann
 2 Cline. My address is 34926 Danver. I'm a Cline, so --
 3 oh, well, you're quick.
 4 My husband and I purchased two lots from
 5 the Trimbles in order to build a cabin for our
 6 grandchildren, and we created a trust for our
 7 descendants to enjoy the piece and serenity that is
 8 there.
 9 I wrote a detailed letter based on my
 10 research of mining operations in the United States and
 11 Canada, and I'm hoping you have that in your packet.
 12 Ann Cline.
 13 I addressed the findings of fact, and in
 14 particular the noise decibel research that has been
 15 conducted both in Canada and in the United States
 16 regarding mining operations and excavations.
 17 Regarding one of the previous speakers,
 18 some of us, myself included, are not financially able
 19 to offer the Trimbles enough money to satisfy them in
 20 order to buy that land so that we could keep it as a
 21 park land or a campground or whatever. We're not able
 22 to do that. So thus we need your help in controlling
 23 the use of the property.
 24 And regarding the freedom of decision, as
 25 a previous testifier said, and I agree, if you want to

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1 have peace and quiet, don't buy a home next to a gravel
 2 pit. If you want to have a gravel pit, don't put it in
 3 the middle of an existing neighborhood.
 4 I implore you to please help us, the
 5 Anchor Point community, which is these folks here. Not
 6 all of us are speaking out of respect for time, but we
 7 would really humbly request that you consider
 8 thoughtfully and uphold and affirm your denial of this
 9 permit. Thank you very much.
 10 **CHAIRMAN MARTIN:** Thank you. Any
 11 questions for Ms. Cline? Seeing none, thanks for your
 12 testimony.
 13 **ANN CLINE:** Thank you.
 14 **CHAIRMAN MARTIN:** Next testifier, please.
 15 **LAUREN ISENHOUR:** Hello, I'm Lauren
 16 Isenhour, I live at 34737 Beachcomber Street. And
 17 tonight I would like to talk about sound. I'd like to
 18 talk about sound and the claim from the opposition that
 19 hearing sounds from gravel pit activity will destroy
 20 the value of their property.
 21 Private property rights in our area are
 22 very important to all of us who chose to live in Anchor
 23 Point. Many of us utilize our acreage for activities
 24 that are not allowed within the city ordinances of
 25 Homer and the like: ATVs, snowmachines, chainsaws for

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1 firewood, free range dogs, livestock, home improvement
 2 projects and mowing our lawns.
 3 ATV's sounds range from 90 to a hundred
 4 decibels; snowmachines and motorcycles are around a
 5 hundred decibels; chainsaws around 110 decibels; and
 6 riding law mowers are around a hundred decibels.
 7 From my research, construction tools such
 8 as chopsaws, sanders, drills, et cetera, operate
 9 between 90 and a hundred decibels. My diesel truck is
 10 over 90 decibels at 50 feet away.
 11 These are all activities and machines
 12 that are routinely operated in my neighborhood and are
 13 acknowledged as socially acceptable by everyone. None
 14 of these activities or machines are restricted by
 15 borough regulations to only operate during particular
 16 hours and are not required to mitigate the sound
 17 created by their usage.
 18 After researching decibel levels of these
 19 common activities, I was surprised to learn that the
 20 sounds created from gravel equipment is notably less
 21 than the items I've spoken of. A backhoe from 50 feet
 22 is 80 decibels, a hundred feet is 74, at 300 feet it's
 23 65 decibels.
 24 A bulldozer from 50 feet is 85 decibels,
 25 from a hundred feet is 79 decibels, 300 feet is 70

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1 decibels.
 2 A dump struck from 50 feet is 84
 3 decibels, from a hundred feet is 78, and from 300 feet
 4 away is 69 decibels.
 5 So gravel equipment ranges from 65 to 85
 6 decibels, while my common use home tools range from 90
 7 to 110 decibels.
 8 My family camped over Memorial weekend on
 9 the Anchor River, and I was genuinely surprised at the
 10 high levels of sound created by the campers. ATVs,
 11 motorcycles, and dirt bikes ripped up and down the
 12 beach road late into the night. Trailers running
 13 generators in the campground, which operate at around
 14 68 decibels, lots of dogs, music, and general camper
 15 noise.
 16 Regular vehicle traffic on the beach
 17 access road is quite noisy. Since virtually all the
 18 campsites are right along the road, I needed ear plugs
 19 to be able to sleep at night.
 20 There was zero gravel pit activity during
 21 those three days I was camping. It was not quiet or
 22 tranquil, but the campground was full of people having
 23 a lot of good family fun.
 24 The Beachcomber gravel pit has now been
 25 operational for about one year, and prior to that the

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1 prior existing use gravel pit on Danver Street across
 2 from the Beachcomber pit was operational for around 15
 3 years.
 4 So anyone who has recreated on the Anchor
 5 River or camped in that campground within the last 15
 6 years has done so in conjunction with an operational
 7 pit. We can and have been coexisting there.
 8 The opposition has noted that they would
 9 rather this property be developed into a subdivision
 10 than a gravel pit, and I find this very curious. If
 11 this 27 acres was divided into 27 new home sites, the
 12 amount of sound created would surpass the sound of
 13 sporadic seasonal gravel activity.
 14 The access roads to develop 27 new lots
 15 would be extensive and require a lot of gravel and
 16 equipment. Building roughly two houses a year would
 17 take nearly 15 years to develop, and the sound from
 18 trucks, cement trucks and dump trucks, delivery trucks,
 19 well drilling rigs, and general construction tools as I
 20 mentioned before range from between 90 to a hundred
 21 decibels, would operate five to seven days a week for
 22 the life of the development.
 23 But then at the end of that subdivision
 24 project, the property would not be reclaimed as it
 25 would for gravel development. After 15 years of

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1 construction sounds, we would now have sounds from 27
 2 new neighbors with loud trucks and barking dogs and
 3 lawn mowers and chainsaws and all the other sounds that
 4 come from a rural neighborhood.
 5 I read all the letters submitted, and I
 6 would like to comment on Phil Brna's statement to the
 7 Planning Commission claiming that sounds generated from
 8 the gravel pit would destroy both his ability to enjoy
 9 his property as well as the general value of his
 10 property.
 11 My property neighbors, Phil is on his
 12 other side separated by Beachcomber Street and a line
 13 of trees, and there is nothing to regulate me from
 14 mowing my lawn at a hundred decibels or operating my
 15 chainsaw at 110 decibels or running any number of my
 16 power tools, ATVs or snowmachines as we often do at any
 17 time of day or night.
 18 Despite my best efforts, as all my
 19 neighbors know my dogs bark quite a lot during the
 20 night. There is no regulations here in Anchor Point to
 21 stop or control any of these activities that I
 22 routinely do on my property. Phil has never complained
 23 to me that my activities have jeopardized his property
 24 value or enjoyment.
 25 There are too many inconsistencies with

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1 the argument about sound being a detriment to the
 2 neighborhood for it to be considered a viable argument.
 3 I can create more sound at higher decibels for longer
 4 durations on my private property without having to
 5 abide to any regulations.
 6 If an individual feels so strongly that
 7 the value of their property can be destroyed by the
 8 activity of their neighbors, then that individual needs
 9 to purchase a parcel larger than an acre to be able to
 10 personally ensure adequate distant from neighborly
 11 activities that they might find displeasing or move to
 12 an area with ordinances and zoning that control all
 13 residents' activities. Thank you.
 14 **CHAIRMAN MARTIN:** Thank you. Any
 15 questions? None at this time.
 16 **LAUREN ISENHOUR:** Thank you.
 17 **CHAIRMAN MARTIN:** Next.
 18 **BUZZ KYLLONEN:** Good evening,
 19 commissioners. Mr. Mayor, nice to have you here. My
 20 name is Buzz Kyllonen, 74200 Seaward Avenue. You've
 21 heard the name Kyllonen used many, many times.
 22 I'm here in support of the Trimbles'
 23 rights to extract gravel from their property. I'm
 24 actually a property rights person, and my real fear is
 25 what's going to happen to this borough.

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1 The ordinance as it's drafted, the
 2 protective conditions that are there are, for the most
 3 part, unfounded, and what it's doing is inviting people
 4 to band together against neighbor. And if this
 5 continues, I can't imagine anybody wanting to file for
 6 an application for a material site permit. No one
 7 wants to go through the expense and the vitriol that
 8 comes from a mob-type reaction to a legitimate
 9 activity.
 10 Now you might ask, who am I? Well, I'm
 11 Buzz Kyllonen. I'd like to think I'm an expert. I
 12 don't know what the definition is, but I began
 13 developing property in Anchor Point 40 years ago. Over
 14 30 subdivisions, 500 lots. Aggregate of about \$50
 15 million in assessed value. None of which I could have
 16 been able to do under the current ordinance.
 17 I've owned and operated 12 gravel pits or
 18 more within Anchor Point, within shouting distance of
 19 most everyone here. Most everyone here is a
 20 beneficiary of one of my subdivisions. That's what I
 21 do and that's what I did for a living until the
 22 ordinance was enacted, and that put me out of business.
 23 Let me explain why.
 24 According to the ordinance, if you export
 25 material from your property A to property B and it

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1 enhances the value of property B, you will be required
 2 to file for an application for a material site permit
 3 to do that. There is precedence set for that, and I'm
 4 here to acknowledge that.
 5 If Mr. Trimble wants to use any of the
 6 gravel, had he not had a permit that he has right now,
 7 he would not be able to transport that material to
 8 another one of his properties without applying for a
 9 material site permit. He has no choice. He has to
 10 apply for this material site in order to use the
 11 material that he currently owns.
 12 As far as the harm and the catastrophic
 13 effects of having a gravel pit are totally unfounded.
 14 No one has complained about the 12 gravel pits that
 15 I've had in Anchor Point, at least no one has looked me
 16 in the eye and said so.
 17 So what Mr. Trimble is doing is basically
 18 a developer gravel pit. There is a difference between
 19 industrial and developer use. You have an industrial
 20 use right here in the heart of Soldotna not very far
 21 from here. A huge facility, they produce asphalt. How
 22 long have they been there? I'm not sure, but a long
 23 time. Everyone is still alive, no one has died from
 24 respiratory disease. Anchorage Sand & Gravel in the
 25 middle of Anchorage, they function. Life goes on. We

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1 have an industrial site in Anchor Point.
 2 Interestingly, the Trimbles are
 3 beneficiaries of hundreds, if not thousands, of truck
 4 loads of gravel that go right by their Coastal Realty
 5 office every day. It's endless. Homer was built with
 6 Anchor Point gravel. Believe it or not, gravel is
 7 where Mother Nature put it, not where you want it to
 8 be. We should all be supporting the Trimbles for
 9 opening up some priceless resource like gravel so that
 10 it's available.
 11 I promise you, I'm a supporter, because
 12 who would complain more than me? I own property on
 13 both sides, substantial property that borders this
 14 property. Even more important, I'm the original Anchor
 15 Pointer. No one alive in Anchor Point has been there
 16 longer than me. I date back to 1945.
 17 The homestead property that Mr. Trimble
 18 owns is sacrosanct to me. That's where the material
 19 site will be. If anyone should complain, I should lead
 20 the parade. And with that, if you have any questions,
 21 I'd be more than happy to answer.
 22 **CHAIRMAN MARTIN:** Ms. Ecklund, did you
 23 have a question?
 24 **COMMISSIONER ECKLUND:** Thank you for your
 25 presence here tonight. Since you have the longest

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1 history in that area, I'd appreciate an answer to a
 2 couple of questions.
 3 When you had the gravel pit, which has
 4 been referenced several times by name, operating in
 5 that area, how many campgrounds or campsites were in
 6 the area?
 7 **BUZZ KYLLONEN:** I developed all those
 8 campsites.
 9 **COMMISSIONER ECKLUND:** So they didn't
 10 have the use --
 11 **BUZZ KYLLONEN:** With the exception of the
 12 state.
 13 **COMMISSIONER ECKLUND:** The state, the
 14 five state ones?
 15 **BUZZ KYLLONEN:** The gravel came from my
 16 gravel pits right there. Tens of thousands of yards,
 17 thousands of truck loads.
 18 **COMMISSIONER ECKLUND:** So currently it's
 19 been stated that there are five state campgrounds and
 20 three private ones and 200 campsites in the Silver King
 21 site.
 22 So were any -- you built all of those
 23 except the state ones?
 24 **BUZZ KYLLONEN:** Over 30 subdivisions,
 25 both sides of the river have my fingerprints on most of

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1 them. Most of the folks are beneficiaries, a lot of
 2 them are very close friends, hopefully they will still
 3 remain friends.
 4 **COMMISSIONER ECKLUND:** How many people
 5 lived in the area when you were operating your gravel
 6 pit?
 7 **BUZZ KYLLONEN:** It's evolved over the
 8 years. It was extremely busy in the mid '80s.
 9 **COMMISSIONER ECKLUND:** Your pit was busy?
 10 **BUZZ KYLLONEN:** There was a depression in
 11 property sales. Interestingly, the reason that I went
 12 out of business, out of the development business, was
 13 because of the ordinance. Because I was issued a cease
 14 and desist when I used material from my golf course,
 15 which I created, to develop what is now the trooper
 16 building. And the code compliance officer from the
 17 borough came down and said, "No more, you can't do
 18 that. You must get a material site permit to build the
 19 golf course." I had no choice. I had a half a million
 20 dollars in the golf course. To continue, I couldn't
 21 afford not to apply for a permit, so I did.
 22 Now that put me in the category of a
 23 gravel pit, which subsequently I was fined by the
 24 borough \$20,000, \$10,000 in attorney fees because I
 25 exceeded the artificial boundary they imposed.

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1 So I have a major heartburn about the
 2 ordinance.
 3 **COMMISSIONER ECKLUND:** Yes.
 4 **BUZZ KYLLONEN:** I would like to see it
 5 scrapped, and I would also like to see it rewritten
 6 focusing on the -- what should be the intent of
 7 reclamation and prudent and proper extraction.
 8 **COMMISSIONER ECKLUND:** Thank you for your
 9 input.
 10 **BUZZ KYLLONEN:** You're welcome.
 11 **CHAIRMAN MARTIN:** Any other questions?
 12 Ms. Fikes.
 13 **COMMISSIONER FIKES:** Yes. With your
 14 history in the area and your history of the operation
 15 of a pit in the area, speaking to the transfer from you
 16 to the next owner of the pit, what was your experience
 17 with the reclamation, and how much of that did you
 18 perform during your operation?
 19 **BUZZ KYLLONEN:** Well, I think that's the
 20 key issue. You would be hard pressed to find where
 21 I've had a gravel pit. They have all been reclaimed.
 22 **COMMISSIONER FIKES:** Were there ever any
 23 complaints about water table contamination during the
 24 time?
 25 **BUZZ KYLLONEN:** That's what's an

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1 unfounded allegation. That is not possible to happen.
 2 Evaporation maybe, ditching only. Digging in the water
 3 table, that was one of my key things. I have several
 4 lakes where I dug in the water table, and that was one
 5 element of this ordinance that I would like to see
 6 revisited, because it does virtually no harm to the
 7 environment. It offers a place for the moose and the
 8 ducks.
 9 Just yesterday two moose were learning
 10 how to swim in my golf course lake. I have pictures of
 11 that. I was quite fascinated by that. Ducks are there
 12 all the time. I love the water. Excuse me, I didn't
 13 mean to expand on that.
 14 **COMMISSIONER FIKES:** So then also
 15 expanding on that, during the operation, were there
 16 ever any complaints for noise, or were there ever any
 17 complaints --
 18 **BUZZ KYLLONEN:** Not to me directly, no.
 19 Over the 500 properties, I'd say 499 are close friends.
 20 **COMMISSIONER FIKES:** So was there any
 21 agency that contacted you with a direct complaint --
 22 **BUZZ KYLLONEN:** No.
 23 **COMMISSIONER FIKES:** -- due to your
 24 specific operation?
 25 **BUZZ KYLLONEN:** No. I might want to add

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1 one more thing because it was mentioned several times,
 2 the beach road, the Anchor Point Road.
 3 **COMMISSIONER FIKES:** Uh-huh.
 4 **BUZZ KYLLONEN:** No one has driven a dump
 5 truck over that road probably more than me, thousands
 6 of times, thousands of times prior to when it was
 7 paved.
 8 One of the stars in my crown is when I
 9 was on the assembly, I got that road paved. The
 10 definition by the state was if you can give me \$200,000
 11 from the mayor at the time, (indiscernible), we will
 12 paint that road black. Not today. \$200,000
 13 transferred from the borough to DOT, and they painted
 14 it black. I didn't know what that meant at the time.
 15 Basically what that means is literally
 16 paint it black. And that's why the road is in the
 17 condition it is, because they had no money to improve
 18 the subsurface.
 19 So -- and I might also add that it was on
 20 the state agenda to revisit that in 2020. If it hadn't
 21 been for my efforts on the assembly, we would still be
 22 waiting for the state to do an assessment. So --
 23 **CHAIRMAN MARTIN:** 11 o'clock is coming up
 24 soon.
 25 **BUZZ KYLLONEN:** Okay, I'm sorry.

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1 **CHAIRMAN MARTIN:** Any -- other question.
 2 **COMMISSIONER FIKES:** I have one more
 3 question. Switching gears to safety.
 4 Again, in your experience, and also it
 5 sounds like you live in that specific area, during that
 6 time are you aware of any school activity disruptions
 7 with school buses or folks waiting for buses or --
 8 people have spoke or testified tonight and previous
 9 nights about the activity and the trucks passing and
 10 going.
 11 In your experience, again, going back to
 12 have you actually heard of or received any written
 13 complaints that would speak to that matter?
 14 **BUZZ KYLLONEN:** Three of my gravel pits
 15 are within rock throwing distance of the existing
 16 school in Anchor Point. Zero, none. Truck drivers are
 17 professional. Someone was referencing the motorhomes.
 18 Those people don't go to school to drive motorhomes,
 19 but truck drivers do. And believe me, it's not easy to
 20 get that license.
 21 **COMMISSIONER FIKES:** Thank you.
 22 **BUZZ KYLLONEN:** You're welcome.
 23 **CHAIRMAN MARTIN:** Any further questions?
 24 None at this time, thank you. Anyone else here wishing
 25 to testify?

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1 **PETE KINNEEN:** I've already testified,
 2 but --
 3 **CHAIRMAN MARTIN:** Yeah, you have not been
 4 recognized by the chair.
 5 **PETE KINNEEN:** Point of order.
 6 **CHAIRMAN MARTIN:** We have not -- everyone
 7 gets one chance to speak, sir.
 8 **PETE KINNEEN:** Except my testimony was
 9 slandered, and to the degree that my testimony has some
 10 effect here, am I not entitled to address it?
 11 **CHAIRMAN MARTIN:** We're keeping the ball
 12 rolling. Everybody gets one turn.
 13 **PETE KINNEEN:** So it's going to be come
 14 up and done?
 15 **CHAIRMAN MARTIN:** That's correct. And as
 16 far as the -- is there anyone else in the audience
 17 wishing to testify? Mr. Whitmore has some
 18 presentation, or at least has his hand going.
 19 **LYNN WHITMORE:** Sure. This is my two
 20 bits worth, and then hopefully that will lead into
 21 questions from you guys on the berm.
 22 So I guess a rhetorical question is, when
 23 you are supposed to be hidden from the construction
 24 site by the berm, is that berm also supposed to hide
 25 you from the remnants of the pit behind you?

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1 So as we practice with a moving berm, the
2 question I want you to kind of pay attention to is what
3 are they going to look at as the berm moves closer to
4 the homes?
5 And the berms, because the homes are
6 situated in roughly a 90 degree angle looking down,
7 then it seems like the berms are going to have to cover
8 the full 90 degrees from the people on one side of the
9 hill and the people wrapped around to the other side of
10 the hill, so that's something to keep in mind when you
11 talk about berms.
12 And I keep -- I hear a developer gravel
13 pit being stated and that it's just going to be one of
14 those. But as near as I can tell from everything I've
15 read, the moment that they get a permit, they can sell
16 it and somebody else in a larger capacity could come
17 along and mine the entire 27 acres. So the developer
18 gravel pit changes immediately upon sales, and that
19 permit goes with the property as I understand it.
20 And so with that, we could work our way
21 through the berm question if you guys have some.
22 **CHAIRMAN MARTIN:** My question for
23 clarification is, is the berm ordinance intended to
24 obscure the view 100 percent, or is our ordinance
25 written to minimize impact, not bring it to zero, but

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1 to minimize impact?
2 **LYNN WHITMORE:** Sure. As I'm seeing
3 this, the question I have is, as we move the 12-foot
4 high berm closer to these houses that are way up
5 higher, the remaining pit behind that berm becomes more
6 visible the further you move that berm toward those
7 homes. And maybe we can display that or look at that.
8 I don't know that a 12-foot berm doesn't
9 work because I haven't heard from the other side on how
10 they intend that to work. But I'd work with them if
11 they wanted to.
12 **CHAIRMAN MARTIN:** I guess our definition
13 is what does "work" mean? Because I think our
14 ordinance means mitigate, it doesn't mean eliminate.
15 **LYNN WHITMORE:** I agree.
16 **CHAIRMAN MARTIN:** Next testifier.
17 **TOM CLARK:** You can start the clock so we
18 can get done. Tom Clark, Box 962, Anchor Point.
19 **CHAIRMAN MARTIN:** Hit the microphone
20 button, sir.
21 **TOM CLARK:** Tom Clark, Box 962, Anchor
22 Point. Thank you, Blair, appreciate it.
23 I sat on this body for six years, I sat
24 on the Board of Adjustment for seven years. Heard I
25 don't know how many of these. Three of the members

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1 here were there when I was there.
2 Most of those that were appealed were
3 sent to the assembly, which acted as Board of
4 Adjustment at that time. All the decisions in the
5 affirmative were upheld. Any of those that were
6 rejected by the Planning Commission were denied by the
7 BOA at that time.
8 Our BOA listened to several appeals, some
9 that you had affirmed, some that you had rejected. All
10 of those passed this ordinance in full. Two lawsuits,
11 the judge ruled in favor of the borough, the way the
12 borough handles their buffers, the way they handle
13 their sound, the way everything gets handled.
14 I know this is all new, these folks are
15 upset, I get it, I live there. This is not in my best
16 interest. It's in my best interest that this pit goes
17 away and the price of my gravel goes up.
18 But as it is today, they are legal, this
19 is allowable, and it's been proven in court.
20 Questions?
21 **CHAIRMAN MARTIN:** Any questions? Thank
22 you. Next.
23 **ANGELA ROLAND:** Hi, my name is Angela
24 Roland, and I own property at the Silver King fish camp
25 as well as property on Thurmond Avenue.

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1 Today I spoke to the parks department
2 about their concerns, since they are property owners as
3 well as run the state recreation area. They said they
4 sent a letter May 1st, and their concerns were dust,
5 safety, and noise.
6 I did some research into dust, as well as
7 there has been a letter already sent. I don't mean to
8 run over this too often, but crystalline silica is as
9 fine as asbestos, and this is a particulate that is
10 emitted whenever rock is crushed or screened and
11 excavated. It also travels a great distance, and it
12 can reach the school. It builds up in buildings, it
13 gets clogged into ventilation systems, and yes, it does
14 cause respiratory diseases. You can verify this at the
15 EPA as well as other OSHA websites. I'm sorry, I said
16 EPA, I meant OSHA websites as well as other well
17 established information.
18 I don't know what size dust mask you need
19 to wear in order to mitigate that, or eliminate it
20 rather.
21 When it comes to safety, we've talked
22 about this quite a bit; however, there has been
23 statistics showing that heavy truck accidents have gone
24 up. The last year that the information was available
25 was 2016/2017. And on this narrow road, yes, like

1 everyone else has said with boats, RVs, kids on bikes,
 2 and also tourists who don't know where they are going,
 3 and I don't know if you've noticed, there are a lot of
 4 people who look down with their cell phones wandering
 5 around trying to figure out -- well, I don't know what
 6 they are doing, but anyway, they walk around looking
 7 down at their cell phones.

8 So I suppose going as fast as you can to
 9 deliver your haul and get back and deliver more, I hope
 10 the truck drivers are as careful as they can be.

11 When it comes to decibels, we've been
 12 talking a lot about -- or rather when we talk about
 13 noise, we've been talking about decibels. And yes it's
 14 true that some -- there is some sounds that sound just
 15 simply worse than others. So I guess the analogy would
 16 be if you could imagine your favorite song at a hundred
 17 decibels, that would be fine; your least favorite song
 18 at a hundred decibels would be misery. It would also
 19 be misery as a lower decibel if you really didn't like
 20 the song. So that's one aspect of it to remember.

21 And then as far as the Trimble family
 22 member living next to it, to their ears I suppose that
 23 sounds like a cash register running.

24 And it just so happens that my father
 25 owned an excavation business. He built a golf course

1 that he was playing, but that is something that should
 2 be considered, is that if we're harvesting gravel and
 3 using it here on our state roads and on our borough
 4 roads with gravel that comes from an area, we don't
 5 know if there is eiders on there right now, but no
 6 study has been done.

7 So we destroy their habitat, and the
 8 federal law, you know, is opposed to it, in other words
 9 they have laws against it. And then we take the gravel
 10 and we put it on our roads and on our borough roads and
 11 our state roads, and I don't think that we should have
 12 a supply chain that's questionable. Thank you. Do you
 13 have any questions?

14 **CHAIRMAN MARTIN:** Thank you. Do you have
 15 any questions? Seeing none, thank you for your
 16 testimony.

17 **ANGELA ROLAND:** Okay, thank you.

18 **CHAIRMAN MARTIN:** Next testifier, please.

19 **JOSH ELMALEH:** Hi, my name is Josh
 20 Elmaleh. I live at 34885 Seabury Court just over the
 21 hill. My wife testified earlier, she had to leave.

22 We're about a quarter mile from the site,
 23 and currently there is -- has been the -- or just
 24 recently there has been the road construction to
 25 elevate -- or improve the drainage for the sides of

1 and he ran heavy equipment as well. I know the dust.
 2 We wound up having a dog with one leg, too. He wound
 3 up, you know, camping out underneath one of the trucks
 4 and it couldn't be helped. So it is a dangerous
 5 business.

6 There is also potential for all kinds of
 7 accidents to occur, from spilling fuel, oil, all those
 8 kinds of problems.

9 One of the things that we haven't talked
 10 about is where are we at right now when it comes to the
 11 health of the community? We've talked about Anchor
 12 Point being so common with gravel pits everywhere, but
 13 are we really a healthy community?

14 We have a school right there, and a lot
 15 of people -- I'm finding that even though this has been
 16 the way we've done things for a long time, we also have
 17 science and technology that tells us now that
 18 particulates, small ones like that, can harm you, they
 19 can cause respiratory problems.

20 The last point -- well, maybe not the
 21 last one -- how much time -- okay, I did contact the
 22 EPA, and on their website you can easily see that this
 23 portion of the Kenai Peninsula does have one endangered
 24 species, the Stellar's eider, if I'm saying that right,
 25 and I don't know if that was the bird that was singing

1 Anchor Point Road, and we've been hearing that a lot.
 2 Well, our dogs are normally peaceful and
 3 quiet, and they let us know when there is animals out
 4 that we should know about, neighbor dogs, neighbors,
 5 moose, keep our -- help keep our kids safe, so we hear
 6 things.

7 When they were running that equipment,
 8 our dogs have been going crazy. They have been barking
 9 non-stop. We go out there, we tell them to be quiet,
 10 we encourage them when they are quiet. They have
 11 just -- going non-stop. There isn't anything we can do
 12 about that.

13 When -- in the event that the Trimbles
 14 have their pit, we're going to be faced with that for
 15 however -- whenever they decide to excavate gravel.
 16 Maybe it's daily, maybe it's weekly, maybe it's every
 17 once in a while, who knows, but only they do.

18 I'm here to say I don't agree with it, I
 19 don't want it on there. I would advise you guys to go
 20 in there and check it out. It's an amphitheater. We
 21 hear things, we hear the waves, we hear the birds.

22 I go down to the eagles -- my dad came up
 23 last year, I hadn't seen him in ten-plus years. He
 24 walked to the beach. He got to see the eagles. He
 25 said it's the million dollar view. I don't believe him

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1 for one second, but at the same time, it's a view not
2 to be messed with.

3 They have the right for their own
4 property, I have the right for my property, I agree
5 with that. And if they don't get it and they develop
6 their own thing, then they develop their own thing, but
7 we don't want a gravel pit.

8 My wife and I two years ago bought our
9 place. We didn't know about it. We looked at another
10 place that was twice the size and only about \$20,000
11 more than our current house. It would have fit our
12 family a lot better, but it was right next to a gravel
13 pit.

14 And we decided, okay, we're not going to
15 get this one, we're going to go to the one that's going
16 to be a lot nicer. So we went there, sure enough we
17 bought it, bickering back and forth with the seller,
18 and finally he got what he wanted and we got a place.

19 So I encourage you, the sound is not
20 going to be improved. It doesn't matter how big the
21 berm is, it's not going to be improved. I can hear a
22 half mile away, a mile away. I can hear dump trucks
23 going on the Old Sterling Highway. So it's what's
24 there. Please help us, thank you.

25 **CHAIRMAN MARTIN:** Thank you. Next.

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1 **KATIE ELSNER:** Hi, good evening. My name
2 is Katie Elsner. I'm an attorney in Kenai. Our
3 address is 215 Fidalgo Avenue, Suite 201. And I have
4 been helping several of the neighbors that are opposed
5 to this gravel pit. And I want to first address Mr.
6 Martin's question.

7 The borough code uses two words in
8 defining what to do with this, both "minimize" and
9 "sufficient," and I just quickly Googled the definition
10 of minimize, which is to reduce something to the
11 smallest possible amount or degree.

12 So the code doesn't call for you to make
13 sure that there is some separation, some barrier or
14 some reduction in the visual impact, it calls on you to
15 actually reduce it to the smallest possible amount or
16 degree. And it further calls on you to ensure that
17 that reduction, that smallest possible amount, is
18 sufficient to address the visual impact.

19 And so, you know, when it comes to Mr.
20 Whitmore's presentation, as far as I can tell with this
21 rolling berm that they are proposing, one of two
22 options are going to come into play. Either the berm
23 is going to start closer to the property, and I think
24 we can move it up, right, so we can move the berm to
25 sort of demonstrate that.

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1 So either it starts closer to the
2 property, at which point there is more or greater
3 visual impact, because you can see -- I mean, it would
4 have to be taller in order to negate it because you're
5 getting closer to the higher elevation, and then it
6 moves back leaving all of the excavated property in its
7 wake; or it starts in that position where it could
8 potentially cause some sort of reduction and visual
9 impact, because at that point farthest away, the angle
10 or elevation allows it to be sufficiently tall.

11 But then as it moves closer and closer
12 and closer and closer to the impacted and affected
13 properties, all you see from behind -- first, of all
14 the same height berm becomes less effective, and all
15 you can see in the background is the excavated pit in
16 its wake.

17 And so, you know, at this point where the
18 GIS LIDAR profile mapping is set by Mr. Whitmore, and I
19 believe you guys all have the examples in your packet,
20 is at, you know, the most likely proposed site for it.

21 And we did propose findings of fact, and
22 I'm going to talk to you in just one minute about that,
23 but those findings of fact are based on that spot and
24 geography and what berm would be sufficient there.

25 But when it comes to these rolling berms,

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1 I think that makes your job even more difficult because
2 the rolling berms would have to vary in height in order
3 to minimize or sufficiently address the visual impact
4 as they moved in geographic proximity to the subject
5 parcels. So I just wanted to address that one point.

6 As I mentioned, we did propose findings
7 of fact for the commission to consider in the event
8 that they are assisting -- or they are assistive to
9 you.

10 There is two alternative proposed
11 findings of fact, you can find them on pages 89 and 92
12 of Volume 1 of your packet. They present under two
13 separate factual scenarios. The first one is if the
14 commission were interested in an outright denial of the
15 application; the second one is proposing a modification
16 to the buffer and berms that are submitted in the
17 application that, based on the objective data based on
18 the GIS LIDAR profiling, would be required in order to
19 minimize and interfere with that visual impact.

20 I do want to make one scrivener's error.
21 Mr. Wall snuck a change in on me that I didn't catch.
22 On page 92, you would actually have to replace finding
23 of fact 15, because that is the one that addresses the
24 buffer and berming. And in the new resolution it's no
25 longer a finding of fact 14.

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1 However, our position is that these
2 findings of fact are sufficiently detailed and follow
3 and track the law, and you have them here so you can
4 read them. I'm not going to go through them again in
5 order to -- in either scenario that the Planning
6 Commission were interested in considering would support
7 the findings.
8 Because while you've heard that you don't
9 have the authority to deny this permit application, I
10 would just remind you that, in fact, nowhere -- nowhere
11 in the code does it say that you're not allowed to deny
12 an application. Nowhere in the code does it say that
13 as long as an application parrots the language in the
14 ordinance, the Planning Commission must approve it
15 regardless and without any consideration of how it
16 impacts and whether or not that question of your
17 discretion as to what is sufficiently minimized plays
18 out in reality. It's not enough in this scenario that
19 he states the requirements of the code, the minimum
20 requirements of the code. I will wrap it up.
21 The question for you is whether or not
22 it's sufficient. And what the code does is expressly
23 grants, and in fact mandates authority on this body to
24 either approve the permit if you find that those berms
25 represent, as proposed in the application, sufficient

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1 visual and noise barriers; or you can modify it, if in
2 fact you find that, based on the objective evidence,
3 significantly higher berms are going to be required in
4 order to minimize that impact; or you can deny it.
5 And in this instance we would urge you to
6 exercise that authority to either deny or modify it
7 based on the fact that this is a gravel site, it's in a
8 depressed elevation surrounded by neighboring
9 communities in a recreational area. And I'm happy to
10 answer any questions to the extent you have any.
11 **CHAIRMAN MARTIN:** Thank you, any
12 questions? None at this time.
13 **KATIE ELSNER:** Thank you.
14 **CHAIRMAN MARTIN:** Mr. Wall.
15 **MR. WALL:** Could I get some clarifying on
16 the findings that you drafted?
17 **KATIE ELSNER:** Sure.
18 **MR. WALL:** And I guess because I have
19 some concerns with some of the language in there. I
20 want to get your feedback on it.
21 In the -- what you're proposing in the
22 denial findings is that it be denied because it is
23 incomplete because they have not provided -- they
24 haven't included a vegetation and fencing plan that are
25 sufficient height and so forth.

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1 But I struggle with that idea that the
2 application is incomplete, because the applicant can't
3 know at the time of application submittal what the
4 Planning Commission will deem as appropriate. Because
5 the code specifically says that the Planning Commission
6 gets to determine what is sufficient height and density
7 for the vegetation and fence.
8 So can you elaborate on how that would be
9 an incomplete application with the -- if the applicant
10 doesn't know up front what the Planning Commission
11 would want?
12 **KATIE ELSNER:** Absolutely. An
13 application must, in order to be approved, must meet
14 the standards, and the standards are complied with by
15 meeting the conditions.
16 And in this instance, one of the
17 conditions for a complete application is that the berms
18 and buffers are of sufficient height and density in
19 order to mitigate and minimize, sufficiently minimize
20 the visual or voice impact. That's the way the
21 ordinance --
22 **MR. WALL:** As deemed by the Planning
23 Commission.
24 **KATIE ELSNER:** -- is written. And so the
25 Planning Commission makes that determination. And in

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1 the event that that determination is made in the
2 negative, the application is almost necessarily
3 incomplete, because a complete application, an
4 approvable application requires compliance with those
5 conditions.
6 **MR. WALL:** So you're saying the
7 application be incomplete after the fact?
8 **KATIE ELSNER:** The application is not
9 complete and approvable until this body says and deems
10 it so.
11 **MR. WALL:** Now, the other thing is that
12 the -- and you pointed out in your findings that the
13 code also provides for the applicant to submit an
14 alternate buffer plan.
15 **KATIE ELSNER:** Yes.
16 **MR. WALL:** So could not that be construed
17 as an alternate buffer plan and therefore the
18 application is complete?
19 **KATIE ELSNER:** In the event -- I
20 understand -- you'll have to forgive me, you have way
21 more experience with these than I do.
22 But my understanding is there is
23 oftentimes some degree of back and forth between the
24 applicant and the Planning Commission, and I think the
25 code does allow for that type of flexibility and that

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1 type of working through as the process goes on.
 2 However, that does not change the fact
 3 that in the event that we have an application that --
 4 or a scenario after the back and forth, after the
 5 voluntary conditions at the time that the commission is
 6 tasked to rule on this decision, that does not meet the
 7 mandatory condition, cannot be found to sufficiently
 8 minimize the visual and noise impact.
 9 The way I read the code says that that's
 10 incomplete at that point in time. It doesn't meet the
 11 mandatory and required conditions.
 12 And nevertheless, even if you didn't view
 13 it that way, it still must be denied because the
 14 Planning Commission must deny applications, must deny
 15 these material site permits when they don't comply with
 16 the minimum standards.
 17 **MR. WALL:** Okay. And another question
 18 there is that the code talks about the vegetation and
 19 fencing needs to be of sufficient height and density,
 20 but it doesn't talk about that in regards to berms, but
 21 yet you seem to be applying it to berms as well.
 22 **KATIE ELSNER:** I do. It's in the same
 23 paragraph. It's in the same section read together. It
 24 seems clear to me, and the interpretation I've taken on
 25 this is that it refers to the same types of

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1 impact-mitigating tools or mechanisms that are
 2 available to the Planning Commission and to applicants
 3 under the code.
 4 **MR. WALL:** Switching to the other set of
 5 findings that you drafted --
 6 **KATIE ELSNER:** Ouch. Okay.
 7 **MR. WALL:** -- you proposed a 43-foot berm
 8 and a 53-foot berm. And actually one of the testifiers
 9 basically came to the same conclusion as me, is would
 10 that not, in effect, be a denial in that a 43-foot berm
 11 and a 53-foot berm would not pass any reasonable test
 12 or reasonable standard?
 13 **KATIE ELSNER:** Well, except I don't
 14 believe that there is a reasonable test or a reasonable
 15 standard written in the code.
 16 I mean, the proposition that an
 17 application has to be denied despite its ineffectual
 18 conditions to meet the standards in the code is just
 19 not consistent with the language of the code. It's not
 20 consistent with the intent of the code. It's not
 21 consistent with the fact that we have a material site
 22 ordinance in the first place.
 23 And so there has to be a mechanism to
 24 address ineffective conditions. And it's certainly not
 25 by imposing a world of conditions that exist outside of

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1 the ones allowable in the code. And so what the code
 2 allows is for the Planning Commission to modify until
 3 they think that it's of sufficient height and density.
 4 And so, you know, in the event that you
 5 want to build a gravel site in a place where visual
 6 impact mitigation or minimization requires a 43-foot
 7 berm, that's the decision of the applicant. And I
 8 don't think it's the Planning Commission's
 9 determination to decide whether or not the applicant
 10 ultimately goes forward. The question is whether or
 11 not they can approve a permit that complies with both
 12 the conditions insofar as it allows the conditions to
 13 meet the standards. Anybody else?
 14 **CHAIRMAN MARTIN:** Thank you. Next
 15 testifier, please. Is there anyone in the audience
 16 wishing to testify? Last call.
 17 Hearing and seeing no further requests, I
 18 will close public comment and bring it to the
 19 commission for continuing discussion. Ms. Ecklund.
 20 **COMMISSIONER ECKLUND:** Thank you. I have
 21 so many notes floating around my desk. But --
 22 **MR. WALL:** I'm sorry, Mr. Chairman, the
 23 rules that you read at the beginning, the procedures
 24 allow for the applicant to give a rebuttal as long as
 25 he's not providing any new information, just rebutting

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1 the testimony that's been given.
 2 **CHAIRMAN MARTIN:** That's why I called
 3 everybody, and nobody spoke up.
 4 **MR. WALL:** Okay.
 5 **CHAIRMAN MARTIN:** Would you like to make
 6 a rebuttal?
 7 **STACY STONE:** Yes, I do, Mr. Chair. As a
 8 matter of procedure, I apologize because I was not
 9 making a further public comment but rather rebutting
 10 testimony offered.
 11 Now, Ms. Elsner got up and spoke and said
 12 that the application before you is incomplete, and
 13 that's incorrect. Because if you go back to 21.25.050
 14 which provides for permit considerations and when a
 15 public hearing is required, it's up to the planning
 16 director and the designee to review and determine
 17 completeness of an application.
 18 The application is not forwarded to this
 19 body until such time as the planning director has said
 20 to this body, "This is a complete application," or,
 21 "This is an incomplete application."
 22 At such time, if there is an incomplete
 23 application, the planning director can go back to the
 24 applicant and say, "Hey, this is not complete, and we
 25 should work to fix it," or it can go straight to this

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1 body for a hearing. And this body could then
 2 determine, "Yes, we agree with the staff, it's
 3 incomplete, and we're going to deny it." Hence the
 4 reason why you have the ability to deny an application.
 5 Now, there has been several comments
 6 today about why does public testimony matter. Why is
 7 there a public process involved in this?
 8 Now, when you read through the code
 9 provisions, and the code has to be read in total, there
 10 are several words, and we've heard the value of words
 11 today, and the important thing is public comment does
 12 matter, because it informs you of what conditions you
 13 need to be paying attention to. If there was no public
 14 comment, for instance, the person could apply, the
 15 planning director could approve and say, "This is a
 16 complete application," pass it to the Planning
 17 Commission, and it could be passed off wholesale.
 18 But the neighbors and the residents have
 19 brought concerns about noise. There is a provision in
 20 here that allows for voluntary conditions to be imposed
 21 by this body.
 22 We talked earlier today about white noise
 23 monitor -- or excuse me, white noise machines being
 24 added to these heavy equipment to help reduce the sound
 25 impacts, and my client today testified that he would do

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1 so voluntarily. And these are the types of things that
 2 all of these people here informing you that noise is a
 3 concern of them allow you to thread this needle and try
 4 and find a balance.
 5 Because you're a government entity,
 6 you're imposing a restriction on the free enjoyment of
 7 someone's land. And in order to do so, it must be
 8 narrowly tailored. And the assembly has taken great
 9 steps to ensure that this fine balance between
 10 government intervention and the public being allowed to
 11 freely exercise on their private property, that that
 12 balance is struck.
 13 Now, there are standards in the code, and
 14 we heard a lot about the standards just a few moments
 15 ago about how they are set to minimize impact. And
 16 what does it mean to minimize impact?
 17 Well, the code itself helps us define
 18 what we can do to minimize the impact. It says only
 19 the conditions set forth in 21.29.050 may be imposed to
 20 meet these standards.
 21 And then when we look further at the
 22 standards, they further guide your deliberation here
 23 tonight. There is words such as "buffer zone shall
 24 provide and retain a basic buffer." And that buffer is
 25 to be at -- if you look, it shall be maintained around

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1 the excavation permitter or parcel boundaries.
 2 We've heard a lot about the rolling berm
 3 today. But that meets exactly with the code, and it's
 4 a compliance to try and make sure that the excavation
 5 perimeter is as protected as possible to minimize the
 6 impact, to meet with that definition of the code.
 7 So again, as we stated at the beginning
 8 of the day today before we heard all the public
 9 testimony, my client submitted an application, it was
 10 reviewed by the planning director, there was a site
 11 visit, there was recommendations to revise the
 12 application, the application was revised, it was
 13 forwarded to this body as complete. This body has
 14 heard public testimony, it's heard the concerns, it has
 15 the ability to institute certain conditions and modify
 16 that application in order to approve it.
 17 But, again, we maintain that there is no
 18 reason for this body to deny the permit, but rather to
 19 institute those conditions that have been agreed to and
 20 that this body is allowed that are reasonable and
 21 necessary under the circumstances to find that strict
 22 balance between someone's right to enjoy their own
 23 property and government intervention.
 24 So we ask that you respectfully approve
 25 the permit.

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1 **CHAIRMAN MARTIN:** Thank you, and I
 2 apologize as well, because the rebuttal phase just kind
 3 of comes naturally. In strict legalese, you did the
 4 right thing.
 5 **MR. WALL:** Mr. Chairman.
 6 **CHAIRMAN MARTIN:** Yes.
 7 **MR. WALL:** It's 10:59.
 8 **CHAIRMAN MARTIN:** Yep. We've been
 9 discussing this -- we're going to have to vote for a
 10 continuation.
 11 **UNIDENTIFIED SPEAKER:** By suspending the
 12 rules?
 13 **CHAIRMAN MARTIN:** Suspending the rules.
 14 So I'm going to entertain a motion for suspending the
 15 rules.
 16 **COMMISSIONER BOKENKO-CARLUCCIO:** So moved
 17 for -- do you want a time period?
 18 **CHAIRMAN MARTIN:** Please.
 19 **COMMISSIONER BOKENKO-CARLUCCIO:** 15
 20 minutes.
 21 **CHAIRMAN MARTIN:** I heard 30 in the
 22 whispers.
 23 **COMMISSIONER BOKENKO-CARLUCCIO:** You
 24 think 30? Okay, 30.
 25 **CHAIRMAN MARTIN:** Yes, we should be able

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1 to get this done in 30 minutes. And the second?
 2 Discussion? Yes, Ms. Ecklund.
 3 **COMMISSIONER ECKLUND:** I believe we were
 4 in the same place the night we denied this, and we were
 5 accused of hurriedly denying it without adequate
 6 discussion. And I want to make sure that we're not
 7 accused of that again. So I don't know if we want 30
 8 minutes or -- I mean, I've got the longest drive.
 9 **CHAIRMAN MARTIN:** Yes, ma'am.
 10 **COMMISSIONER ECKLUND:** So it might take
 11 longer.
 12 **CHAIRMAN MARTIN:** No sense in rushing to
 13 the finish line prematurely.
 14 **COMMISSIONER ECKLUND:** No, no. I want to
 15 deliberate.
 16 **CHAIRMAN MARTIN:** We're just going to
 17 take it at 30 minute bites at a time.
 18 **COMMISSIONER ECKLUND:** Okay, we can make
 19 another motion at 30 minutes?
 20 **CHAIRMAN MARTIN:** Yeah.
 21 **COMMISSIONER ECKLUND:** Thank you.
 22 **CHAIRMAN MARTIN:** So are we all in
 23 agreement that we're going 30 minutes at a time? The
 24 motion passes.
 25 Now, discussion. Ms. Ecklund --

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1 **COMMISSIONER ECKLUND:** Do we need to have
 2 a motion to put it on the table?
 3 **COMMISSIONER BOKENKO-CARLUCCIO:** I was
 4 going to say, don't we need a motion?
 5 **CHAIRMAN MARTIN:** Let's get this --
 6 **COMMISSIONER ECKLUND:** Don't we still
 7 have the motion live from the last time we took it up?
 8 **CHAIRMAN MARTIN:** No, we're start -- I
 9 think we're starting over. This is kind of a rare
 10 bird.
 11 **COMMISSIONER ECKLUND:** So we need a
 12 motion to approve this, correct, to put it on the floor
 13 for discussion? All right, I'm going to try to find
 14 that number again.
 15 I move to approve a conditional land use
 16 permit application for Beachcomber, LLC for discussion
 17 purposes.
 18 **UNIDENTIFIED SPEAKER:** (Indiscernible).
 19 **COMMISSIONER ECKLUND:** Thank you.
 20 2018-23 is the resolution number for the record.
 21 **COMMISSIONER BOKENKO-CARLUCCIO:** I'll
 22 second it.
 23 **CHAIRMAN MARTIN:** Yes, ma'am.
 24 **COMMISSIONER ECKLUND:** Through the chair.
 25 We work for you, all of you. We work for the assembly.

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1 And I think the main goal for all of the residents of
 2 the Kenai Peninsula is balanced development, a balance
 3 between economy and residents living their values,
 4 their life values.
 5 It is sad to say that people want to put
 6 a gravel pit in a residential area, and if you knew it
 7 was there at the size this one is, or if the number of
 8 you that purchased property there knew it was coming,
 9 you probably wouldn't purchase property there.
 10 Several things have been brought up
 11 tonight that this ordinance doesn't address. It
 12 doesn't really say we can do anything if it's not safe.
 13 And I've brought that up several times in past gravel
 14 pit permits, the safety, site triangles, school bus
 15 stops, traffic on the road coming and going at the
 16 ingress and egress.
 17 But that's not -- it doesn't really allow
 18 us to say, "Oh, it's not safe, we can't do that." I've
 19 been given reasons like, "Oh, school bus stops always
 20 change," and stuff like that.
 21 That's -- and we hoped to have a gravel
 22 material site extraction ordinance done a year ago, I
 23 believe, or less than a year ago, June sometime at
 24 2018. And it has been in committee, and it's, I guess,
 25 coming out of committee soon. We've had some

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1 discussions of it.
 2 I do have some questions for staff, so to
 3 Mr. Wall. I believe that the permit that's in the
 4 packet tonight in packet 1, I've heard that that's not
 5 correct anymore, because I've heard through public
 6 testimony -- and that may be -- that now instead of
 7 50,000 cubic yards, he's going to only extract 10,000
 8 cubic yards a year, and then the application says
 9 50,000.
 10 It also says that the one test hole
 11 that's been dug says that the groundwater is at 18
 12 feet -- or at 20 feet, and he was going to only dig to
 13 18. And his own testimony was tonight that he was
 14 going to dig 25 feet down.
 15 So do we need a new application?
 16 **MR. WALL:** What you need to base your
 17 decision on is the application that was submitted
 18 and -- yeah. He hasn't changed -- except for the
 19 volunteered conditions, the application has not
 20 changed.
 21 **CHAIRMAN MARTIN:** Maybe for
 22 clarification. The 50,000 is a threshold. So you can
 23 do less than 50,000 without changing the application?
 24 **MR. WALL:** Right. In other words, I
 25 guess what I'm trying to say is that what he intends to

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1 do in the foreseeable future and what he puts on the
 2 application are two different things. What you're
 3 approving is what's on the application.
 4 **COMMISSIONER ECKLUND:** Followup through
 5 the chair to Mr. Wall.
 6 So if we had a gravel pit permit approved
 7 and then they wanted to dig into the water table,
 8 wouldn't they have to come back and ask for permission
 9 to do that?
 10 **MR. WALL:** Yes, the code specifically
 11 requires that.
 12 **COMMISSIONER ECKLUND:** So we'll be seeing
 13 him come back if we approve this? He'll have to come
 14 back since he's now going to dig 25 feet down?
 15 **MR. WALL:** He will not be able to
 16 excavate within two feet of the water table without
 17 coming back to the commission.
 18 **COMMISSIONER ECKLUND:** Through the chair.
 19 I only see one test hole on the site map that says the
 20 groundwater at whatever date it was dug was at 20 feet.
 21 Is that how you read the application?
 22 **MR. WALL:** Yes.
 23 **COMMISSIONER ECKLUND:** I'll allow the
 24 rest of the commission deliberation.
 25 **CHAIRMAN MARTIN:** Ms. Bentz.

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1 **COMMISSIONER ABRAHAMSON-BENTZ:** A
 2 question for staff through the chair. The letter from
 3 the DOT about requiring KPБ to repair any impairments
 4 in the road. The letter that is in page 172 of our
 5 packet, can you confirm that it would be the
 6 responsibility of the borough for any repairs to
 7 that -- that road?
 8 **MR. WALL:** That road is under the
 9 jurisdiction of the state, and they are responsible for
 10 maintenance. The borough has no intentions of doing
 11 any maintenance on that road.
 12 **COMMISSIONER ABRAHAMSON-BENTZ:** So
 13 followup. That statement from DOT would be erroneous
 14 as far as their concerns about this application?
 15 **MR. WALL:** Yes, Ms. Bentz. Mr. Chairman.
 16 I believe that the point that they were trying to
 17 emphasize is that they also have no intentions of doing
 18 repairs upon that road.
 19 **CHAIRMAN MARTIN:** Ms. Carluccio.
 20 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes, I
 21 wanted to ask you -- I saw some information in there
 22 about the parks, the state parks. And I just wanted to
 23 know if you had anything in writing from DNR or the
 24 Division of Parks and Outdoor Recreation whether they
 25 were in favor or opposed to this, or have you heard

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1 back from them at all? Or were they contacted?
 2 **MR. WALL:** Yes, Mr. Chairman, Ms.
 3 Carluccio. I have talked to State Parks several times,
 4 and they have talked about getting a letter to me.
 5 I've never seen that, though.
 6 **COMMISSIONER BOKENKO-CARLUCCIO:** And in
 7 your conversation with them, what were they saying?
 8 **MR. WALL:** I don't think that they -- I
 9 think they just mentioned that they may have some
 10 concerns because of the proximity of the parks. I
 11 don't think they were specific. They were just talking
 12 more about the deadlines for getting the comment letter
 13 to me and things of that sort.
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** And
 15 apparently they have missed the deadline?
 16 **MR. WALL:** Yeah, they missed several
 17 deadlines. I have not seen a comment letter from them.
 18 **CHAIRMAN MARTIN:** Mr. Ecklund.
 19 **COMMISSIONER ECKLUND:** I want to follow
 20 up on the letter from the Department of Transportation
 21 and Public Facilities that, number one, they had five
 22 things that they listed. And number one was that they
 23 wanted someone to verify the site triangles at the
 24 Danver Street stop sign either by an engineer, a
 25 surveyor, or a borough public works official. KPБ

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1 public works can coordinate with the DOT Public
 2 Facilities maintenance and operations when reviewing
 3 sight triangles. Has that been accomplished?
 4 **MR. WALL:** It has not, or at least that
 5 information has not been passed on to me.
 6 I did talk to the roads department about
 7 that. We were not able to connect and get out there.
 8 But I didn't pursue it further because there is not any
 9 conditions or standards in the code that would relate
 10 to that.
 11 **COMMISSIONER ECKLUND:** Again, another one
 12 of those safety issues that I was hoping we would see
 13 in the new ordinance and I hear has not been included
 14 in the new ordinance.
 15 So when that comes forward, I think there
 16 will be some amendments hoping that we can add some of
 17 these safety elements, you know, shoulders of 12 inches
 18 to 14 inches, that kids walk on and bikes go on and
 19 sight triangles. That's come before us, and I had
 20 mentioned it in the past.
 21 So I just -- I'm concerned that a state
 22 organization is asking us to verify some things and
 23 that we're not. Because I thought we could do more
 24 than the state asked of us, but we can't do less. So
 25 is it only if we see it in a state --

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1 **UNIDENTIFIED SPEAKER:** In statute.
 2 **COMMISSIONER ECKLUND:** -- in the
 3 administrative codes and in statute. So they would
 4 have had to reference a statute to make us act?
 5 **MR. WALL:** Yes, there is nothing in
 6 the -- there is no state requirement that we check site
 7 triangles on approaches to state roads.
 8 **CHAIRMAN MARTIN:** Mr. Ernst.
 9 **COMMISSIONER ERNST:** Yeah, this is to the
 10 staff through the chair. I just need some
 11 clarification.
 12 I'm looking at the findings of fact on
 13 page 80, 15 Q, and it says -- I just need to understand
 14 this a little bit, because when I look at the GIS
 15 evidence, if you will, it doesn't seem like there is
 16 any way -- let's see, it says, "Each piece of real
 17 estate is uniquely situated, and a material site cannot
 18 be conditioned so that all adjacent parcels are equally
 19 screened by the buffers."
 20 Well, in this unique situation, we have a
 21 pit that's in the lowlands surrounded by affected
 22 properties. Is there any possible buffer that could be
 23 reasonably used to protect the, you know, the noise
 24 levels and visual impact of this pit since there are so
 25 many parcels around it?

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1 **MR. WALL:** And one thing that was asked
 2 earlier that I did want to answer, somebody from the
 3 public asked, and that is that they were talking about
 4 adjacent parcels versus other parcels in the vicinity.
 5 And the code does say that the buffer
 6 requirements shall be made in consideration of and in
 7 accordance with existing uses of adjacent property. So
 8 that is in the conditions in 21.29.050.
 9 So that's why in the staff report I put
 10 particular emphasis on the adjacent parcels, because
 11 that's what the decision needs to be based on as
 12 concerning buffers.
 13 And even at that, not all of those
 14 parcels -- and I think that that 15 Q, really all it's
 15 saying is that not all -- some parcels are going to get
 16 better screening than others. And so it's not a matter
 17 of eliminating the visual impact or the noise impact,
 18 it's a matter of minimizing it.
 19 **CHAIRMAN MARTIN:** Mr. Ernst, followup.
 20 **COMMISSIONER ERNST:** I'm sorry, a
 21 followup.
 22 So equal protection under this law
 23 doesn't apply? I mean, I'm looking at that, I'm
 24 looking at this.
 25 **MR. WALL:** The way that I'm reading the

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1 ordinance is that all adjacent properties need to be
 2 minimized. The impacts need to be minimized for all
 3 adjacent properties.
 4 **COMMISSIONER ERNST:** So some properties
 5 are more minimized than others?
 6 **MR. WALL:** That's the way that I -- yeah,
 7 I would have to agree with that statement.
 8 **COMMISSIONER ERNST:** Okay, that's
 9 interesting.
 10 **CHAIRMAN MARTIN:** Mr. Foster.
 11 **COMMISSIONER FOSTER:** Mr. Wall, I had a
 12 little concern over adjacent and adjoining. And I
 13 remember back when I was with Homer that that came up,
 14 that adjoining means next to and touching and adjacent
 15 means nearby. Is that correct?
 16 **MR. WALL:** And I did spend some time
 17 looking at various definitions. And as it relates to
 18 property, generally it means adjacent or just separated
 19 by a roadway.
 20 It seems to be more specific than just
 21 nearby, although elsewhere in the code the word
 22 "adjacent" is used, and it appears to be referencing
 23 nearby in that it talks about wells within 300 feet on
 24 adjacent properties. Well, not all wells are
 25 on adjacent -- all wells within 300 feet are on

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1 adjacent property.
 2 So in that context it appears to be
 3 referencing nearby, or in close vicinity. I took it as
 4 adjacent properties to be immediately adjacent or
 5 separated by a roadway, which is a common definition I
 6 read as it relates to property.
 7 **CHAIRMAN MARTIN:** Thank you. Ms.
 8 Ecklund.
 9 **COMMISSIONER ECKLUND:** The specific code
 10 on that is 21.29.050 permit conditions (2)(C). And
 11 it's "The Planning Commission or planning director
 12 shall designate one or a combination of the above as it
 13 deems appropriate. The vegetation and fence shall be
 14 of sufficient height and density to provide visual and
 15 noise screening of the proposed use as deemed
 16 appropriate the Planning Commission or planning
 17 director."
 18 And I don't see where it says "adjacent"
 19 on that or on the buffer zone above it. If somebody
 20 sees where it says "adjacent," it just says --
 21 **MR. WALL:** (2)(E).
 22 **COMMISSIONER ECKLUND:** -- deemed.
 23 Right, in (2)(E), "At its discretion, the
 24 Planning Commission may waive buffer requirements where
 25 the topography of the property or the placement of

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1 natural barriers makes screening not feasible or not
 2 necessary. Buffer requirements shall be made in
 3 consideration of and in accordance with existing uses
 4 of adjacent properties at the time of the approval of
 5 the permit. There is no requirement to buffer the
 6 material site from use which commenced after the
 7 approval of the permit."
 8 So existing uses of adjacent property.
 9 We have residential and recreational are the adjacent
 10 properties, is that correct?
 11 **MR. WALL:** Yes.
 12 **COMMISSIONER ECKLUND:** Thank you. And
 13 then one last, if I may. 14 of 21.050 permit
 14 conditions reads that, and I'm going to take a point
 15 out of there, "It's at the best interest of the borough
 16 and the surrounding property owners."
 17 So there is these references to existing
 18 uses of adjacent properties and the surrounding areas
 19 and the surrounding property owners. But we let them
 20 all come and talk, but we have no meat to help them in
 21 this ordinance, because we are -- we can put buffers,
 22 we can put vegetation, and we can put fences, but who
 23 are we going to ask to put a 53-high earthen berm. I
 24 mean, we all know that's ridiculous.
 25 **UNIDENTIFIED SPEAKER:** Well, we can't

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1 even (indiscernible).
 2 **CHAIRMAN MARTIN:** Because, Mr. Wall,
 3 correct me if I'm wrong, the buffer is vegetative or a
 4 fence or a six-foot berm. Unless we want to jack
 5 the -- do we have the power to jack the berm up taller?
 6 **MR. WALL:** Yes. The code says minimum
 7 six-foot high fence --
 8 **CHAIRMAN MARTIN:** Minimum.
 9 **MR. WALL:** -- or minimum six-foot high
 10 berm or a 50-foot vegetated buffer.
 11 **CHAIRMAN MARTIN:** Thank you.
 12 **UNIDENTIFIED SPEAKER:** Minimum?
 13 **CHAIRMAN MARTIN:** Yeah, minimum. Ms.
 14 Carluccio.
 15 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Yes. Or}
 16 it also says a combination. So we could require a
 17 buffer, a berm, and a fence. Under C, designate one or
 18 a combination of the above as it deems appropriate.
 19 **CHAIRMAN MARTIN:** If you can justify it
 20 with findings.
 21 **COMMISSIONER BOKENKO-CARLUCCIO:** But,
 22 what I also see here is that the minimum six-foot
 23 earthen berm -- okay, it says minimum. So we could
 24 actually make the berm taller?
 25 **COMMISSIONER ECKLUND:** Yep.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Like 53}
 2 feet.
 3 **MR. WALL:** Yes, and staff did -- and
 4 staff did propose a 12-foot berm in most locations.
 5 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{But is a}
 6 12-foot berm enough to minimize visual and noise
 7 effects?
 8 **CHAIRMAN MARTIN:** It depends on what --
 9 your definition of minimize. Because it will bring it
 10 less. I mean, he can show us a picture of a six-foot
 11 berm or a 12-foot berm, and it will reduce the area of
 12 the triangle in the line of sight, but will it be
 13 adequate?
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{But is a}
 15 the minimization adequate, and that's what the question
 16 is.
 17 **CHAIRMAN MARTIN:** Ms. Ecklund, you have
 18 your hand up.
 19 **COMMISSIONER ECKLUND:** I asked the
 20 planning staff earlier today if they could share some
 21 information about how many gravel pits we've actually
 22 denied in the ten years I've been on this commission.
 23 Mr. Wall, did you say we've denied a couple over the
 24 last ten years or so?
 25 **MR. WALL:** Yes, there has been two

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1 denials done by the Planning Commission.
 2 **COMMISSIONER ECKLUND:** And the hearing
 3 officer overturned both of them?
 4 **MR. WALL:** Yes. And actually one was
 5 overturned by the hearing officer and the other was
 6 overturned with the Board of Adjustments. There was a
 7 transition period about that time, but yes.
 8 And then there was a couple of other
 9 cases where a modification to a permit was denied, and
 10 in that case that I'm thinking of, that was upheld.
 11 **COMMISSIONER ECKLUND:** But how many have
 12 we approved? We are not against gravel pits, and I
 13 think it's been kind of put upon us that we are against
 14 them. I mean, my dad was an operating engineer for 40
 15 years. I lived at a gravel pit. I had a CDL, I know
 16 you're safe drivers out there. We're not against
 17 gravel pits. But in the middle of a recreational and
 18 residential area, it just doesn't seem right.
 19 And a couple years ago, I -- or over the
 20 last year or two I've looked at how much money the
 21 borough actually gains from gravel pits, like how much
 22 sales tax or something they get off of them. And there
 23 is other economic entities and industries in the
 24 borough that make a lot more money.
 25 So -- and I know we need gravel. I drive

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1 to Anchorage twice a week, and I drive to these
 2 meetings twice a month. You know how much construction
 3 there is out there? Do you know how much gravel and
 4 rocks are going on those roads? Tons and tons, and I
 5 know we need these, but not in the middle of a
 6 recreational and residential area.

7 **CHAIRMAN MARTIN:** Mr. Whitney.

8 **COMMISSIONER WHITNEY:** Well, I think this
 9 is one of the more unique gravel pit permits we've
 10 looked at. It seems like most of them that I can
 11 remember over the last five or six years I've been on
 12 the commission, they are usually more in a flat land
 13 area where you can put up a six-foot berm or a 10-foot
 14 berm or whatever and lose your visual impact.

15 This is a little bit unique. It sits
 16 down low and there is adjoining properties, adjacent
 17 properties, whatever you want to call them. They are
 18 all close by, they are looking down into that area.

19 So I just don't think the berms that are
 20 proposed and anything that's going on here is adequate
 21 to control the visual impact that everyone is going
 22 to -- the adjoining property owners are going to
 23 suffer.

24 As far as noise, you know, we've heard
 25 lawn mowers make more noise than the equipment does and

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1 hand drills and everything else. The difference with
 2 that is they don't run for 10 or 12 hours a day. Your
 3 lawnmower is going to be going for a couple of hours,
 4 and, you know, we all listen to that, even here in the
 5 city.

6 So the heavy equipment, I think they are
 7 going to be able to hear it because most of the wind
 8 comes -- direction is coming off the water. That has
 9 an effect on noise, it makes it travel. I live two
 10 miles away from Fred Meyers, and I can hear trucks
 11 going down the hill slowing down. So I think those
 12 people that are living above that are going to continue
 13 hearing noise no matter what.

14 So right now I've listened to I don't
 15 know how many hours of testimony, read hundreds and
 16 hundreds of pages, and I still think my decision is
 17 still going to be the same as it was in July of last
 18 year, and I'll vote against this.

19 **CHAIRMAN MARTIN:** Mr. Venuti.

20 **COMMISSIONER VENUTI:** Boy, I feel
 21 fortunate I live in a community that has planning and
 22 zoning. You know, if nothing else that comes out of
 23 this, is this is a good argument for local option
 24 zoning. And I hope no matter what comes out of this,
 25 that this community -- and it's really great that this

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1 has brought you all together, but I think that you
 2 should really consider local option zoning so that
 3 something like this won't happen in the future.

4 I know gravel is an important commodity,
 5 and I know that it's a big industry in Anchor Point.
 6 I'm in the construction industry. Every project I work
 7 on has gravel, and all of it comes from Anchor Point.
 8 So I know there is real value, but I'm glad that there
 9 is not a gravel pit next to me. And I understand where
 10 you guys are concerned about.

11 But the idea that we can deny an
 12 individual the right to develop their property doesn't
 13 sit well with me. I know that if I want to control
 14 what's happening on the property next to me, I better
 15 buy it.

16 So I'm uncomfortable with the way this
 17 has transpired. Like Mr. Whitney, I've read thousands
 18 of pages of -- hundreds of pages of testimony, heard a
 19 lot about your concerns. I hope you guys will consider
 20 local option zoning, thank you.

21 **CHAIRMAN MARTIN:** Ms. Bentz.

22 **COMMISSIONER ABRAHAMSON-BENTZ:** So I have
 23 maybe a question for staff or just an observation about
 24 the idea of a rolling 12-foot berm. And this goes back
 25 to some discussion we've been having at the material

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1 site code revision workgroup.

2 And a lot of -- some of what we talked
 3 about is alternative post-mining land uses and when
 4 does a pit stop being a pit and it starts being a
 5 reclaimed area that's a pasture or a meadow.

6 And I'm looking at these profiles that
 7 have been drawn using the LIDAR of the area and
 8 thinking about the reclamation plan that's outlined in
 9 our packet, and this idea of a rolling buffer -- or a
 10 rolling berm, excuse me, and if extraction could be
 11 pursued in a way that that rolling berm only was
 12 minimized -- or basically minimizing visual impacts
 13 from a narrow swath of land that was currently being
 14 excavated, and that annually or every couple years the
 15 applicant would be reclaiming in its path, so it would
 16 be marching along through the site reclaiming as they
 17 went, which I think is what they plan to do in their
 18 application, and leaving behind a reclaimed natural
 19 area that was topsoil and seeded and reclaimed, similar
 20 to the images that were shown earlier tonight.

21 So I'm just trying to wrap my head around
 22 that, how this rolling buffer -- this rolling berm
 23 could be an effective way to minimize visual impacts to
 24 adjacent properties.

25 And maybe the question for staff is,

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1 looking at the reclamation plan and this idea of a
 2 rolling 12-foot berm, would that be feasible -- would
 3 that provide greater reduction of impact for at least
 4 visual screening for neighboring properties if
 5 extraction was pursued in that manner?
 6 **MR. WALL:** Yes. And I think that what
 7 you're referring to also is some comments earlier
 8 about, yeah, if that berm moves then all you're seeing
 9 is the scar on the land. But no, he would be required
 10 to reclaim as he goes for the exhausted areas of the
 11 material site.
 12 **COMMISSIONER ABRAHAMSON-BENTZ:** And I
 13 didn't -- just followup through the chair -- I didn't
 14 see a schedule for reclamation in -- or maybe I missed
 15 that in the packet. Do you have the page number for --
 16 I know annually 50,000 yards, but I'm not sure if there
 17 was an area plan to reclaim every year.
 18 **MR. WALL:** It mentions two to five years,
 19 but that's really going to depend on how much material
 20 is extracted. So the intent is to reclaim a
 21 significant amount. In other words, if more than 2 or
 22 5 acres are excavated, there is going to be some
 23 reclamation done.
 24 **COMMISSIONER ABRAHAMSON-BENTZ:** So just
 25 maybe a followup in the way of explanation.

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1 So looking at these profiles, the whole
 2 pit area wouldn't be a active excavation area as far as
 3 line of sight goes, it would be the line of site only
 4 within the currently excavated area, which would
 5 hopefully be protected by that 12-foot berm.
 6 **CHAIRMAN MARTIN:** Ms. Ecklund.
 7 **COMMISSIONER ECKLUND:** To follow up on
 8 the conversation about the rolling berm and the line of
 9 sight, as I understand it, most of the visual impact is
 10 along the east side and south side of this site where
 11 the topography goes up?
 12 In their Phase 1, 2, and 3 in the
 13 processing area are going the other direction, so I
 14 don't know how -- I mean, it's almost like they would
 15 have to start on the Phase 3 and roll back towards the
 16 hillside for that to work for a rolling berm. But it's
 17 a good thought. I mean, maybe they could start on the
 18 west side of Phase 1 and go that direction, and -- if
 19 this is going to be approved.
 20 **CHAIRMAN MARTIN:** We have a point of
 21 order. It's 11:30. Ms. Ecklund.
 22 **COMMISSIONER ECKLUND:** I move that we
 23 continue the discussion for a maximum of another 30
 24 minutes.
 25 **COMMISSIONER BOKENKO-CARLUCCIO:** Second.

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1 **CHAIRMAN MARTIN:** Does that mean that
 2 you're going to give us a count down so we can
 3 deliberate and vote precisely? The maximum -- you
 4 know, what's minimize versus maximize?
 5 **COMMISSIONER ECKLUND:** The midnight hour
 6 I turn into a pumpkin, so let's --
 7 **MR. WALL:** Mr. Chairman, there is nothing
 8 saying that a decision needs to be made tonight. We've
 9 closed the hearing. You can continue your deliberation
 10 at the next meeting.
 11 **CHAIRMAN MARTIN:** Does anyone feel that
 12 at this hour the human factor is weakening our ability
 13 to make a decision? Continue discussion. Ms.
 14 Carluccio.
 15 **COMMISSIONER BOKENKO-CARLUCCIO:** This has
 16 been an awful lot of information to read over and
 17 understand, and there are a number of things that I
 18 have read over where originally I thought I understood
 19 it, and then I read it over and it didn't quite match
 20 up to what my first impressions were.
 21 I would not be unhappy with continuing
 22 the deliberation at the next meeting. No more public
 23 testimony, just deliberation and then findings of fact.
 24 **CHAIRMAN MARTIN:** Mr. Foster.
 25 **COMMISSIONER FOSTER:** I was ready to vote

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1 when I got here tonight, and then I heard -- I took
 2 down seven pages of notes, and I would not be opposed
 3 to continuing this so I could review these -- this
 4 information.
 5 **CHAIRMAN MARTIN:** Could anyone state that
 6 in the form of a motion? Ms. Bentz.
 7 **COMMISSIONER ABRAHAMSON-BENTZ:** I have a
 8 question before we make that motion. The original
 9 motion that's on the floor, did we attach staff
 10 recommendations and findings or voluntary conditions?
 11 **UNIDENTIFIED SPEAKER:** No.
 12 **UNIDENTIFIED SPEAKER:** No.
 13 **COMMISSIONER ABRAHAMSON-BENTZ:** And I
 14 don't know -- just an order -- point of order. Do we
 15 want to do that today?
 16 **CHAIRMAN MARTIN:** I think so. I think
 17 the maker of the motion and the second could easily
 18 come to a concurrence on that, I hope. Mr. Whitney, do
 19 you have a comment?
 20 **COMMISSIONER WHITNEY:** I just have a
 21 quick question for staff. What does the agenda look
 22 like for the next meeting? Is it going to be a --
 23 **THE CLERK:** Through the chair. The
 24 agenda is not completely set right now. I do know the
 25 material site is coming to that meeting. I'm trying to

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1 remember what else. If you give me a minute, I can
2 check.
3 **CHAIRMAN MARTIN:** I know I could benefit
4 from coalescing the notes and collecting my thoughts.
5 Ms. Carluccio.
6 **COMMISSIONER BOKENKO-CARLUCCIO:** The only
7 thing is I guess where we are now, we would have to do
8 a up or down, a yes or no on what we have so far;
9 whereas, I don't know if we're interested in asking the
10 applicant to voluntarily add some things to this -- to
11 his application.
12 **CHAIRMAN MARTIN:** Did you have something
13 creative in mind, or is this hypothetical?
14 **COMMISSIONER BOKENKO-CARLUCCIO:** I don't
15 have any -- no, I don't have any. And I don't have
16 much creative at 11:35, but I'm just saying that
17 that's -- that would be one of the negative things.
18 **CHAIRMAN MARTIN:** But it also could be --
19 it also could be handled with -- if you did come up
20 with some great idea in the interim --
21 **COMMISSIONER BOKENKO-CARLUCCIO:** Right.
22 **CHAIRMAN MARTIN:** -- you could pass it on
23 to Bruce, and he could discuss it with the applicant,
24 and we could be prepared.
25 **COMMISSIONER BOKENKO-CARLUCCIO:** That's

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1 true.
2 **CHAIRMAN MARTIN:** It wouldn't be a dead
3 end.
4 **THE CLERK:** Through the chair.
5 **CHAIRMAN MARTIN:** Yes.
6 **THE CLERK:** So for the 24th meeting we
7 have a right-of-way vacation, the ordinance for the
8 material site, and then the review of a plat committee
9 approval.
10 **CHAIRMAN MARTIN:** Sounds like a light
11 agenda. Ms. Ecklund.
12 **COMMISSIONER ECKLUND:** So I don't really
13 find a staff agenda statement, but I guess the findings
14 are on the resolution. And if you wanted me to attach
15 those to the main motion, just so that we have a
16 complete motion, and then we make a decision on if
17 we're going to wait and deliberate at our next meeting
18 or not.
19 **THE CLERK:** Through the chair. When you
20 made the motion earlier, you did reference the
21 resolution, just to be clear.
22 **COMMISSIONER ECKLUND:** Okay, so that
23 should take care of it, all right, thanks.
24 **CHAIRMAN MARTIN:** Badda bing, badda boom,
25 okay.

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1 **UNIDENTIFIED SPEAKER:** The voluntary
2 conditions?
3 **CHAIRMAN MARTIN:** The voluntary
4 conditions were only discussed. But once the applicant
5 is questioned and -- because Ms. Ecklund I think said,
6 "Did you agree to this?" And he said, "Yes." That's
7 in the motion.
8 **COMMISSIONER ECKLUND:** Right.
9 **MR. WALL:** Just for some clarification,
10 Mr. Chairman, is that those volunteered conditions need
11 to be accepted by the commission, and there needs to be
12 findings that those conditions are in the best interest
13 of the borough and in the surrounding properties.
14 **CHAIRMAN MARTIN:** Yes.
15 **COMMISSIONER ECKLUND:** Through the chair.
16 So the voluntary conditions that I brought forward was
17 the white noise back-up alarm, and Mr. Trimble agreed
18 to that. And I believe --
19 **COMMISSIONER BOKENKO-CARLUCCIO:** For his
20 vehicles.
21 **COMMISSIONER ECKLUND:** For his vehicles,
22 not for any contractor that was in the pit, but for his
23 vehicles. So he volunteered that condition. And I
24 guess that's the only one I can remember.
25 **MR. WALL:** The other one was the --

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1 **COMMISSIONER ECKLUND:** Rolling berms?
2 **MR. WALL:** -- the rolling berms, yes.
3 **COMMISSIONER ECKLUND:** The rolling berms,
4 okay.
5 **UNIDENTIFIED SPEAKER:** And the
6 processing.
7 **COMMISSIONER ECKLUND:** And I believe that
8 the finding is that the white noise back-up alarms
9 would minimize noise impact, and the rolling berm would
10 hopefully minimize visual impact. Are those enough
11 findings, or do I need to quote code verbatim? Code
12 1 -- do you want me to do that?
13 **MR. WALL:** No, that is --
14 **COMMISSIONER ECKLUND:** Okay, good.
15 **MR. WALL:** -- sufficient.
16 **COMMISSIONER ECKLUND:** I just want to
17 make sure we're sufficient tonight and not -- that was
18 not made based on fear. Okay, thank you.
19 **THE CLERK:** I'm sorry.
20 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes, I
21 second.
22 **THE CLERK:** Can I have a point of order
23 of exactly what are we -- are we amending something
24 here or --
25 **COMMISSIONER ECKLUND:** They wanted to get

1 the voluntary conditions added to the main motion so
 2 that they were in the record, and that was for the
 3 white noise back-up alarms and the rolling berms.
 4 **CHAIRMAN MARTIN:** Mr. Whitney.
 5 **COMMISSIONER WHITNEY:** I thought he also
 6 agreed to the changing of the processing area.
 7 **CHAIRMAN MARTIN:** No, that was in a -- an
 8 exception, and staff recommended against -- to deny.
 9 **COMMISSIONER WHITNEY:** To not approve it,
 10 and then I thought he agreed that he would go --
 11 **CHAIRMAN MARTIN:** He said, yeah, don't --
 12 he said he doesn't have a problem with that denial.
 13 **UNIDENTIFIED SPEAKER:** Did anybody make a
 14 motion on postponing?
 15 **COMMISSIONER BOKENKO-CARLUCCIO:**
 16 (Indiscernible) I will.
 17 **CHAIRMAN MARTIN:** Please.
 18 **COMMISSIONER BOKENKO-CARLUCCIO:** I move
 19 that we postpone deliberation and final vote on KPB
 20 Planning Commission Resolution 2018-23.
 21 **COMMISSIONER ABRAHAMSON-BENTZ:** Second.
 22 **CHAIRMAN MARTIN:** And to the next
 23 meeting?
 24 **COMMISSIONER BOKENKO-CARLUCCIO:** Sorry,
 25 to the next meeting.

1 **CHAIRMAN MARTIN:** Mr. Whitney.
 2 **COMMISSIONER WHITNEY:** Can we make sure
 3 that's the number 1 thing on the agenda, so if people
 4 do come to be here for that decision, that they won't
 5 have to wait around all night?
 6 **CHAIRMAN MARTIN:** Do we have to make a
 7 motion to force to you do that, Julie? Thank you.
 8 Okay, is there any discussion on the
 9 motion to postpone? Any objection? It's unanimous
 10 that we'll see you -- we'll see each other here next
 11 time.
 12 (11:39:00)
 13 (End of requested portion)
 14 (11:40:13)
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1 **CERTIFICATE**
 2 **I, LEONARD J. DiPAOLO, Registered Professional**
 3 **Reporter, Certified Realtime Reporter, Certified CART**
 4 **Provider, and Notary Public in and for the State of**
 5 **Alaska, do hereby certify:**
 6 **That the tape recording, CD 6/10/19 was transcribed**
 7 **under my direction by computer transcription; that the**
 8 **foregoing is a true record of the testimony and**
 9 **proceedings taken at that time to the best of my**
 10 **ability; and that I am not a party to nor have I any**
 11 **interest in the outcome of the action herein contained.**
 12 **IN WITNESS WHEREOF, I have hereunto set my**
 13 **hand and affixed my seal this 26th day**
 14 **of August, 2019.**
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 23 #3319
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 25

 LEONARD J. DiPAOLO, RPR, CRR, CCP
 Notary Public for Alaska
 My Commission Expires: 2-3-2020

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JUNE 24, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION

LOCATION

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Monday, June 24, 2019
7:36 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 48, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Syverine Abrahamson-Bentz, Anchor Point/Ninilchik
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Dr. Rick Foster, Southwest Borough
Blair Martin, Kalifornsky Beach
Diane Fikes, City of Kenai
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna

Staff Present:

Max Best, Planning Director
Charlie Pierce, Kenai Peninsula Borough Mayor
Julie Hindman, Administrative Assistant
Holly Montague, Deputy borough Attorney
Bruce Wall, Planner
Scott Huff, Planning Manager

Others Present:

Eric Neely
Pete Arno
Pete Kinneen
Teresa Jacobson Gregory
Mary Trimble
Hans Bilben
Richard Carlton
James Hall
Jamie Ross
Richard Koskovich
Peter Zuyus
Blaine Gilman
Buzz Kyllonen

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1 Others Present, Continued:
 2 Wayne Ogle
 3 Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP
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1 location, and the adjacent property is a prior existing
 2 use material site on the opposite side of Danver Road.
 3 And so the recommendation would be, if
 4 you choose to make that change, would be the fifth
 5 bullet point on condition No. 2 to change it to read:
 6 A 50-foot vegetated buffer adjacent to the eastern most
 7 parcel boundary and a 12-foot high berm placed near the
 8 active excavation area, except along the northern 200
 9 feet of the proposed excavation.
 10 The applicant has also volunteered this
 11 additional condition. The permittee shall not operate
 12 the material site or haul material from the site on
 13 Memorial Day weekend, Saturday through Monday; Labor
 14 Day weekend, Saturday through Monday; and the 4th of
 15 July holiday, to include Saturday and Sunday if July
 16 4th is on a Saturday, Sunday, Monday, or Friday;
 17 Saturday, Sunday and Monday if the July 4th is on a
 18 Tuesday; Saturday, Sunday, and Friday if July 4th is on
 19 a Thursday.
 20 If the Planning Commission accepts this
 21 condition, staff recommends adding the following
 22 findings to finding No. 29, and that would be E, F, and
 23 G as follows.
 24 E, the applicant has volunteered a
 25 condition that prohibits material site operation on

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1 PROCEEDINGS
 2 7:34:42 p.m.
 3 (This portion not requested)
 4 7:37:50 p.m.
 5 **CHAIRMAN MARTIN:** Hearing and seeing no
 6 requests, I'll close public comment and bring it back
 7 to staff for a report on Item E-1.
 8 **MR. WALL:** Thank you, Mr. Chairman.
 9 This is an application for a conditional
 10 land use permit for a material site in the Anchor Point
 11 area. It is located at 74185 Anchor Point Road, Parcel
 12 No. is 169-010-67. The applicant is Beachcomber, LLC.
 13 At the June 10th meeting, the Planning
 14 Commission asked staff to work with the applicant on
 15 additional volunteered conditions. The applicant also
 16 wanted a clarification to the buffer along the eastern
 17 boundary.
 18 Along the northern 200 feet of the buffer
 19 along Danver Road he's requesting a 50-foot vegetated
 20 buffer without the 12-foot high berm. This was
 21 discussed at previous meetings, but not in detail, and
 22 it was not incorporated into the conditions.
 23 Staff is in support of this because there
 24 is significant vegetation in this area. Danver Road is
 25 at a lower elevation than the material site at this

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1 holiday weekends during the summer months; F, the
 2 volunteered condition to not operate on holidays is
 3 consistent with the standard to reduce noise
 4 disturbance to adjacent properties; and G, the
 5 volunteered condition to not operate on holidays is in
 6 the best interest of the borough and the surrounding
 7 property owners because the Anchor River State
 8 Recreational Area has a significantly greater number of
 9 visitors on holidays, and several of the neighbors and
 10 Alaska State Parks has expressed concerns about noise
 11 impacts to the recreational area.
 12 The public hearing for this item was
 13 closed at your last meeting. Your packet contains the
 14 resolution that has been updated to reflect the
 15 volunteered conditions that were accepted at the last
 16 meeting. The packet also includes on page 30 a letter
 17 dated May 1st from Alaska State Parks.
 18 At the last meeting it was mentioned by a
 19 testifier that State Parks had submitted a letter. I
 20 informed the Planning Commission that we had not
 21 received the letter. Since then I have spoken to State
 22 Parks and they provided me with a copy of the letter.
 23 It evidently was lost in the mail.
 24 On page 32 through 61 are materials that
 25 were passed out at the last meeting. In your desk

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1 packet are two letters from Shirley Gruber that were
 2 mailed directly to Ms. Carluccio and Mr. Whitney after
 3 the hearing was closed.
 4 The applicant has not had an opportunity
 5 to rebut the comments mailed directly to the commission
 6 members or the letter from State Parks.
 7 The applicant may not have received all
 8 of the printed materials that were provided at the last
 9 meeting.
 10 Prior to continuing deliberation on this
 11 matter, the applicant should be given an opportunity to
 12 rebut this additional information. The applicant
 13 should also be instructed to limit his rebuttal to only
 14 those additional comments that I have mentioned.
 15 With the chair's permission I would like
 16 to address a couple of commission members to get some
 17 items clarified in the record.
 18 Mr. Ruffner, there is an article
 19 published on June 4th by KBBi that quotes you as
 20 saying, concerning material sites, "The Planning
 21 Commission doesn't have the authority to say no."
 22 Can you state for the record the context
 23 of that statement?
 24 **COMMISSIONER RUFFNER:** Sure. Through the
 25 chair. Yeah, I don't know that I can recall verbatim

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1 what the comments were or the context, but in general I
 2 would say that a number of times when material sites
 3 have come before this body, since I've been on the
 4 commission, it's been pretty clear to me that our job
 5 as commissioners is to interpret what the code is that
 6 has been laid forward from the assembly.
 7 And with respect to a denial, if a permit
 8 application comes in and it's complete and it meets the
 9 conditions that have been set forth in 21.29, then
 10 those -- and again, I'll just repeat, if those
 11 conditions are met, then we don't have the ability to
 12 deny the permit.
 13 So that's my understanding of how that
 14 is, because those elements that address the conditions
 15 are pretty specific in 21.29.050 I believe. That would
 16 be my address back to staff and to the public for
 17 clarification on those comments.
 18 **MR. WALL:** So it's my understanding that
 19 was in the context of your role as the chair of the
 20 material site work group?
 21 **COMMISSIONER RUFFNER:** Yeah. I mean, I
 22 know they called me and asked about -- KBBi that is
 23 called and asked to do an interview on that. And it
 24 wasn't specific to any one gravel pit, it was the
 25 entire suite of code that we address right now.

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1 So again, I've made very similar comments
 2 on the record for a whole host of these material sites
 3 that have come before us over the last five, six, seven
 4 years.
 5 **MR. WALL:** All right, thanks. Mr.
 6 Chairman, if I could ask Dr. Foster a question as well.
 7 At the April 22nd meeting, the applicant
 8 stated, and I'm reading from the minutes of the meeting
 9 that I recognize isn't verbatim, but it says that he
 10 met prior to the meeting with planning staff Mr. Best
 11 and Mr. Wall, and the acting chairman Dr. Foster. They
 12 made some changes to procedures and they wanted to make
 13 him aware of the changes.
 14 He listened and came away from the
 15 meeting knowing how the things would go regarding
 16 scheduling. All of the testimony would be allowed, and
 17 at the end of the public testimony they would ask for a
 18 continuance and that would be the end of the public
 19 testimony.
 20 Starting on April 22nd, the date
 21 presented by staff and Dr. Foster, that it would begin
 22 with his rebuttal, and it sounded fine, so they agreed.
 23 So I guess what I'm wondering is, as I'm
 24 reading that, Mr. Trimble's account of the
 25 conversation, it sounds like the conversation was

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1 limited to how the meeting was going to proceed. And
 2 I'm wondering if you could provide any additional
 3 clarification concerning that conversation.
 4 **COMMISSIONER FOSTER:** Thank you. Through
 5 the chair. When I arrived I had a short meeting with
 6 Mr. Best and Mr. Wall in regards to tidying up our
 7 hearing procedure. That we would begin with the chair
 8 introducing the agenda items; the staff presenting a
 9 report and staff recommendation; the No. 3, the
 10 presentation by the applicant and their
 11 representatives -- in the past we have started that way
 12 but haven't read this out as this is going to be the
 13 process -- and then 4, testimony by members of the
 14 public; 5, response by staff to any testimony that was
 15 given and an opportunity for the commission to ask
 16 questions of the staff; and then No. 6, the rebuttal by
 17 the applicant.
 18 That's something that we hadn't done
 19 regularly. And so by making this hearing procedure,
 20 setting it in stone, that then No. 7, the chairperson
 21 closes the hearing and then entertains a motion.
 22 So I read this over, I agreed to it as
 23 the acting chair. And then Mr. Trimble, I shared it
 24 with Mr. Trimble and showed him the seven steps and
 25 said, "This is where we're going to ask you to

Page 10

1 present." And that's the limit of my conversation with
2 him.

3 **MR. WALL:** Thanks. And Mr. Chairman,
4 if -- one more thing. Just for the record, we know
5 that Mr. Whitney and Ms. Carluccio has received ex
6 parte communication after the hearing was closed, and
7 it would probably be a good idea to ask the rest of the
8 commission members if there has been any additional ex
9 parte communication.

10 **CHAIRMAN MARTIN:** Ms. Carluccio.
11 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes. I
12 just want to state for the record that when I received
13 that letter, I didn't know what it was when I opened
14 it. And when I opened it and read the first line and
15 saw that it was in -- pertaining -- it was pertaining
16 to this issue, I did not read the rest of the letter,
17 but I scanned it and sent it to Julie, our secretary.

18 And the first time I got to read the
19 letter was tonight when I saw it in the desk packet.

20 **CHAIRMAN MARTIN:** Mr. Foster.
21 **COMMISSIONER FOSTER:** I received --
22 through the chair. I received that same letter and
23 brought it in and turned it in.

24 **CHAIRMAN MARTIN:** Mr. Whitney.
25 **COMMISSIONER WHITNEY:** Yeah, I received

Page 11

1 it and e-mailed it to Julie the next day, I believe it
2 was.

3 **CHAIRMAN MARTIN:** Ms. Fikes.
4 **COMMISSIONER FIKES:** I received the same
5 letter, and I turned it over to Julie. I also received
6 a phone call message for contact and I did not respond.

7 **CHAIRMAN MARTIN:** Yes, Ms. Bentz.
8 **COMMISSIONER BENTZ:** I must not check my
9 mail very often because I did not receive a letter.

10 But I did receive calls from neighbors, but just
11 related to the material site code ordinance. And I
12 reminded them that I wouldn't be able to speak to any
13 specific permits. So we just discussed the ordinance,
14 not the application of the day.

15 **CHAIRMAN MARTIN:** Mr. Ruffner.
16 **COMMISSIONER RUFFNER:** Thank you, Mr.
17 Chair. Well, if I got a letter, I didn't read it or
18 see it. So I'm trying to catch up. So maybe not
19 specifically on ex parte communication, because I don't
20 believe I've had any ex parte communication with people
21 since the hearing happened.

22 But I would say that I wasn't here for
23 the last meeting, so I did go back and listen to the
24 audio portion of the record. I listened to almost all
25 of that, most of it, and read through the minutes

Page 12

1 pretty carefully. So I'm up to speed on what happened
2 last time.

3 **CHAIRMAN MARTIN:** Thank you. Ms. Morgan.
4 **COMMISSIONER MORGAN:** I was not here the
5 last meeting, but I did listen to the audio and I read
6 the minutes, and I read the packets.

7 **CHAIRMAN MARTIN:** Thank you. Staff.
8 **MR. WALL:** Thank you, Mr. Chairman. I
9 might add that both Mr. Ruffner and Ms. Morgan did view
10 the video presentation that was done by the applicant
11 at the last meeting.

12 And in conclusion, staff recommends that
13 the Planning Commission review the application, site
14 plan, staff report, and comments received and determine
15 if the mandatory conditions contained in KPB 21.29.050
16 will be met.

17 The planning department recommends that
18 the Planning Commission amend the resolution as
19 discussed in tonight's staff report, deny the
20 processing distance waiver request, approve the
21 conditional land use permit with listed conditions, and
22 adopt the findings of fact subject to the requirements
23 contained in the full staff report. And that's the end
24 of my report.

25 **CHAIRMAN MARTIN:** Thank you. So there is

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1 a motion on the floor. Mr. Whitney.
2 **COMMISSIONER WHITNEY:** I just have a
3 procedural question. If we pull up this new resolution
4 with these changes made, is that going to open up for
5 testimony about those changes?

6 **CHAIRMAN MARTIN:** I'm not at liberty to
7 answer that. Staff?
8 **MR. WALL:** The resolution that's included
9 in your staff report are basically what you had
10 approved at the last meeting, I just put it in writing.

11 What's contained in the staff report
12 today is the applicant's response to the public
13 testimony that's been heard. So you're certainly free
14 to act on that without taking additional public
15 comments. The public has already commented and the
16 applicant has responded with an additional volunteered
17 condition.

18 And the other item concerning the buffer,
19 that's certainly within your purview to change the
20 requested buffers. That does not require additional
21 public comment.

22 **CHAIRMAN MARTIN:** Thank you. Ms.
23 Ecklund.
24 **COMMISSIONER ECKLUND:** Through the chair
25 to staff. Is discussion then allowed, or any

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1 additional amendments allowed besides the one that are
 2 new and presented tonight and the changes we made at
 3 the last meeting?
 4 **MR. WALL:** As I recall, the way that you
 5 ended the last meeting was you left it open to bring
 6 the applicant up to ask him for additional volunteered
 7 conditions as well. But you also asked me to work with
 8 the applicant in the meantime so that wouldn't all have
 9 to be hashed out here.
 10 **COMMISSIONER ECKLUND:** In the time from
 11 the last meeting it's come to my attention that there
 12 is really, like, three times of the year that the beach
 13 is inundated with people, there is three openings, and
 14 it's mentioned in the letter that you said is new for
 15 us tonight, the one on page 30.
 16 It's mentioned in there by the parks
 17 department that the saltwater and the fresh fishery
 18 opens increase traffic. So I'm just wondering, are
 19 those the same periods of time that the applicant has
 20 made amendments and agreed to? They sound like
 21 holidays, but these fishery openings, is it possible
 22 to -- I know they change every year, but there are
 23 three fisheries openings in that area and would
 24 increase public traffic.
 25 **MR. WALL:** That is certainly something

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1 that you can bring up with the applicant.
 2 **COMMISSIONER ECKLUND:** Thank you.
 3 **CHAIRMAN MARTIN:** Yes.
 4 **COMMISSIONER ECKLUND:** Is this now the
 5 time that we can talk to staff and deliberate some
 6 more?
 7 **CHAIRMAN MARTIN:** Yeah, we are in
 8 discussion.
 9 **COMMISSIONER ECKLUND:** Through the chair,
 10 back to staff --
 11 **MR. WALL:** Mr. Chairman, if I could.
 12 Again, my recommendation is to allow the applicant to
 13 rebut the additional comment -- the additional comments
 14 he had not seen at the last meeting if he wishes to do
 15 so.
 16 **CHAIRMAN MARTIN:** I think that would be a
 17 good sequence of events if Ms. Ecklund agrees.
 18 **COMMISSIONER ECKLUND:** The comments
 19 regarding the fisheries?
 20 **CHAIRMAN MARTIN:** We're going to bring
 21 the applicant up so we can -- for housekeeping get the
 22 beginning -- get us caught up in time.
 23 **COMMISSIONER ECKLUND:** Okay, yeah.
 24 **CHAIRMAN MARTIN:** Would the applicant
 25 please come to the podium. State your name and address

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1 and turn the microphone on.
 2 **EMMITT TRIMBLE:** Emmitt Trimble, Box 193,
 3 Anchor Point.
 4 My understanding regarding any rebuttal
 5 would be it would specifically deal with those -- the
 6 letter that was received, and I had some rebuttal
 7 regarding the presentation that was drawn out over a
 8 two-hour period with the -- one of the opponents
 9 sitting over here with the computer. I felt that that
 10 was something that should not have happened. We've
 11 previously rebutted those drawings and those assertions
 12 with the letter from a licensed land surveyor.
 13 Regarding the letter that came in late, I
 14 have no problem with anything there, and I'm available
 15 for any questions.
 16 **CHAIRMAN MARTIN:** Ms. Ecklund.
 17 **COMMISSIONER ECKLUND:** Through the chair.
 18 Thank you, Mr. Trimble.
 19 The letter from the Alaska Division of
 20 Parks and Outdoor Recreation, Jack Blackwell, mentions
 21 the increase of traffic during the freshwater and
 22 saltwater fisheries, and I believe those are just a few
 23 days, but three different times. Are you familiar with
 24 those fishery openings?
 25 **EMMITT TRIMBLE:** Very familiar. I've

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1 been there in that river bottom since 1975.
 2 **COMMISSIONER ECKLUND:** Okay. And --
 3 sorry, go ahead.
 4 **EMMITT TRIMBLE:** And they aren't the
 5 same. The freshwater openings vary every year. It
 6 opens around Memorial Day, sometimes it's the weekend
 7 before, sometimes weekend after. But nevertheless, on
 8 Memorial Day and on the holidays, that's when the most
 9 people are there. Right now there is -- last Saturday
 10 there was 14 people out of 186 sites.
 11 So we chose to respond to the state's
 12 concerns. And, you know, the noise is coming both ways
 13 then. But it's not in our best interest to be trying
 14 to operate in the middle of all of that.
 15 Regarding the freshwater openings -- and
 16 so the saltwater is continuous every day, but mostly
 17 it's on the weekends. So I'm open to suggestions about
 18 that, but the summertime is what we have --
 19 **COMMISSIONER ECKLUND:** Correct.
 20 **EMMITT TRIMBLE:** -- we can't not operate.
 21 But I thought it was reasonable Labor Day, Memorial
 22 Day, and the 4th of July. Particularly we have a
 23 parade down there on the 4th of July and big barbecues,
 24 and so those were the big events.
 25 **COMMISSIONER ECKLUND:** Okay. I did go

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1 down there two Saturdays ago and drove the road and saw
 2 the recreational sites, and it was a pretty quiet
 3 Saturday. I don't think there was a freshwater opening
 4 that Saturday.
 5 **EMMITT TRIMBLE:** Yes, that was when there
 6 were 14 out of 186 was --
 7 **COMMISSIONER ECKLUND:** Not just three
 8 days ago, but two weeks ago.
 9 **EMMITT TRIMBLE:** Yes, I understand. And
 10 that was on a Saturday. There were 35 last Saturday.
 11 **COMMISSIONER ECKLUND:** Okay. So on your
 12 suggested additional conditions that you would agree
 13 to, you say if the 4th is on a Thursday you would be
 14 closed Saturday, Sunday, and Friday. Is your parade on
 15 the 4th or is your parade on Friday. Because you're
 16 going to be open on the day of the parade if the 4th is
 17 Thursday.
 18 **EMMITT TRIMBLE:** I didn't discuss those
 19 clarifications of when it fell. I'm open to anything
 20 there. Certainly I don't want to be anyone trying to
 21 operate while the parade is going on. We wouldn't do
 22 that anyway. So I think that was a clarification from
 23 staff that, you know, the dates change. So we needed
 24 to address that in the staff report.
 25 **COMMISSIONER ECKLUND:** Okay. Yeah,

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1 because they are skipping the 4th on all three of those
 2 dates. So we might need to just --
 3 **UNIDENTIFIED SPEAKER:** (Indiscernible).
 4 **COMMISSIONER ECKLUND:** -- to include the
 5 4th?
 6 **MR. WALL:** Mr. Chairman, that was the
 7 intent, to include the 4th. And so if it can be
 8 construed a different way, then feel free to reword
 9 that, I think.
 10 **COMMISSIONER ECKLUND:** Okay. So it's
 11 going to include the 4th plus these three additional
 12 days around these holidays?
 13 **EMMITT TRIMBLE:** Sometimes there is a
 14 four-day weekend I guess is what he was getting to. So
 15 we would include all of that.
 16 **COMMISSIONER ECKLUND:** And I didn't ask
 17 you to make it a condition, but you seem to be
 18 agreeable or probably practical not to operate on those
 19 freshwater openings when it's crowded, or would you --
 20 **EMMITT TRIMBLE:** I would rather keep it
 21 to the holidays because there is too much uncertainty
 22 about those openings. Frankly, usually the first
 23 weekend there is hardly anyone there anyway. So I
 24 would rather keep it to the holidays.
 25 **COMMISSIONER ECKLUND:** Thank you.

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1 **EMMITT TRIMBLE:** Because we know that
 2 people will be there then regardless of the fish.
 3 **COMMISSIONER ECKLUND:** Thank you.
 4 **CHAIRMAN MARTIN:** Further discussion on
 5 the voluntary conditions? Make sure we get those all
 6 nailed down.
 7 **EMMITT TRIMBLE:** And the -- to clarify,
 8 Mr. Wall had a question regarding the back-up beepers,
 9 and he was clarifying with me that I said I was in
 10 agreement with that on my equipment. I can't govern
 11 what happens with a truck that's maybe one time going
 12 to come in there, but I would certainly try to
 13 accomplish that.
 14 It's not a big deal to deactivate the
 15 beeper without putting the other white noise machine
 16 on. So I would do everything I could to keep that down
 17 on other people's equipment.
 18 **CHAIRMAN MARTIN:** Yes.
 19 **COMMISSIONER ECKLUND:** Just another
 20 question regarding the weight. Do you know what the
 21 weight limit is on the bridge? And I know you can't
 22 use it, but what is the weight limit on the bridge?
 23 **EMMITT TRIMBLE:** I think it's 11 tons. I
 24 followed a dump truck across it with 12 yards of dirt
 25 in it the other day heading up Danver, so...

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1 **COMMISSIONER ECKLUND:** I had one follow
 2 me across the bridge last Saturday.
 3 **EMMITT TRIMBLE:** So it's not being
 4 monitored. But to answer your question, I think it's
 5 11 tons.
 6 **COMMISSIONER ECKLUND:** And a gravel truck
 7 full is more than that?
 8 **EMMITT TRIMBLE:** As far as I know it's
 9 more than that. And we, for our part, would not be
 10 going across that bridge until it's repaired.
 11 **COMMISSIONER ECKLUND:** But you are
 12 probably going to have other contractors working with
 13 you in the pit?
 14 **EMMITT TRIMBLE:** And we would require of
 15 them, that if they are going to buy gravel from us,
 16 they cannot go across the bridge until it's repaired.
 17 **COMMISSIONER ECKLUND:** Is there a
 18 timeline for those repairs, do you know?
 19 **EMMITT TRIMBLE:** I'm hoping for next
 20 summer. I'm not optimistic. I mean, you've got to
 21 build a separate bridge to tear that one down, you
 22 know, to --
 23 **COMMISSIONER ECKLUND:** Yeah. Thank you.
 24 **CHAIRMAN MARTIN:** Ms. Fikes.
 25 **COMMISSIONER FIKES:** Through the chair.

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1 Is there an area of the residential zone there or
 2 housing area that would be affected by any of the Jake
 3 brake use at all?
 4 **EMMITT TRIMBLE:** The only place someone
 5 might use a Jake brake would be on the other side of
 6 the river coming down the hill towards the bridge.
 7 You know, I'm down there all the time, my
 8 daughter lives there. I don't know that I've heard
 9 Jake brakes there. I have heard them from out on the
 10 Sterling, Old Sterling highway. And also I'd just
 11 clarify it's not a residential zone. There are
 12 residential properties there, but there is no zone.
 13 **COMMISSIONER FIKES:** Yes, I apologize,
 14 you are correct. Thank you.
 15 **CHAIRMAN MARTIN:** Any other questions for
 16 the applicant? None at this time.
 17 **EMMITT TRIMBLE:** Thank you.
 18 **UNIDENTIFIED SPEAKER:** Mr. Chairman --
 19 **CHAIRMAN MARTIN:** I don't -- this isn't
 20 part -- this isn't part of the plan.
 21 **UNIDENTIFIED SPEAKER:** I realize it isn't
 22 (indiscernible).
 23 **CHAIRMAN MARTIN:** And if -- you're not
 24 even -- this is not part of the procedure, sir. We
 25 have -- we're in discussion at this point and we

Page 23

1 brought up some information by request.
 2 **UNIDENTIFIED SPEAKER:** (Indiscernible).
 3 **CHAIRMAN MARTIN:** No, by -- these people
 4 requested.
 5 **UNIDENTIFIED SPEAKER:** They did
 6 (indiscernible).
 7 **CHAIRMAN MARTIN:** What say you, Ms.
 8 Ecklund?
 9 **COMMISSIONER ECKLUND:** I have a question
 10 for staff through the chair.
 11 On page 124 of our packet No. 2, which
 12 has 600-some pages, is the letter we received, not
 13 quite -- there is so many packets on my iPad right now
 14 I'm not sure which one. But it's the one from the
 15 Alaska Department of Transportation & Public Facilities
 16 that is, like, giving us direction, giving the borough
 17 direction.
 18 And I will say the pictures that were
 19 presented to us at the last meeting in public testimony
 20 showed the road, they were black and white.
 21 But I drove that road, as I said, two
 22 Saturdays ago, and I can't imagine what that road is
 23 going to turn into with a large amount of heavy trucks
 24 going over it. It's very narrow, it is cracked all
 25 over, especially along the edges and tried to be

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1 patched like their edges are already falling off the
 2 sides of the road.
 3 So I spoke to Planning Director Best and
 4 asked if there had been any followup, because at the
 5 meeting, Mr. Wall, you stated that the borough would
 6 not be doing any repairs as the Department of
 7 Transportation and Public Facilities requested.
 8 Is there anyplace in the borough code
 9 that talks about what happens to a state maintained
 10 road when we approve something to happen on it that
 11 then makes it a bad shape, in bad repair? Who is
 12 responsible to repair that?
 13 **MR. BEST:** Thank you, through the chair,
 14 Ms. Ecklund. There is nothing in borough code that
 15 would require an applicant or somebody utilizing the
 16 road to repair it, a state road especially. The code
 17 talks about borough roads and any borough ownership of
 18 those roads.
 19 The -- that responsibility lies with the
 20 state. If they want to impose weight restrictions,
 21 axle load limits on a road in disrepair, they certainly
 22 have that ability, like they do in the spring, signage.
 23 Like I said, load limits and those kind of things, they
 24 have the tools to do that if they felt that was
 25 necessary on that road.

Page 25

1 **COMMISSIONER ECKLUND:** Thank you.
 2 **CHAIRMAN MARTIN:** Mr. Bentz.
 3 **COMMISSIONER BENTZ:** Followup question
 4 for staff regarding roads.
 5 We did receive testimony that, "Wouldn't
 6 it have to be approved by the state DNR through the
 7 State Parks since that road was originally granted as
 8 easement through the State Parks for DOT as well?"
 9 I just remember there being some
 10 combination of State Parks/DOT relationship with that
 11 road building.
 12 **MR. WALL:** It is complicated. I did look
 13 into that a little bit today. I believe that DOT does
 14 have an easement for that to do all the work they need.
 15 From my previous conversations with DOT,
 16 the major limiting factor was the adjacent wetlands and
 17 encroaching upon, like, the adjacent private property.
 18 There just isn't much room to work in there. So it was
 19 more of a physical restraint rather than the legal
 20 restraint.
 21 **CHAIRMAN MARTIN:** Mr. Whitney.
 22 **COMMISSIONER WHITNEY:** A followup on that
 23 earlier question on weight limits.
 24 Who would trigger that with DOT? Would
 25 it be a complaint from the borough? Would it be a

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1 complaint from property owners in the area or people
 2 using the road or even parks department?
 3 **MR. BEST:** Through the chair, Mr.
 4 Whitney. I believe it could be anybody that could make
 5 the complaint. But it would be up to DOT to do an
 6 analysis of it to decide if there should be some sort
 7 of load limit on there.
 8 **COMMISSIONER WHITNEY:** Thank you.
 9 **CHAIRMAN MARTIN:** Mr. Ruffner.
 10 **COMMISSIONER RUFFNER:** Thank you, Mr.
 11 Chair. So I think to get us on to the crux of what
 12 we're working on here, I would move to amend our motion
 13 by substitution. And the substitution would include
 14 the resolution that is in our electronic packet
 15 starting on page 22 of 173 and continuing through 29 of
 16 173.
 17 **COMMISSIONER BENTZ:** Second.
 18 **COMMISSIONER RUFFNER:** And then I can
 19 speak a little bit just to the substitution.
 20 So this substitution amendment renumbers
 21 a number of sections to have it make sense. There are
 22 a couple of substantial -- or maybe not substantial
 23 changes, but the additions are in red that included the
 24 voluntary conditions that were worked on and agreed
 25 upon by the applicant and staff.

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1 And also makes some changes and clarifies
 2 the permit conditions themselves with respect to a
 3 change in the height of the berm specifically along one
 4 of the streets. So that's -- and this was all covered
 5 by the staff in their staff report. So that's what
 6 this amendment accomplishes.
 7 **CHAIRMAN MARTIN:** Mr. Wall.
 8 **MR. WALL:** Just for clarification. The
 9 resolution on the page numbers that Mr. Ruffner just
 10 referred to does not include the conditions that has
 11 been volunteered since the last meeting. And the
 12 clarification on the buffer along Danver Road as
 13 contained in today's staff report, that would need to
 14 be --
 15 **CHAIRMAN MARTIN:** A separate motion?
 16 **MR. WALL:** -- an additional motion to
 17 amend that.
 18 **CHAIRMAN MARTIN:** So we can deliberate
 19 and vote on the motion now and then add to that, it
 20 would be simpler. Further discussion on the motion?
 21 Ms. Bentz.
 22 **COMMISSIONER BENTZ:** Question for staff
 23 through the chair.
 24 On page 27 of our packet, the permit
 25 conditions, there is language change on condition No. 2

Page 28

1 about buffers. And the language that was replaced was
 2 "between the vegetated buffer" and replaced with
 3 "placed near the active extraction area." Can you
 4 explain that language change for three bullet points in
 5 condition 2?
 6 **MR. WALL:** Yes, and that was me trying to
 7 get it into words what the applicant was volunteering
 8 concerning the rolling berm or the moving berm.
 9 The way that it was previously written,
 10 he could put that berm anywhere between the property
 11 boundary and the excavation. This limits him to
 12 placing the berm near the active excavation area.
 13 So as the -- as he progresses with the
 14 active excavation area, he would need to move the berm.
 15 So it would be moving or rolling, as he's referred to
 16 it.
 17 **CHAIRMAN MARTIN:** Further discussion? Is
 18 there any opposition to the motion? Hearing and seeing
 19 none, the motion passes, the amendment passes.
 20 I'll entertain a motion on the other
 21 amendment Mr. Wall discussed.
 22 (Whispered discussion-indiscernible).
 23 **COMMISSIONER RUFFNER:** I think there is a
 24 little discussion, I want to be careful about that. So
 25 the only discussion that's happening up here is that we

Page 29

1 just need a little clarification, Mr. Wall, on the --
 2 where we can find -- is it -- I think there are two --
 3 are there two additional changes or just one additional
 4 change that was not in the substitute language?
 5 **MR. WALL:** Yes, and I apologize. And
 6 some of that I did kind of a blue line/red line thing,
 7 and the other part I didn't. So let me clarify that.
 8 On condition 2, I'm proposing that the
 9 fifth bullet point be changed to a 50-foot vegetated
 10 buffer adjacent to the eastern most parcel boundary and
 11 a 12-foot high berm placed near the active extraction
 12 area except along the northern 200 feet of the proposed
 13 excavation. So that takes care of the first issue
 14 concerning the buffer along Danver.
 15 The --
 16 **COMMISSIONER BOKENKO-CARLUCCIO:** I'm
 17 sorry, I'm sorry, Mr. Chairman, I'm a little lost. I
 18 don't know -- he said Item 2, and now I don't know
 19 where he is.
 20 **MR. WALL:** Okay, and I'm referring to
 21 today's staff report, the two-page staff report,
 22 condition No. 2.
 23 **COMMISSIONER BOKENKO-CARLUCCIO:** On
 24 page -- on what page?
 25 **COMMISSIONER ECKLUND:** 27 of 173.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{15.1?}

2 **COMMISSIONER ECKLUND:** This is 15.1. But

3 on the packet it gives permit conditions.

4 **COMMISSIONER BOKENKO-CARLUCCIO:** And

5 that's on page 27?

6 **COMMISSIONER ECKLUND:** Where the change

7 is.

8 **COMMISSIONER BOKENKO-CARLUCCIO:** So,

9 okay, permit conditions on page 27 of 173 and 15.1 of

10 173?

11 **MR. WALL:** Yeah. So on the resolution

12 that's contained in your staff report -- I mean, in the

13 packet, you're changing the fifth bullet point -- I'm

14 proposing changing the fifth bullet point on condition

15 2 on page 27.

16 **COMMISSIONER RUFFNER:** Through the chair.

17 Is that the only additional change?

18 **MR. WALL:** Mr. Chairman, Mr. Ruffner, the

19 second change is in the staff report on that page 15.1.

20 And it would be all of the text under 22, and 29 E, F,

21 and G contained in the staff report. The 29 E, F, and

22 G would be the findings to support the additional

23 condition No. 22.

24 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Do you}

25 think you can --

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1 **CHAIRMAN MARTIN:** Mr. Ruffner.

2 **COMMISSIONER RUFFNER:** Thank you, Mr.

3 Chair. Just -- I know that we're all trying, trying to

4 follow along here. But I think I've got it, so I'll

5 try this and staff can correct me if it's not the right

6 intent.

7 But I think there are three more changes

8 that we might consider, and I think taking them one at

9 a time probably makes the most sense. So I'll put the

10 first one out there for discussion.

11 So in the fifth bullet point are the

12 resolution that we now have in front of us.

13 On condition No. 2, we would be

14 changing that bullet point to read, "A 50-foot

15 vegetated buffer adjacent to the eastern most parcel

16 boundary and a 12-foot high berm placed near the active

17 extraction area, except along the northern 200 feet of

18 the proposed excavation, period."

19 So that is a motion to amend our

20 resolution, to include that condition, permit

21 condition.

22 **COMMISSIONER BENTZ:** Second.

23 **CHAIRMAN MARTIN:** Discussion. Ms.

24 Carluccio.

25 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Why are}

Page 32

1 we excluding the 200 feet to the north?

2 **MR. WALL:** Mr. Chairman, Ms. Carluccio.

3 That is an area that has some significant vegetation.

4 The applicant felt like a 12-foot berm would be

5 redundant, particularly since the property sits at a

6 higher elevation than the adjacent road. The adjacent

7 road is quite a bit lower right there.

8 And the adjacent property across the

9 street on Danver is a prior existing use material site.

10 Generally the commission doesn't require a buffer

11 between material sites.

12 But then also the idea behind that, I

13 think what the applicant was getting at with that is

14 that that gives him additional gravel to extract in

15 that area that's more hidden from the neighbors. And

16 so if he can extract more gravel from that area that's

17 hidden from the neighbors, that would mean less gravel

18 that he would have to extract elsewhere potentially.

19 **CHAIRMAN MARTIN:** Ms. Ecklund.

20 **COMMISSIONER ECKLUND:** I'm not -- through

21 the chair to staff, and I'm not sure that you have this

22 dimension.

23 But when I drove down Danver, the first

24 200 feet is -- their access road is within there, and

25 you can see into the upper level as you said, an upper

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1 level area of gravel.

2 And at some point along Danver is a big

3 high berm, the downed trees and the stuff that was just

4 pushed off so that they could get to the gravel.

5 Do you know, is that berm within that 200

6 feet? It seemed rather close to the Anchor Point Road

7 up Danver.

8 **MR. WALL:** That berm would not be within

9 the 200 feet. The 200 feet would end where the denser

10 vegetation ends.

11 **COMMISSIONER ECKLUND:** Okay. There is a

12 berm somewhere along there, and you're right, it could

13 be more than 200 feet, and then there is an area where

14 there is no vegetation along Danver Road where you

15 could see out to the fenced horse area. Is that area 2

16 or area 3 that I saw?

17 I'm just trying to find out where the

18 buffer is along there. I know that's not what we're

19 talking about right now, but I just -- the berm is

20 passed the 200 feet, and then the area where you can

21 see the horse pasture is past the 200 feet?

22 **MR. WALL:** That's correct.

23 **CHAIRMAN MARTIN:** Ms. Carluccio.

24 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Yes.}

25 With all these pages, can you direct us to a page that

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1 we could visually see what you're talking about?
 2 **MR. WALL:** Give me a minute.
 3 **COMMISSIONER BENTZ:** Mr. Chair, I would
 4 suggest looking at page 190 of Volume 2, or --
 5 **MR. WALL:** And I apologize, my numbering
 6 is different than what you have, so give me a minute to
 7 catch up with you.
 8 **CHAIRMAN MARTIN:** Mrs. Carluccio, did you
 9 find the page that Ms. Bentz is suggesting?
 10 **COMMISSIONER BOKENKO-CARLUCCIO:**
 11 Actually, Ms. Ecklund did, and that's not really what I
 12 had in mind. I was thinking about a --
 13 **CHAIRMAN MARTIN:** Photograph.
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** --
 15 actual photograph, an aerial view.
 16 **MR. WALL:** Yeah, I have in front of me
 17 the picture that you're looking for. I just need to
 18 find it, what the page number is in your packet. I'm
 19 being told that it's page 420.
 20 **COMMISSIONER BOKENKO-CARLUCCIO:** Of
 21 Volume 2? It can't be, I only have --
 22 **MR. WALL:** Okay, so there is the prior
 23 existing use material site is the pond on the opposite
 24 side of Danver. And immediately west of that pond is
 25 the vegetation that I'm talking about that's fairly

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1 dense in there. And that's the portion that he is
 2 proposing to eliminate the 12-foot high berm.
 3 Then on a couple of pages after that is
 4 some contour lines that might help visualize that as
 5 well. That would be page -- is there a number there?
 6 **UNIDENTIFIED SPEAKER:** 423.
 7 **CHAIRMAN MARTIN:** Yeah, 423.
 8 **MR. WALL:** And so there are some contour
 9 lines there that shows that the road is at a lower
 10 elevation there. You can see that the adjacent
 11 property is at about a 24-foot elevation, and where
 12 those trees are it's about a 44-foot elevation.
 13 **CHAIRMAN MARTIN:** Ms. Ecklund.
 14 **COMMISSIONER ECKLUND:** If you're looking
 15 at that page, the area I was talking about where there
 16 is no vegetated buffer is along Danver Road to the
 17 south where you don't see any trees.
 18 How do you get a vegetated -- 50-foot
 19 vegetated buffer? Are we talking grass land?
 20 **MR. WALL:** Yes, there are some trees in
 21 that area. They are pretty sparse. So yes, it does
 22 not provide a lot of screening. So yeah, most of that
 23 is going to be grass.
 24 **COMMISSIONER ECKLUND:** And that's --
 25 **MR. WALL:** So that's why a 12-foot berm

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1 is being recommended there in addition to that 50-foot
 2 vegetation.
 3 **COMMISSIONER ECKLUND:** Thank you.
 4 **CHAIRMAN MARTIN:** Further discussion on
 5 the amendment? Ms. Carluccio, you have your
 6 microphone.
 7 **COMMISSIONER BOKENKO-CARLUCCIO:** Sorry.
 8 **CHAIRMAN MARTIN:** Is there any opposition
 9 to the motion for amendment? Hearing and seeing none,
 10 the motion passes unanimously. Further discussion on
 11 the main motion? Mr. Ruffner.
 12 **COMMISSIONER RUFFNER:** Thank you, Mr.
 13 Chair. So we'll take the second proposed volunteered
 14 condition. So this would be No. 22.
 15 Permittee shall not operate the material
 16 site or haul material from the site on Memorial Day
 17 weekend, Labor Day weekend, and the 4th of July
 18 holiday. And the specifics of how those fall with
 19 respect to the Tuesday through Thursday is spelled out
 20 in three bullet points on page 151 of -- or 15.1 of
 21 173. So I'd make that amendment.
 22 **COMMISSIONER FOSTER:** Second.
 23 **CHAIRMAN MARTIN:** It's been moved and
 24 seconded. Discussion?
 25 **COMMISSIONER ECKLUND:** Add findings?

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1 **COMMISSIONER BENTZ:** Do we need to attach
 2 the findings?
 3 **COMMISSIONER RUFFNER:** Yes, and I'll add
 4 to my amendment then, too. Attach the following
 5 findings, 29 E, the applicant has volunteered the
 6 condition, a condition that prohibits material site
 7 operations on holiday weekends during the summer
 8 months; and F, a volunteered condition to not operate
 9 on holidays as consistent with the standard to reduce
 10 noise disturbance to adjacent properties; and G, the
 11 volunteered condition to not operate on holidays in the
 12 best interest of the borough and the surrounding
 13 property owners because of the state recreational area
 14 has a significant greater number of visitors on those
 15 holidays, and several of the neighbors and Alaska State
 16 Parks has expressed concerns about noise impacts to the
 17 recreational area.
 18 **CHAIRMAN MARTIN:** Does the maker of the
 19 second concur?
 20 **COMMISSIONER FOSTER:** Yes.
 21 **CHAIRMAN MARTIN:** Now we can discuss. Is
 22 there any opposition to the motion? Hearing and seeing
 23 none, that motion passes.
 24 Yeah, we're discussing the main motion as
 25 amended. Ms. Ecklund.

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1 **COMMISSIONER ECKLUND:** Through the chair
2 to staff. This is the main motion on approving this
3 material site permit.
4 Staff, is the area around this gravel
5 pit, would it have been sufficient area for a local
6 option zoning had they done that prior to this permit?
7 **MR. WALL:** Yes. All that's required for
8 a local option zone is 12 contiguous lots.
9 **COMMISSIONER ECKLUND:** Okay. Thank you
10 followup, sorry.
11 **CHAIRMAN MARTIN:** Yes.
12 **COMMISSIONER ECKLUND:** Would the
13 recreational, the state recreational -- no, I'm getting
14 a head shake from Mr. Best. So it would be 12
15 privately owned lots?
16 **MR. WALL:** Yeah, the code deals with
17 similarly sized lots. And so I would believe that
18 would exclude the state recreational areas, because
19 they would need to be similarly sized lots and similar
20 uses.
21 **COMMISSIONER ECKLUND:** And then they
22 could have -- I know it's after the fact, but yeah,
23 just wanted to know if it was even a possibility ever
24 in their life.
25 **CHAIRMAN MARTIN:** Ms. Carluccio.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** I was
2 going to say actually I don't think so, because even if
3 they did an LOR, it wouldn't necessarily include Mr.
4 Trimble's property. And so the LOR wouldn't have
5 affected this anyway, would it?
6 **MR. WALL:** That is correct. Under the
7 current ordinance, the -- because, again, the parcel
8 sizes need to be similarly sized, they could not
9 include Mr. Trimble's property within that local option
10 zone. It would be limited to 12 contiguous similarly
11 used lots, residential lots.
12 **CHAIRMAN MARTIN:** Ms. Carluccio.
13 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes, one
14 other question. And once again, I'm not sure where it
15 was, but did Mr. Trimble at some point indicate what --
16 how much gravel he was planning to move on a yearly
17 basis, or how much he was planning to excavate?
18 **MR. WALL:** Mr. Chairman, Ms. Carluccio.
19 The application states up to 50,000 cubic yards. In
20 previous hearings he indicated that he really has no
21 intentions of going that high. It would probably be
22 much smaller. That is just the number that he used,
23 because anything beyond that requires bonding with the
24 state.
25 **COMMISSIONER BOKENKO-CARLUCCIO:** But in

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1 effect, he could excavate that much, move that much
2 gravel in a year.
3 And I guess through the chair, another
4 question I have is if he, in fact, sold this property,
5 would the conditional use go with the property?
6 **MR. WALL:** Yeah, the first question is
7 yes. He certainly could excavate the 50,000 cubic
8 yards, if this permit is approved, per year.
9 And yes, the permit does carry with the
10 land. It doesn't -- it's not tied to the owner, it's
11 tied to the land.
12 **COMMISSIONER BOKENKO-CARLUCCIO:** So just
13 one final followup. Even if he says that he doesn't
14 intend to move 50,000 in a year, but he, in fact, sold
15 the property, then it still would be open for up to
16 50,000?
17 **MR. WALL:** That's correct.
18 **COMMISSIONER BOKENKO-CARLUCCIO:** But --
19 through the chair. But all of these other conditions
20 that we've put on it today would remain in effect?
21 **MR. WALL:** That is correct.
22 **COMMISSIONER BOKENKO-CARLUCCIO:** Thank
23 you.
24 **CHAIRMAN MARTIN:** Are you ready to vote?
25 Ms. Bentz?

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1 **COMMISSIONER BENTZ:** Thanks, through the
2 chair. I guess in deliberations, I just remind all the
3 commissioners, if there is any other conditions or
4 modification to the conditions that we have laid before
5 us that would facilitate a reduction in negative
6 secondary impacts of this material site going in, we
7 did briefly talk about the rolling berm and how it
8 would be more or less effective based on the approach
9 to extraction, whether it was going from east to west
10 towards neighboring residences or from north to south,
11 and just trying to think about the practicality of that
12 rolling berm and having it march ahead of any
13 excavation so that it was reducing that sight angle or
14 reducing that potential dust or noise barrier as it
15 went.
16 So I think that's just a concept that I
17 haven't seen a lot before in other material sites, and
18 just curious if other commissioners have any opinions
19 about that, or the practicality of that?
20 **CHAIRMAN MARTIN:** Mr. Ruffner.
21 **COMMISSIONER RUFFNER:** Well, I'll just
22 kind of redirect to staff. I think that, you know,
23 that we did include that in that first amendment by
24 substitution, that the applicant had volunteered to
25 utilize that technique.

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1 And so it seems to make sense, you know,
 2 in this case, and because of the sight angles that you
 3 mentioned, but in other cases, than just the
 4 practicality of being able to extract material if
 5 you're removing the stuff you don't want, which is on
 6 top, and just kind of keep stacking it and moving it as
 7 you go, that keeps the greatest distance of a buffer
 8 between you rather than, you know, push it all out at
 9 the beginning, build your berm way out at the end and
 10 work to supply the material.
 11 And particularly in large sites it seems
 12 like it would make a lot of sense to apply that in the
 13 future as well. I think that's what you were asking.
 14 **CHAIRMAN MARTIN:** Mr. Foster.
 15 **COMMISSIONER FOSTER:** I have a question
 16 for staff. With these berms, do they ever put in
 17 alder, just so the alder will take off on these earthen
 18 berms, or they just generally cut down a bunch of trees
 19 and drag them over and make it kind of biomass and
 20 dirt? How -- what do we consist of an earthen berm and
 21 what can we put on as additional conditions on that?
 22 **MR. WALL:** I don't think the code really
 23 allows any additional conditions on that. It's assumed
 24 that it's going to be an earthen berm. Typically
 25 that's what I see with material sites, is an earthen

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1 berm with perhaps some woody debris in there from the
 2 clearing, but usually that stuff just gets in the way.
 3 So there is usually not a lot of woody debris in there.
 4 And then if that berm stays in place for
 5 quite some time, then vegetation will naturally start
 6 growing on it, such as alders. But that would not seem
 7 practical in this case where they are going to be
 8 moving the berm periodically.
 9 **CHAIRMAN MARTIN:** Further discussion?
 10 Ms. Carluccio.
 11 **COMMISSIONER BOKENKO-CARLUCCIO:** And as
 12 far as this goes, that we do have a reclamation plan in
 13 place? Or is it just up to Mr. Trimble?
 14 **MR. WALL:** There is a reclamation plan
 15 included with the application that meets the code
 16 requirements, yes.
 17 **COMMISSIONER BOKENKO-CARLUCCIO:** And the
 18 code requirements are?
 19 **MR. WALL:** The exhausted areas exceeding
 20 five acres in size needs to be reclaimed with four feet
 21 of soil and revegetated -- four inches of soil and
 22 revegetated. And the slopes need to be 2-to-1 slope so
 23 there aren't any steep slopes.
 24 **CHAIRMAN MARTIN:** Please.
 25 **COMMISSIONER BOKENKO-CARLUCCIO:** And what

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1 is the borough's history on following up on
 2 reclamations of other sites?
 3 **MR. WALL:** Each year I do go and do an
 4 inspection of each of the permitted material sites and
 5 take note of what areas are in need of reclamation, and
 6 if they haven't been keeping up, I do follow up with
 7 them.
 8 The current language of the code is a
 9 little bit problematic with that because it talks about
 10 exhausted areas, and so that's a little bit subjective.
 11 But if an area is obviously exhausted, then I do follow
 12 up and require the reclamation take place.
 13 **COMMISSIONER BOKENKO-CARLUCCIO:** And is
 14 there something in the code or some way to follow up
 15 if, in fact, they don't reclaim?
 16 **MR. WALL:** Yes, there are provisions in
 17 the code for enforcement of the ordinance, particularly
 18 concerning reclamation. That would involve sending out
 19 an enforcement notice, scheduling a hearing with a
 20 hearing officer. And the fines are typically \$300 a
 21 day, plus the hearing officer can take additional
 22 action concerning -- requiring the reclamation and
 23 revoking the permit.
 24 **COMMISSIONER BOKENKO-CARLUCCIO:** So, in
 25 effect, you actually can revoke a permit if they don't

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1 follow the guidelines?
 2 **MR. WALL:** Yes, absolutely.
 3 **COMMISSIONER BOKENKO-CARLUCCIO:** And
 4 through the chair -- you're very lenient, thank you.
 5 **CHAIRMAN MARTIN:** It's your meeting.
 6 **COMMISSIONER BOKENKO-CARLUCCIO:** And how
 7 much time do they have? I mean, when you send out a
 8 letter and a notice, are we talking weeks, months,
 9 years?
 10 **MR. WALL:** I'm probably a little too
 11 generous in working with some of these people, giving
 12 them more time than I should. The idea is to get
 13 compliance with it, get them to be in compliance and
 14 help them determine the time frame that works with
 15 them. But no, we're not talking about years, we're
 16 talking about months.
 17 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
 18 thank you.
 19 **CHAIRMAN MARTIN:** Mr. Venuti.
 20 **COMMISSIONER VENUTI:** Question for staff
 21 through the chair. Mr. Wall, would reclamation require
 22 bonding?
 23 **MR. WALL:** The way that the code is
 24 currently written is if a material site in the borough
 25 is exempt from the state bonding requirements, we also

1 exempt it from our bonding requirements. Anything that
 2 is excavating -- that has a total disturbed area of
 3 less than five acres is exempt from the state bonding
 4 requirement.
 5 So if they start reclaiming land after
 6 they have disturbed five acres, then no, we would never
 7 require bonding under the current code.
 8 **COMMISSIONER VENUTI:** Can we make bonding
 9 a condition?
 10 **MR. WALL:** The ordinance specifically
 11 exempts it if they were exempt from the state bonding
 12 requirements.
 13 **COMMISSIONER VENUTI:** Thank you.
 14 **CHAIRMAN MARTIN:** Anyone else? Roll
 15 call, please.
 16 **THE CLERK:** This is to approve a
 17 conditional land use permit application for
 18 Beachcomber, LLC, Resolution 2018-23 that's been
 19 amended.
 20 Venuti?
 21 **COMMISSIONER VENUTI:** Yes.
 22 **THE CLERK:** Morgan.
 23 **COMMISSIONER MORGAN:** Yes.
 24 **THE CLERK:** Foster?
 25 **COMMISSIONER FOSTER:** Yes.

1 **CERTIFICATE**
 2 **I, LEONARD J. DiPAOLO, Registered Professional**
 3 **Reporter, Certified Realtime Reporter, Certified CART**
 4 **Provider, and Notary Public in and for the State of**
 5 **Alaska, do hereby certify:**
 6 **That the tape recording, CD 6/24/19 was transcribed**
 7 **under my direction by computer transcription; that the**
 8 **foregoing is a true record of the testimony and**
 9 **proceedings taken at that time to the best of my**
 10 **ability; and that I am not a party to nor have I any**
 11 **interest in the outcome of the action herein contained.**
 12 **IN WITNESS WHEREOF, I have hereunto set my**
 13 **hand and affixed my seal this 26th day**
 14 **of August, 2019.**
 15
 16
 17
 18
 19
 20
 21 **LEONARD J. DiPAOLO, RPR, CRR, CCP**
 22 **Notary Public for Alaska**
 23 **My Commission Expires: 2-3-2020**
 24
 25 #3319

1 **THE CLERK:** Carluccio?
 2 **COMMISSIONER BOKENKO-CARLUCCIO:** No.
 3 **THE CLERK:** Bentz?
 4 **COMMISSIONER BENTZ:** Yes.
 5 **THE CLERK:** Whitney?
 6 **COMMISSIONER WHITNEY:** No.
 7 **THE CLERK:** Ruffner?
 8 **COMMISSIONER RUFFNER:** Yes.
 9 **THE CLERK:** Fikes?
 10 **COMMISSIONER FIKES:** Yes.
 11 **THE CLERK:** Ecklund?
 12 **COMMISSIONER ECKLUND:** Yes.
 13 **THE CLERK:** Martin?
 14 **CHAIRMAN MARTIN:** Yes.
 15 **THE CLERK:** 8 to 2.
 16 **CHAIRMAN MARTIN:** The motion carries.
 17 And I would like to thank you every member of the
 18 public who came and did their research and participated
 19 in the process. It's not a pretty one, but it's the --
 20 it's better than a lot of the alternatives. So I just
 21 want to express my thanks for you participating in this
 22 way.
 23 8:40:03.
 24 (End of requested portion)
 25 11:10:33

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Resolution 2018-23

**Appeal of the Kenai Peninsula Borough
Planning Commission's Approval of
A Conditional Land Use Permit
in the Anchor Point area.**

**KPB Tax Parcel ID# 169-010-67
Tract B, McGee Tracts
Deed of Record Boundary Survey (Plat 80-104)
Deed recorded in Book 4, Page 116,
Homer Recording District.**

**Applicant
Beachcomber, LLC**

**Landowner
Beachcomber, LLC**

Volume 1

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T1 through T49	Verbatim Transcript / Index July 16, 2018
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CONDITIONAL LAND USE PERMIT

APPLICATION

KPB 21.29

Conditional Land Use Permit Application

For a Sand, Gravel or Material Site

I. APPLICANT INFORMATION

Applicant Beachcomber LLC ATTN: Emmitt Trimble Landowner same
Address PO Box 193 Address _____
City, State, Zip Anchor Point AK 99556 City, State, Zip _____
Telephone 907-299-1459 Cell _____ Telephone _____ Cell _____
Email emmitttrimble@gmail.com Email _____

II. PARCEL INFORMATION

KPB Tax Parcel ID# 16901067 Legal Description _____
T5S R15W Section 5 S.M., McGee Tracts Deed of Record Boundary Survey Tract B
If permit is not for entire parcel, describe specific location within parcel to be material site, e.g.: "N1/2 SW1/4 NE1/4 - 10 acres", or "5 acres in center of parcel".
Easterly 27.7 acres

III. APPLICATION INFORMATION "Check" boxes below to indicate items included.

- \$300.00 permit processing fee payable to: Kenai Peninsula Borough. (Include Parcel # on check comment line.)
- Site Plan, to scale, prepared by a professional surveyor (licensed and registered in Alaska) showing, where applicable:
- parcel boundaries
 - location of boundary stakes within 300 ft. of excavation area (to be in place at time of application)
 - proposed buffers, or requested buffer waiver(s)
 - proposed extraction area(s), and acreage to be mined
 - proposed location of processing area(s)
 - all encumbrances, including easements
 - points of ingress and egress
 - anticipated haul routes
 - location/depth of testholes, and depth to groundwater, if encountered
 - location of all wells within 300 ft. of parcel boundary
 - location of water bodies on parcel, including riparian wetlands
 - surface water protection measures
 - north arrow and diagram scale
 - preparer's name, date and seal
- Site Plan Worksheet (attached)
- Reclamation Plan (attached) and bond, if required. Bond requirement does not apply to material sites exempt from bonding requirements pursuant to AS 27.19.050

Please Note: If a variance from the conditions of KPB 21.29 is requested, a variance application must be attached. (A variance is NOT the same thing as a waiver.)

IV. CERTIFICATION STATEMENT

The information contained on this form and attachments are true and complete to the best of my knowledge. I grant permission for borough staff to enter onto the property for the purpose of processing the permit application.

Emmitt D. Trimble _____
Applicant Date Landowner (required if not applicant) Date

Site Plan Worksheet for Conditional Land Use Permit Application

Use additional space provided on next page, if necessary. Indicate item # next to comments.

Applicant Beachcomber LLC Owner Beachcomber LLC

KPB Tax Parcel ID # 16901067 Parcel Acreage 41.72

1. Cumulative acres to be disturbed (excavation plus stockpiles, berms, etc.) 27.7 acres
2. Material to be mined (check all that apply): gravel sand peat other(list) _____
3. Equipment to be used (check all that apply): excavation processing other _____
4. Proposed buffers as required by KPB 21.29.050.A.2 (check all types and directions that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> 50 ft. of natural or improved vegetation | <input checked="" type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input checked="" type="checkbox"/> W |
| <input checked="" type="checkbox"/> minimum 6 ft. earthen berm | <input checked="" type="checkbox"/> N <input checked="" type="checkbox"/> S <input checked="" type="checkbox"/> E <input checked="" type="checkbox"/> W |
| <input type="checkbox"/> minimum 6 ft. fence | <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W |
| <input type="checkbox"/> other _____ | <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W |

5. Proposed depth of excavation: 18' ft. Depth to groundwater: +20' ft.
6. How was groundwater depth determined? Testhole on parcel & exposed surface water to north
7. A permit modification to enter the water table will be requested in the future: Yes No
8. Approx. annual quantity of material, including overburden, to be mined: <50,000 cubic yards
9. Is parcel intended for subdivision? Yes No
10. Expected life span of site? 15 years
11. If site is to be developed in phases, describe: the excavation acreage, anticipated life span, and reclamation date for each phase: (use additional space on page 4 if necessary)

Kindly see page 4.

12. Voluntary permit conditions proposed (additional buffers, dust control, limited hours of operation, etc.)

- A. _____
- B. _____
- C. _____

Material Site Reclamation Plan for Conditional Land Use Permit Application

1. All disturbed land shall be reclaimed upon exhausting the material on-site, so as to leave the land in a stable condition.
2. All revegetation shall be done with a "non-invasive" plant species.
3. Total acreage to be reclaimed each year: 2-5 acres
4. List equipment (type and quantity) to be used in reclamation:

Loader & dozer

5. Describe time schedule of reclamation measures:

Reclamation will be completed annually before the growing season ends (September). Seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust.

6. The following measures must be considered in preparing and implementing the reclamation plan, although not all will be applicable to every plan – **"check" all that apply to your plan.**

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.

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.

Sufficient quantities of stockpiled or imported topsoil will be spread over the reclaimed area to a depth of four inches to promote natural plant growth that can reasonably be expected to revegetate the area within five years. The applicant may use the existing natural organic blanket representative of the project area if the soil is found to have an organic content of 5% or more and meets the specification of Class B topsoil requirements as set by Alaska Test Method (ATM) T-6. The material shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.

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.

Peat and topsoil mine operations shall ensure a minimum of two inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).

Ponding will be used as a reclamation method. (Requires approval by the planning commission.)

R3

ADDITIONAL APPLICATION COMMENTS

(Please indicate the page and item # for which you are making additional comments.)

Page 2 Item 11.

This material site will be developed in Phases on an "as-needed" extraction basis. Development will begin at the Phase I area in the northeastern corner. There is an existing ingress/egress in this area to Denver Street and the associated section line easement. Phase I is 6.2 acres with an additional 0.9 acres in buffer area. A process area is proposed in Phase I and is located 300 feet from all property lines, excluding the south property line of PID 16902208. A waiver to the process area setback is being requested. The Phase II area is immediately south of the Phase I area and is 3.9 acres plus 0.6 acres buffer. Phase III area is westerly of both Phase I & Phase II areas.

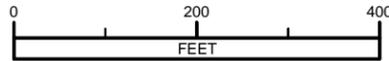
Monitor wells are planned for installation deem if the site is viable for extraction below the water table at a future time.

CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT:
 BEACHCOMBER LLC
 PO BOX 193
 ANCHOR POINT, ALASKA 99556



SCALE



LEGEND

- RECORD MONUMENT
- PROPERTY CORNERS
- PROPOSED INGRESS/EGRESS
- WELL SETBACK
- INTERVISIBLE FLAGGING
- EXISTING TREELINE
- PROPOSED BUFFER TREELINE
- WETLAND
- APPROX. TESTHOLE LOCATION
- EXISTING FENCELINE

CLUP DEVELOPMENT NOTES

1. THIS PERMIT APPLICATION IS KPB PARCEL 16901067; T5S R15W SECTION 5 SEWARD MERIDIAN, MCGEE TRACTS DEED OF RECORD BOUNDARY SURVEY TRACT B.
2. THE EASTERLY PORTION OF THIS PARCEL IS UNDEVELOPED AND COVERED IN NATIVE VEGETATION AND GRASS FIELD.
3. THE EXISTING AND PROPOSED INGRESS/EGRESS IS TO DANVER STREET AND/OR SECTION LINE EASEMENT, AS SHOWN.
4. THE PREFERRED BUFFERS ARE A COMBINATION OF 50' (OR GREATER) NATIVE VEGETATIVE BUFFERS AND 6' HIGH BERM.
5. WELLS WITHIN 100' AND/OR 300' OF THE EXCAVATION AREA ARE SHOWN HEREON. EXCAVATION BELOW WATER TABLE MAY BE PROPOSED AT A FUTURE TIME.
6. THERE IS MAPPED WETLAND AND SURFACE WATER, AS SHOWN, IN THE NORTHEAST CORNER OF THE PARCEL. PROPOSED EXCAVATION IS A MINIMUM OF 100' FROM WATERBODIES. THIS SURFACE WATER SETBACK WILL PROVIDE PROTECTION VIA PHYTOREMEDIATION OF ANY RUN-OFF PRIOR TO ENTERING THE SURFACE WATER.
7. GROUNDWATER IS ESTIMATED AT APPROXIMATELY 20' (AVERAGE) BELOW EXISTING GROUND IN PROPOSED EXCAVATION AREAS. THIS ESTIMATE IS FROM TEST HOLE EXCAVATED BY THE OWNER OR OTHER REPRESENTATIVES.
8. THE RECLAIMED AREA WILL BE GRADED AND RECONTOURED USING STRIPPINGS, OVERBURDEN AND TOPSOIL TO A CONDITION THAT ALLOWS FOR RE-ESTABLISHMENT OF NATURAL VEGETATION AND SLOPES STEEPER THAN 2:1 WILL BE SEEDDED.
9. PROPOSED MATERIAL EXTRACTION INCLUDING STRIPPING WILL BE DONE IN INCREMENTALLY BEGINNING AT THE NORTHERN LIMITS, AS SHOWN, AND PROCEEDING SOUTHERLY AS MARKET FOR MATERIAL SALES JUSTIFIES. THE CENTRAL AREA WILL BE MAINTAINED AS A PROCESSING AND STAGING AREA.
10. PROPOSED PROCESS AREA IS SHOWN. A PROCESS WAIVER WILL BE REQUESTED FOR SEPARATION TO THE NORTH PROPERTY LINE.
11. THE PROPERTY CORNERS, WITNESS CORNERS, OR SECTION LINE EASEMENT WAS LOCATED AND THE PARCEL BOUNDARY HAS BEEN FLAGGED AT VISIBLE INTERVALS AS SHOWN HEREON.
12. ALASKA DEC USER'S MANUAL, BEST MANAGEMENT PRACTICES FOR GRAVEL/ROCK AGGREGATE EXTRACTION PROJECTS, PROTECTING SURFACE WATER AND GROUNDWATER QUALITY IN ALASKA, SEPTEMBER 2012 WILL BE UTILIZED AS A GUIDELINE TO REDUCE POTENTIAL IMPACTS TO WATER QUALITY.



REV	DATE	DESCRIPTION	BY	GND
2	6/21/2018	NOTE 6, 7 & 12 REVISION		GND
1	5/31/2018	CLUP APPLICATION EXHIBIT		GND

BEACHCOMBER LLC
ANCHOR POINT RD
ROAD CONDITIONAL LAND USE PERMIT

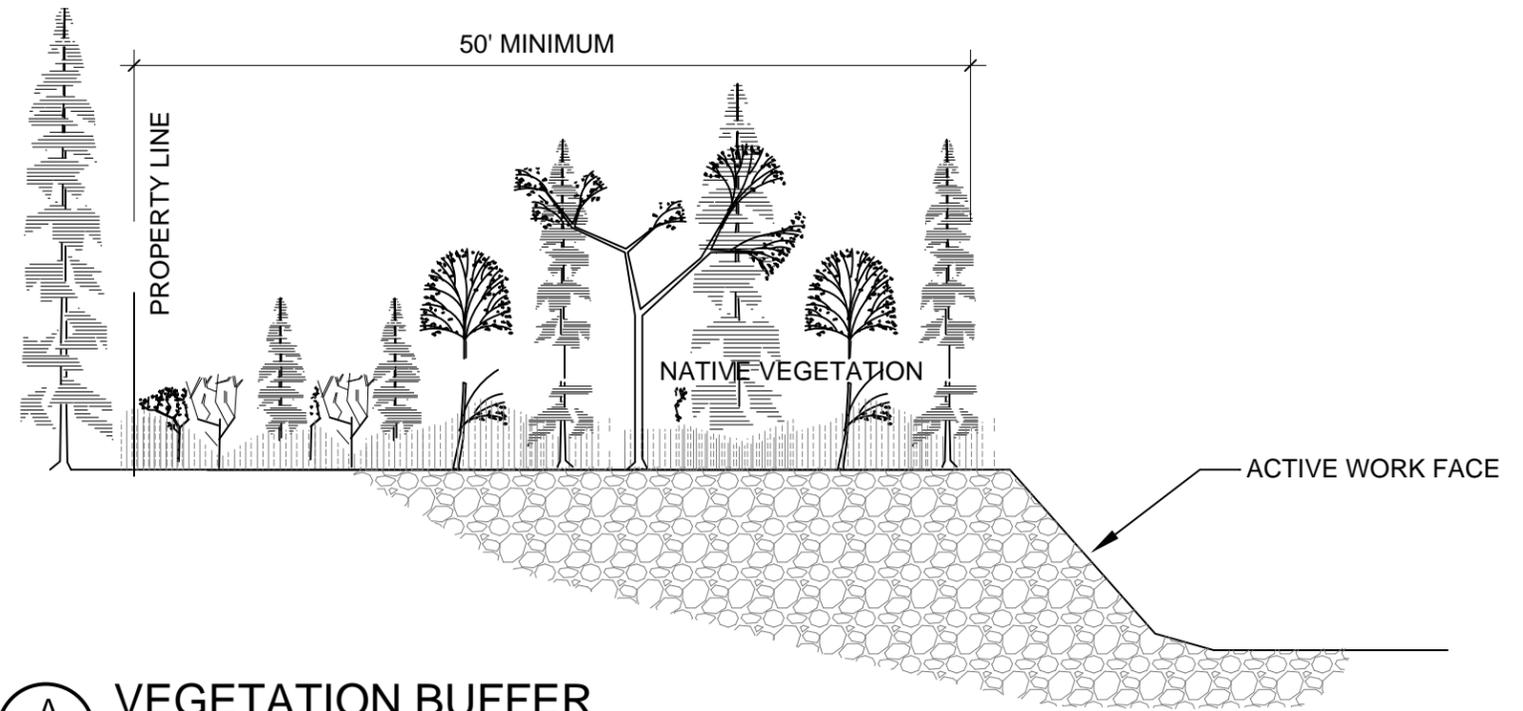
FIELD WORK DATE: 5/16/2018 - 5/17/2018
 FIELD BOOK NO. 18-01
 JOB NO. 194018



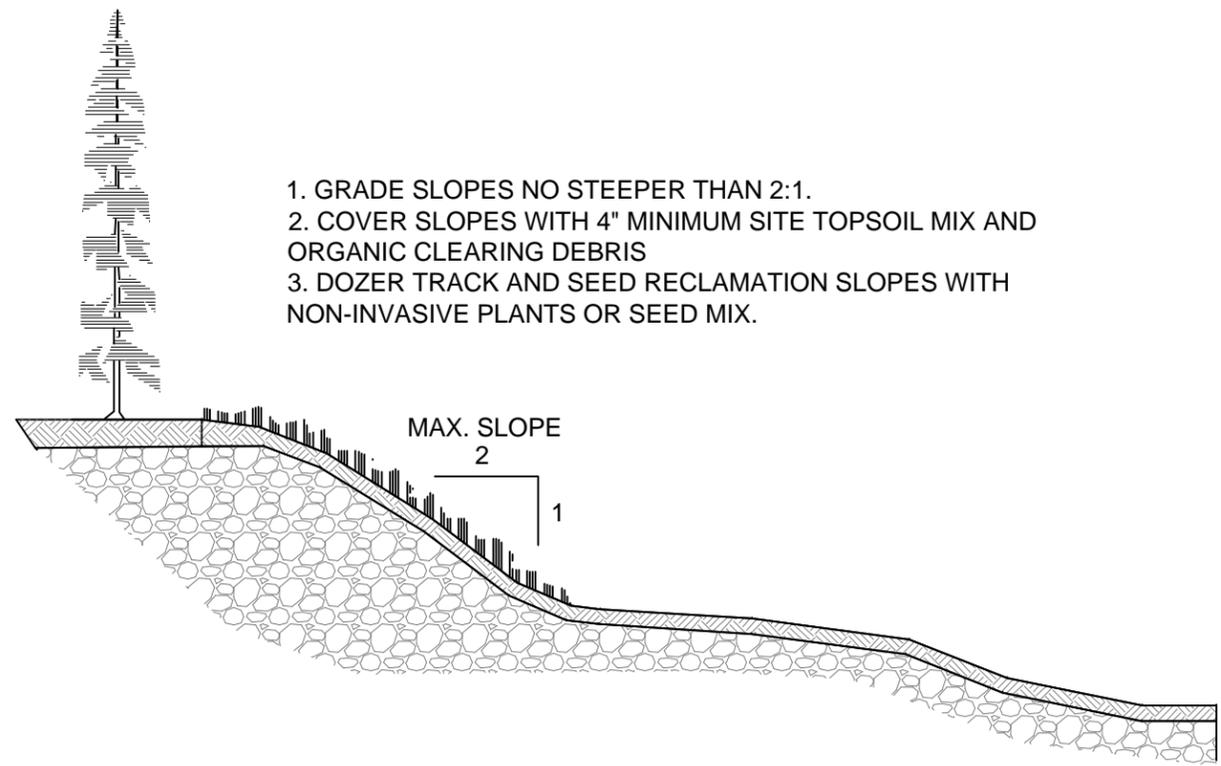
McLANE Consulting Inc

ENGINEERING - TESTING
 SURVEYING - MAPPING
 P.O. BOX 468
 SOLDOTNA, AK. 99669
 VOICE: (907) 283-4218
 FAX: (907) 283-3265
 WWW.MCLANECG.COM

DRAWN BY: BGB/GMD
 CHECKED BY: GMD
 HORZ. SCALE: 1" = 50'
 VERT. SC. **R6** 25'
 SHEET: **P1.1**

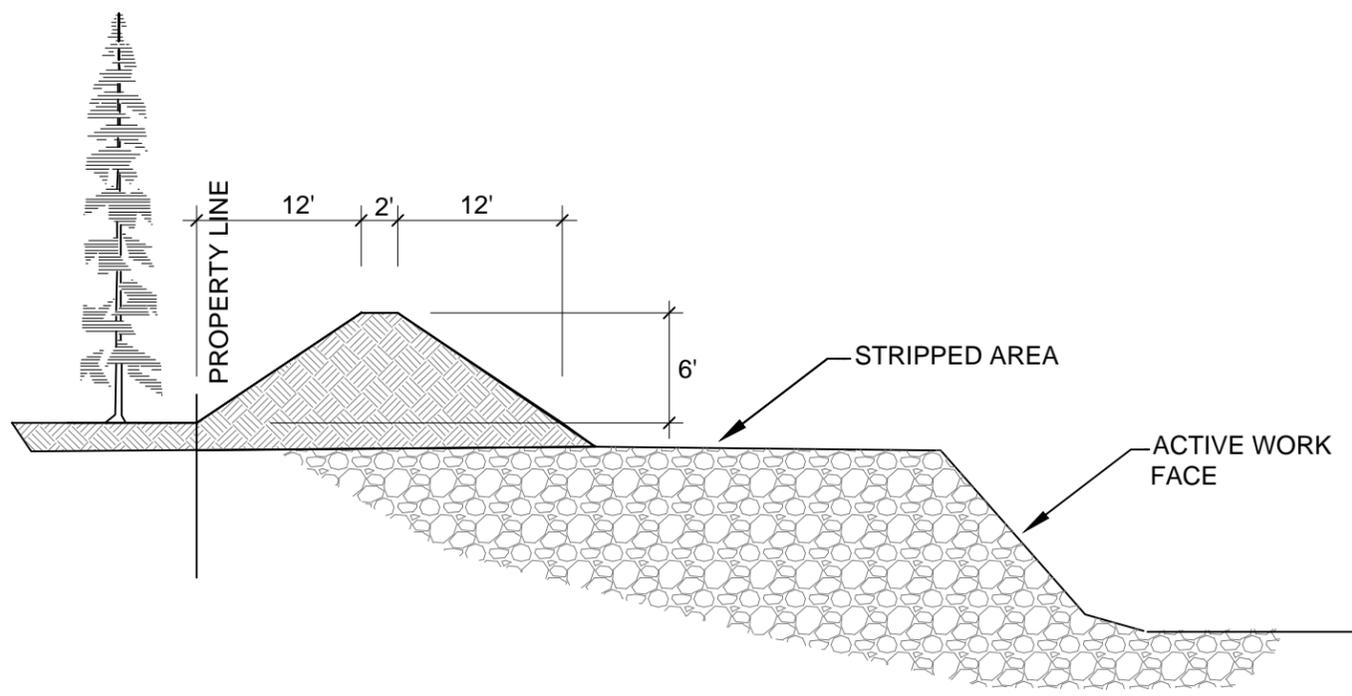


A
3 VEGETATION BUFFER
SCALE: 1" = 10 FT.



1. GRADE SLOPES NO STEEPER THAN 2:1.
2. COVER SLOPES WITH 4" MINIMUM SITE TOPSOIL MIX AND ORGANIC CLEARING DEBRIS
3. DOZER TRACK AND SEED RECLAMATION SLOPES WITH NON-INVASIVE PLANTS OR SEED MIX.

B
3 RECLAMATION SLOPE
SCALE: 1" = 10 FT.



C
3 EARTHEN BERM BUFFER
SCALE: 1" = 10 FT.

REV	DATE	DESCRIPTION	BY
2	6/21/2018	NOTE 6, 7 & 12 REVISION	GMD
1	5/31/2018	CLIP APPLICATION EXHIBIT	GMD

BEACHCOMBER LLC
ANCHOR POINT RD
ROAD CONDITIONAL LAND USE PERMIT
JOB NO. 18-01
FIELD BOOK NO. 18-01
FIELD WORK DATE: 5/16/2018 - 5/17/2018



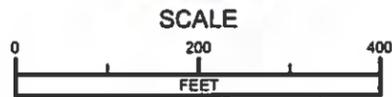
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VOICE: (907) 283-4218
FAX: (907) 283-3265
WWW.MCLANECG.COM

DRAWN BY: BGB/GMD
CHECKED BY: GMD
HORZ. SCALE: 1" = 50'
VERT. SCALE: 1" = 25'
SHEET: P2

R7

CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT:
 BEACHCOMBER LLC
 PO BOX 193
 ANCHOR POINT, ALASKA 99556

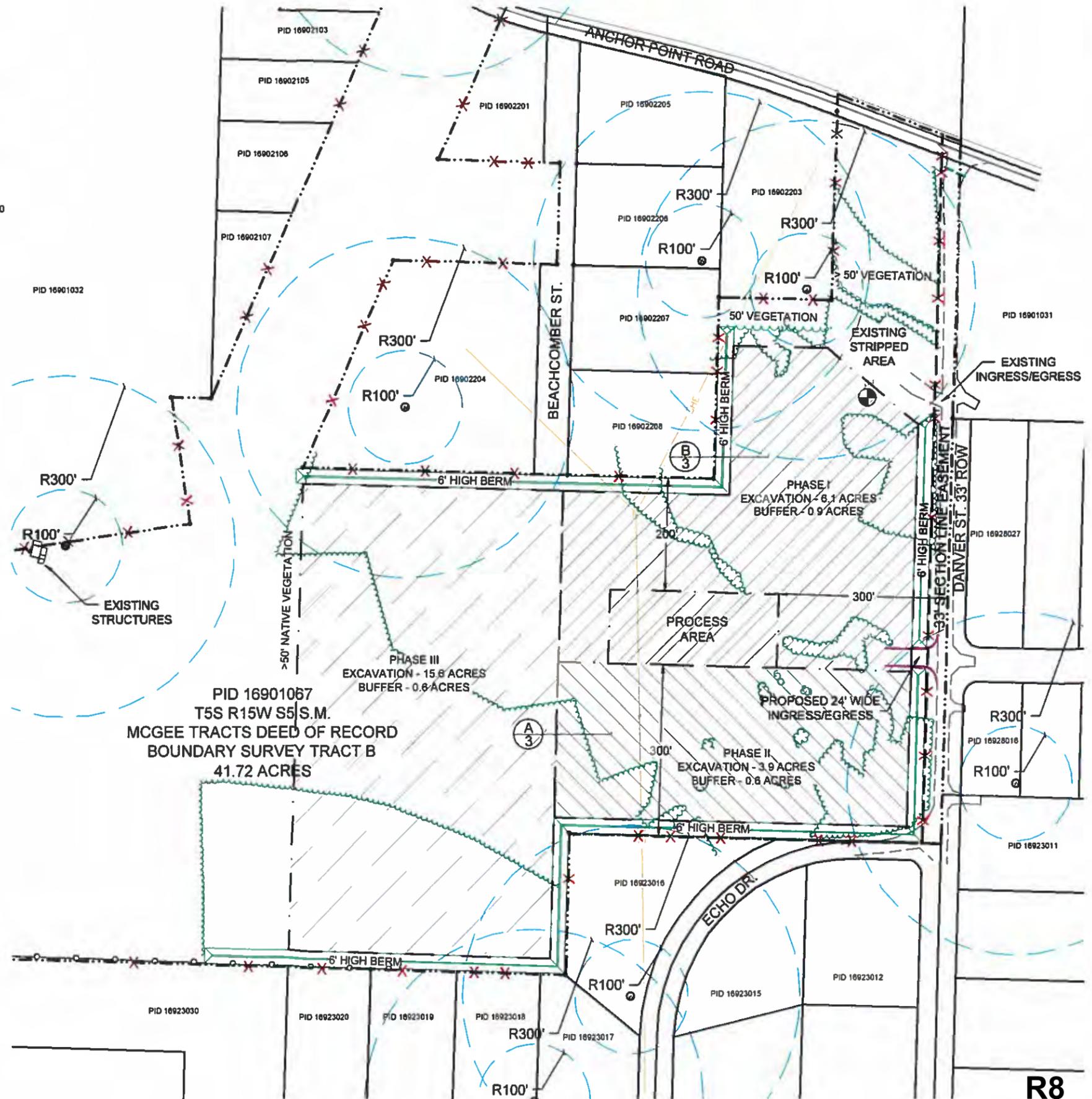


LEGEND	
	RECORD MONUMENT
	PROPERTY CORNERS
	PROPOSED INGRESS/EGRESS
	WELL SETBACK
	INTERVISIBLE FLAGGING
	EXISTING TREELINE
	PROPOSED BUFFER TREELINE
	WETLAND
	APPROX. TESTHOLE LOCATION
	EXISTING FENCELINE

CLUP DEVELOPMENT NOTES

1. THIS PERMIT APPLICATION IS KPB PARCEL 16901067; T5S R15W SECTION 5 SEWARD MERIDIAN, MCGEE TRACTS DEED OF RECORD BOUNDARY SURVEY TRACT B
2. THE EASTERLY PORTION OF THIS PARCEL IS UNDEVELOPED AND COVERED IN NATIVE VEGETATION AND GRASS FIELD.
3. THE EXISTING AND PROPOSED INGRESS/EGRESS IS TO DANVER STREET AND/OR SECTION LINE EASEMENT, AS SHOWN.
4. THE PREFERRED BUFFERS ARE A COMBINATION OF 50' (OR GREATER) NATIVE VEGETATIVE BUFFERS AND 6' HIGH BERM.
5. WELLS WITHIN 100' AND/OR 300' OF THE EXCAVATION AREA ARE SHOWN HEREON. EXCAVATION BELOW WATER TABLE MAY BE PROPOSED AT A FUTURE TIME.
6. THERE IS MAPPED WETLAND AND SURFACE WATER, AS SHOWN, IN THE NORTHEAST CORNER OF THE PARCEL.
7. GROUNDWATER IS ESTIMATED AT APPROXIMATELY 18' BELOW EXISTING GROUND IN PROPOSED EXCAVATION AREAS. THIS ESTIMATE IS FROM TEST HOLE EXCAVATED BY THE OWNER OR OTHER REPRESENTATIVES.
8. THE RECLAIMED AREA WILL BE GRADED AND RECONTOURED USING STRIPPINGS, OVERBURDEN AND TOPSOIL TO A CONDITION THAT ALLOWS FOR RE-ESTABLISHMENT OF NATURAL VEGETATION AND SLOPES STEEPER THAN 2:1 WILL BE SEED.
9. PROPOSED MATERIAL EXTRACTION INCLUDING STRIPPING WILL BE DONE IN INCREMENTALLY BEGINNING AT THE NORTHERN LIMITS, AS SHOWN, AND PROCEEDING SOUTHERLY AS MARKET FOR MATERIAL SALES JUSTIFIES. THE CENTRAL AREA WILL BE MAINTAINED AS A PROCESSING AND STAGING AREA.
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11. THE PROPERTY CORNERS, WITNESS CORNERS, OR SECTION LINE EASEMENT WAS LOCATED AND THE PARCEL BOUNDARY HAS BEEN FLAGGED AT VISIBLE INTERVALS AS SHOWN HEREON.

ORIGINAL SITE PLAN



REV	DATE	DESCRIPTION	BY
1	5/11/2018	CLUP APPLICATION EXHIBIT	GMD

BEACHCOMBER LLC
 ANCHOR POINT RD
 ROAD CONDITIONAL LAND USE PERMIT

FIELD WORK DATE: 5/16/2018 - 5/17/2018
 FIELD BOOK NO: 18-01
 JOB NO: 184018



McLANE Consulting Inc

ENGINEERING - TESTING
 SURVEYING - MAPPING
 P.O. BOX 488
 SOLDOTNA, AK 99689
 VOICE (907) 283-4218
 FAX (907) 283-3285
 WWW.MCLANECG.COM

DRAWN BY:	BGB/GMD
CHECKED BY:	GMD
HORZ. SCALE:	1" = 50'
VERT. SCALE:	1" = 25'
SHEET	P1



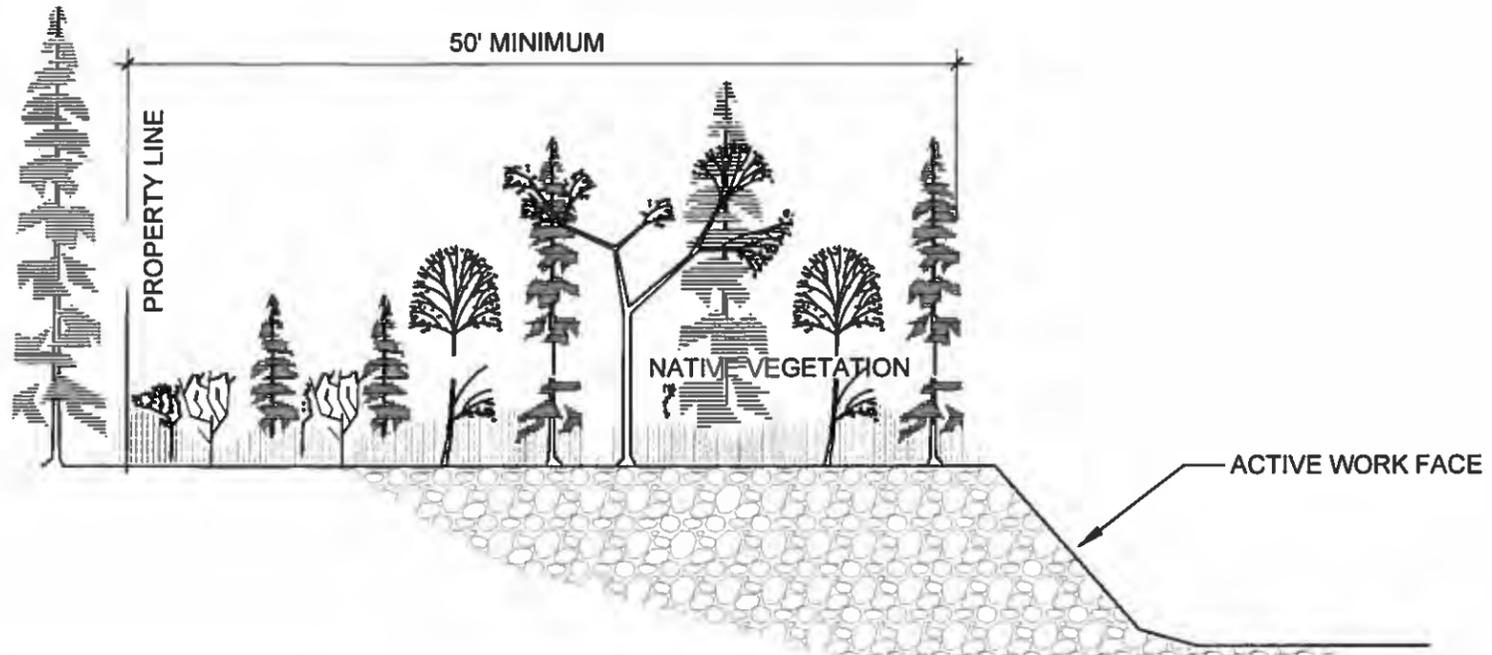
REV	DATE	DESCRIPTION	BY

BEACHCOMBER LLC
 ANCHOR POINT RD
 ROAD CONDITIONAL LAND USE PERMIT
 FIELD WORK DATE: 5/18/2018 - 5/17/2018
 FIELD BOOK NO 18-01
 JOB NO 184016
 GMD



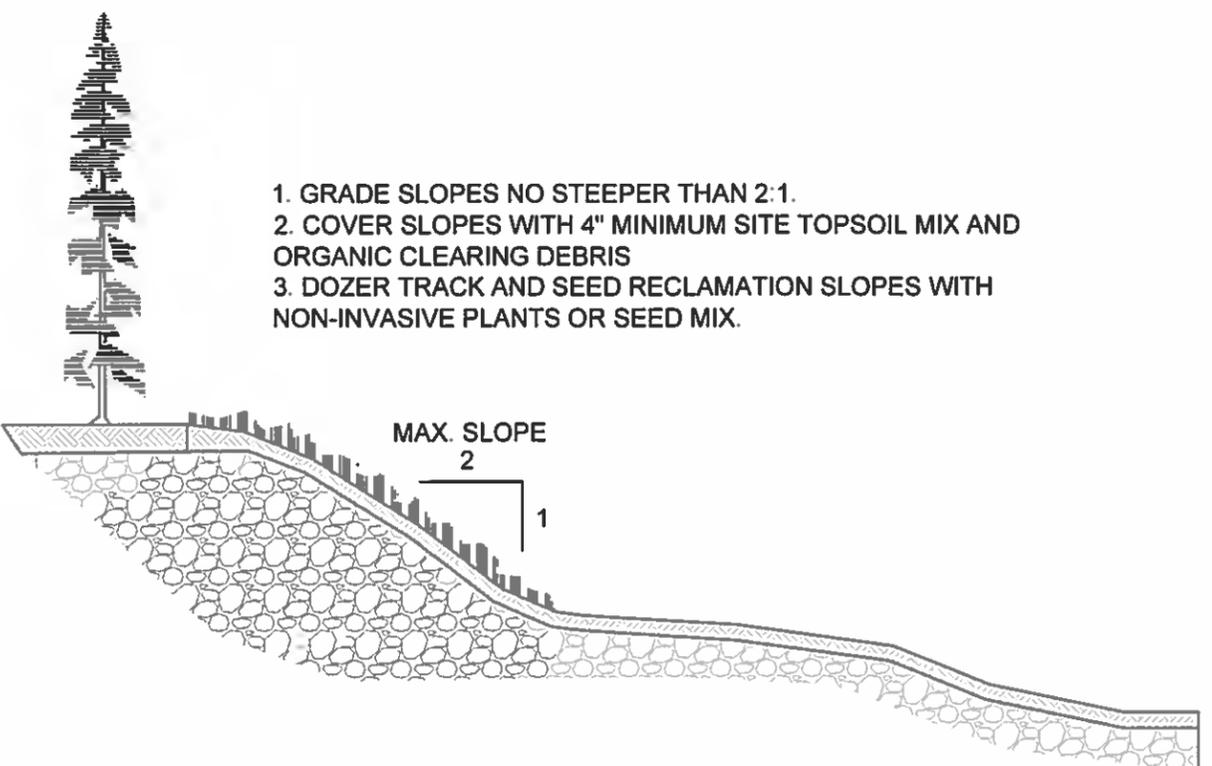
Consulting Inc
 ENGINEERING - TESTING
 SURVEYING - MAPPING
 P.O. BOX 488
 SOLDOTNA, AK, 99669
 VOICE: (907) 283-4218
 FAX: (907) 283-3285
 WWW.MCLANECG.COM

DRAWN BY: BGB/GMD
 CHECKED BY: GMD
 HORIZ SCALE: 1" = 50'
 VERT SCALE: 1" = 25'
 SHEET: P2

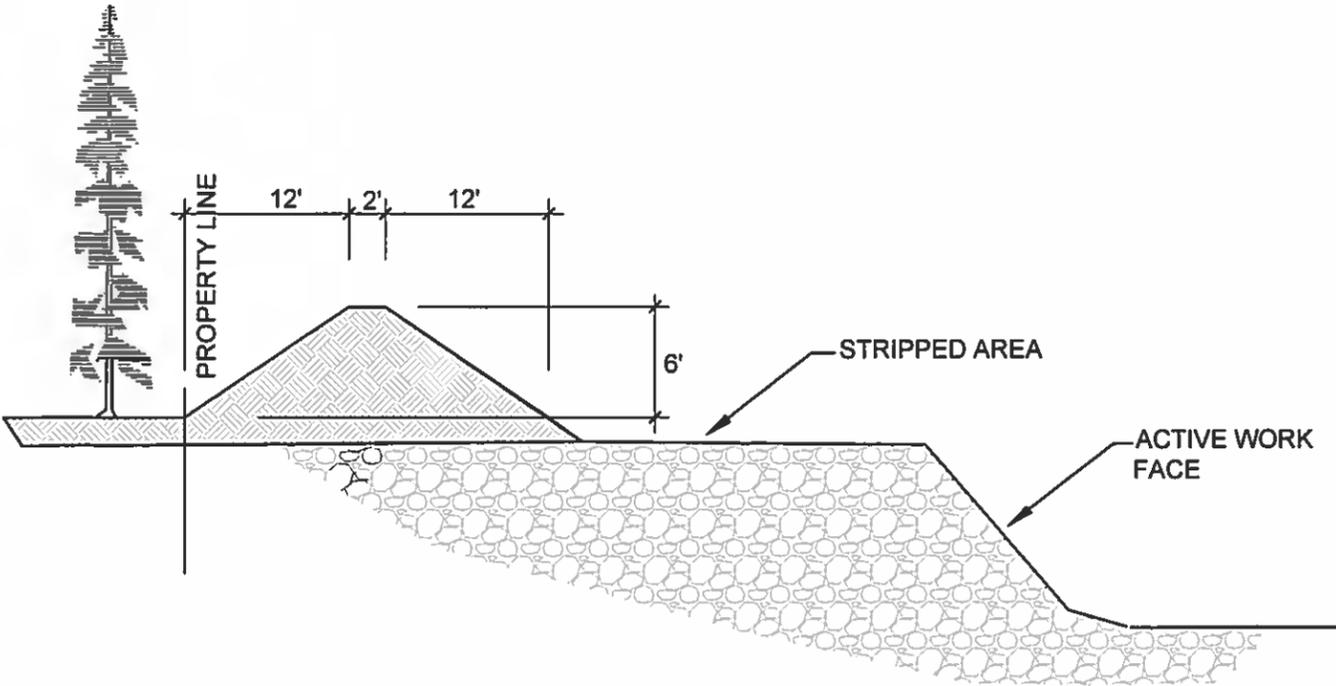


A
3
VEGETATION BUFFER
 SCALE: 1" = 10 FT.

1. GRADE SLOPES NO STEEPER THAN 2:1.
2. COVER SLOPES WITH 4" MINIMUM SITE TOPSOIL MIX AND ORGANIC CLEARING DEBRIS
3. DOZER TRACK AND SEED RECLAMATION SLOPES WITH NON-INVASIVE PLANTS OR SEED MIX.



B
3
RECLAMATION SLOPE
 SCALE: 1" = 10 FT.



C
3
EARTHEN BERM BUFFER
 SCALE: 1" = 10 FT.

ORIGINAL SITE PLAN

R10

PLANNING COMMISSION

RESOLUTION 2018-23

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2018-23
HOMER RECORDING DISTRICT**

A resolution granting a conditional land use permit to operate a sand, gravel, or material site for a parcel described as Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

- WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS,** KPB 21.25.040 provides that a permit is required for a sand, gravel or material site; and
- WHEREAS,** on June 4, 2018 the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district; and
- WHEREAS,** public notice of the application was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS,** public notice of the application was published in the July 5, 2018 & July 12, 2018 issues of the Homer News; and
- WHEREAS,** a public hearing of the Planning Commission was held on July 16, 2018;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On June 4, 2018 the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
5. The proposed disturbed area is approximately 27.7 acres.
6. A public hearing of the Planning Commission was held on July 16, 2018 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
7. The site plan indicates that the processing area is 300 feet from the south and east property lines and is greater than 300 feet from the west property line. A waiver was requested from the north property line.

8. The site plan shows the proposed processing area being 200 feet south of Parcel 169-022-08, which is undeveloped. Parcel 169-022-04 is developed and located within 300 feet of the proposed processing area; this parcel is owned by the applicant's daughter.
9. A 200-foot separation distance to the property boundaries for the processing area is not sufficient to minimize noise disturbance to other properties.
10. The proposed extraction meets material site standard 21.29.040(A1); "Protects against the lowering of water sources serving other properties", as evidenced by:
 - A. Permit condition number 6 requires that the permittee not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
 - B. The submitted site plan shows several wells located within 300 feet of the parcel boundaries but none within 100 feet of the proposed excavation area.
 - C. Permit condition number 7 requires that the permittee maintain a 2-foot vertical separation from the seasonal high water table.
 - D. The application indicates that the depth to groundwater is greater than 20 feet and that the depth of the proposed excavation is 18 feet.
 - E. Permit condition number 8 requires that the permittee not dewater either by pumping, ditching or any other form of draining.
11. The proposed extraction meets material site standard 21.29.040(A2); "Protects against physical damage to other properties". There is no evidence in the record to indicate that physical damage will occur to any other properties as a result of the operations of a material site at this location.
12. The proposed extraction meets material site standard 21.29.040(A3); "Minimizes off-site movement of dust", as evidenced by:
 - A. Permit condition number 13 requires that the permittee provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
13. The proposed extraction meets material site standard 21.29.040(A4); "Minimizes noise disturbance to other properties" as evidenced by:
 - A. Permit condition number 2 requires that the permittee maintain the following buffers that will reduce the noise disturbance to other properties:
 - 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.
 - 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.
 - B. Permit condition number 5 requires that the processing area be located greater than 300 feet from the property boundaries.
14. The proposed extraction meets material site standard 21.29.040(A5); "Minimizes visual impacts" as evidenced by permit condition number 2 that requires that the permittee maintain the following buffers that will reduce the visual impacts to other properties:
 - 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm

- shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.
 - 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.
15. The proposed extraction meets material site standard 21.29.040(A6); "Provides for alternate post-mining land uses" as evidenced by:
- A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C3) is necessary to meet this material site standard.
 - C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.
 - 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.

These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
10. The permittee shall ensure that fuel storage 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.
11. The permittee shall conduct operations 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.
 12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
 13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
 14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
 15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
 17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
 18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
 19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
 20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS _____ DAY OF _____, 2018.

 Blair J. Martin, Chairperson
 Planning Commission

ATTEST:

Patti Hartley
Administrative Assistant

PLEASE RETURN
Kenai Peninsula Borough
Planning Department
144 North Binkley St.
Soldotna, AK 99669

NOTICE OF DECISION



Planning Department

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

Charlie Pierce
Borough Mayor

July 24, 2018

«OWNER»
«ATTENTION»
«ADDRESS»
«CITYSTATEZIP»

NOTICE OF DECISION

At their July 16, 2018 meeting, the Planning Commission disapproved a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

FINDINGS OF FACT

1. The noise will not be sufficiently reduced with any buffer or berm that could be added.
2. The visual impact to the neighboring properties will not be reduced sufficiently.

This decision may be appealed through the Borough Clerk within fifteen days of the date of the Notice of Decision.

Bruce Wall, AICP
Planner

July 24, 2018
Date

OWNER	ATTENTION	ADDRESS	CITY/STATE/ZIP
GIRTON JOHN & BARBARA		PO BOX 869	ANCHOR POINT, AK 99556
GORMAN JAMES		PO BOX 1239	ANCHOR POINT, AK 99556
BROOK THOMAS J		PO BOX 39004	NINILCHIK, AK 99639
CLINE ANN AND RC		61 TRILLIUM TRL	UNDERWOOD, WA 98651
DRINKHOUSE MARIE L		5949 S HAYFIELD RD	WASILLA, AK 99623
CARLTON RICHARD D & MARIE		722 W 45TH AVE	KENNEWICK, WA 99337
GORDON GARY & PAMELA		PO BOX 876130	WASILLA, AK 99687
MILLARD DANIEL C		2266 PANORAMA WAY W	GUINTERSVILLE, AL 35976
SHERIDAN GARY L & EILEEN D		35060 DAVNER ST	ANCHOR POINT, AK 99556
BAKER R O	ROBERT O BAKER II TRUSTEE	PO BOX 661	ANCHOR POINT, AK 99556
VICKEY HODNIK		PO BOX 870	ANCHOR POINT, AK 99556
HORTON DON & LORI		35031 MOFFIT LN	ANCHOR POINT, AK 99556
DON HORTON		221 ELLEN CIR	ANCHOR POINT, AK 99556
GEORGE KRIER		PO Box 2552	ANCHORAGE, AK 99515
TESAR DAVID J & BONITA G		PO BOX 1165	HOMER, AK 99603
WARTBURG MICHAEL G		PO BOX 871567	ANCHOR POINT, AK 99556
SHARON FROMONG		PO BOX 849	WASILLA, AK 99687
YALE MARK & LEE		PO Box 429	ANCHOR POINT, AK 99556
YALE MARK & LEE		74140 SEAWARD AVE	ANCHOR POINT, AK 99556
BILBEN HANS & JEANNE		PO BOX 1176	ANCHOR POINT, AK 99556
BRNA PHILIP J		5601 E 98TH AVE	ANCHOR POINT, AK 99556
COOWE WALKER	KBNERR	2181 KACHEMAK DR	ANCHORAGE, AK 99507
SPARKMAN JOSEPH J & DENISE		PO BOX 767	HOMER, AK 99603
SPARKMAN JOSEPH J & DENISE		73884 SEAWARD AVE	ANCHOR POINT, AK 99556
LORRI DAVIS		PO BOX 946	ANCHOR POINT, AK 99556
GREGORY DAVID & TERESA ANN JACOBSON		PO BOX 904	ANCHOR POINT, AK 99556
SHIRLEY GRUBER		73510 TWIN PEAKS LP	ANCHOR POINT, AK 99556
SHIRLEY GRUBER		13701 ERVIN RD	ANCHOR POINT, AK 99556
PATRICK MIKE & LINDA		PO BOX 335	ANCHORAGE, AK 99516
ALEXANDER TOM & PATTY		785 CASCADE CT	ANCHOR POINT, AK 99556
JOSEPH ALLRED		PO BOX 708	PALMER, AK 99645
ROBERT W CORBISIER		500 L ST SUITE 300	HOMER, AK 99603
COSMAN TERESA		PO BOX 563	ANCHORAGE, AK 99501
DAVID DRIGGERS		PO BOX 745	ANCHOR POINT, AK 99556
MARIE HERDEGEN		69195 KAREN CIR	ANCHOR POINT, AK 99556
HOMER SOIL & WATER CONSERVATION DIST		432 E PIONEER AVE, STE D	ANCHOR POINT, AK 99603
OLIVER RICK		PO BOX 1444	HOMER, AK 99603
REID JIM & SUSAN		PO BOX 85	ANCHOR POINT, AK 99556
REID JIM & SUSAN		73820 SEAWARD AVE	EVERGLADES CITY, FL 34139
LEAH & BILLSCOTT		PO BOX 1193	EVERGLADES CITY, FL 34139
CARLA MILBURN		66090 MOOSEWOOD CT	ANCHOR POINT, AK 99556
BRANTLEY MICHAEL		PO BOX 950	ANCHOR POINT, AK 99556
CULLIP GARY		1523 SW 58TH LN	CAPE CORAL, FL 33914
TODD BAREMAN		PO BOX 1462	ANCHOR POINT, AK 99556
TODD BAREMAN		74294 ANCHOR POINT RD	ANCHOR POINT, AK 99556

captainboomer@hotmail.com

RICHARD CLINE <captrichie@icloud.com>

Marie Carlton <seaburyroad@live.com>
Gary L Gordon <garygordon4@gmail.com>

Gary and Eileen Sheridan <twoshar@acsalaska.net>
R. O. Baker II <bobkleen@acsalaska.net>
<mailto:homerdental@homer.net>
AK Don H <hortons6@gmail.com>

Mark Yale <markyale2001@yahoo.com>
Mark Yale <markyale2001@yahoo.com>
Hans <catchalaska@alaska.net>
Phil Brna <fishyweak@gmail.com>
Coowe Walker <cmwalker9@alaska.edu>
Joseph Sparkman <jay1332@att.net>

Lorri Davis <homesteadart@gmail.com>
David Gregory <davidgregory0754@gmail.com>
shirley gruber <shirleytdx@yahoo.com>
shirley gruber <shirleytdx@yahoo.com>
Linda Patrick <mpatrick335@yahoo.com>
Tom Alexander <pmedic1568@yahoo.com>
Joseph Allred <hungryegret@outlook.com>
rob@reevesamodio.com

sleepybear@alaska.net
David Driggers <david.driggers@gmail.com>
<mailto:marieherdegen@icloud.com>
<mailto:kyra@homerswcd.org>
L Rick Oliver <roliverb747@me.com>

Bill Scott <naturesventures@gmail.com>
Carla Milburn <cjm2@me.com>

PETE KINNEEN
BLAIR GERALD
BOB SHAVELSON
OVERSON ELDON
WHITMORE LYNN
XOCHITL LOPEZ-AYALA
ELMALEH JOSHUA L
ISENHOOR LAUREN
Gina M. DeBardelaben
EMMITT TRIMBLE
CARLTON RICHARD D
STEVE HABER
Marie Carlton

34969 DANVER ST
PO BOX 978
3734 BEN WALTERS LN
PO BOX 1318
PO BOX 355
PO Box 2552
PO BOX 542
PO BOX 317
PO Box 468
PO BOX 193
722 W 45TH AVE
PO BOX 2429
PO Box 29

BEACHCOMBER LLC

ANCHOR POINT, AK 99556
ANCHOR POINT, AK 99556
HOMER, AK 99603
ANCHOR POINT, AK 99556
ANCHOR POINT, AK 99556
HOMER, AK 99603
ANCHOR POINT, AK 99556
ANCHOR POINT, AK 99556
SOLDOTNA, AK 99669
ANCHOR POINT, AK 99556
KENNEWICK, WA 99337
HOMER, AK 99603
Anchor Point, AK 99556

Biocharalaska@gmail.com

Bob Shavelson <bob@inletkeeper.org>

Gina DeBardelaben <gina@bar@mcjaneeg.com>
Emmitt Trimble <emmitttrimble@gmail.com>

MEETING PACKET

&

DESK / LAY DOWN PACKET

JULY 16, 2018

(Please note that some information has been dispersed throughout the record so that there was not duplicate information.)

AGENDA ITEM F. PUBLIC HEARING

4. Conditional Land Use Permit for a Material Site; Anchor Point Area

STAFF REPORT

PC MEETING: July 16, 2018

Applicant: Beachcomber LLC

Landowner: Beachcomber LLC

Parcel Number: 169-010-67

Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Location: 74185 Anchor Point Road

BACKGROUND INFORMATION: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

The submitted site plan indicates that the material site haul route will be Denver Street, which is a Borough maintained road. The site plan and application proposes the following buffers:

- North: 6-foot high berm except along the east 400 feet where a 50-foot vegetated buffer is proposed.
- South: 6-foot high berm.
- East: 6-foot high berm.
- West: Greater than 50-foot vegetated buffer.

The application indicates that the depth to groundwater is 20 feet and that the depth of the proposed excavation is 18 feet. The groundwater depth was determined by a test hole on the property and exposed surface water to the north. The site plan indicates that the processing area is 300 feet from the south and east property lines. It is greater than 300 feet from the west property line. A waiver is being requested from the north property line. The site plan indicates that the proposed processing area is located 200 feet south of Parcel 169-022-08, which is undeveloped. Parcel 169-022-04 is developed and located within 300 feet of the proposed processing area; this parcel is owned by the applicant's daughter. Staff does not recommend approval of the processing distance waiver request.

The site plan indicates that there are several wells located within 300 feet of the parcel boundaries but none within 100 feet of the proposed excavation area. The site plan indicates 100-foot setback from the wetlands area located in the northeast corner of the property and that this setback will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, Best Management Practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska, will be utilized as a guideline to reduce potential impacts to water quality.

The application states that reclamation will be completed annually before the growing season ends (September) and that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust. The applicant estimates a life span of 15 years for the site with an approximate annual quantity of less than 50,000 cubic yards.

Much of the vegetation was removed from this property 20-30 years ago. The neighboring properties adjacent to the southeast corner of the proposed material site are at a higher elevation than the subject property. The proposed 6-foot high berm alone will do little to minimize the visual impact or noise disturbance to other properties. Staff recommends that a 50-foot vegetated buffer be required adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer. Staff also recommends that a 50-foot vegetated buffer be required adjacent to the Echo Drive right-of-way

and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer. Staff recommends that a 12-foot high berm be placed along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm should take place prior to removing the existing vegetation in the western portion of the material site.

PUBLIC NOTICE: Public notice of the application was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their Post Office. Public notice of the application was published in the July 5, 2018 & July 12, 2018 issues of the Homer News.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on July 6, 2018.

ATTACHMENTS

- Conditional Land Use Permit application and associated documents
- Aerial map
- Area land use map
- Ownership map
- Contour map

FINDINGS OF FACT

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On June 4, 2018 the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
5. The proposed disturbed area is approximately 27.7 acres.
6. A public hearing of the Planning Commission was held on July 16, 2018 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
7. The site plan indicates that the processing area is 300 feet from the south and east property lines and is greater than 300 feet from the west property line. A waiver was requested from the north property line. The site plan shows the proposed processing area being 200 feet south of Parcel 169-022-08, which is undeveloped. Parcel 169-022-04 is developed and located within 300 feet of the proposed processing area; this parcel is owned by the applicant's daughter. A 200-foot separation distance to the property boundaries for the processing area is not sufficient to minimize noise disturbance to other properties.
8. The proposed extraction meets material site standard 21.29.040(A1); "Protects against the lowering of water sources serving other properties", as evidenced by:
 - A. Permit condition number 6 requires that the permittee not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
 - B. The submitted site plan shows several wells located within 300 feet of the parcel boundaries but none within 100 feet of the proposed excavation area.
 - C. Permit condition number 7 requires that the permittee maintain a 2-foot vertical separation from the seasonal high water table.
 - D. The application indicates that the depth to groundwater is greater than 20 feet and that the depth of the proposed excavation is 18 feet.
 - E. Permit condition number 8 requires that the permittee not dewater either by pumping, ditching or any other form of draining.
9. The proposed extraction meets material site standard 21.29.040(A2); "Protects against physical damage to other properties". There is no evidence in the record to indicate that physical damage will occur to any other properties as a result of the operations of a material site at this location.
10. The proposed extraction meets material site standard 21.29.040(A3); "Minimizes off-site

movement of dust", as evidenced by:

- A. Permit condition number 13 requires that the permittee provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. The proposed extraction meets material site standard 21.29.040(A4); "Minimizes noise disturbance to other properties" as evidenced by:
- A. Permit condition number 2 requires that the permittee maintain the following buffers that will reduce the noise disturbance to other properties:
- 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.
 - 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.
- B. Permit condition number 5 requires that the processing area be located greater than 300 feet from the property boundaries.
12. The proposed extraction meets material site standard 21.29.040(A5); "Minimizes visual impacts" as evidenced by permit condition number 2 that requires that the permittee maintain the following buffers that will reduce the visual impacts to other properties:
- 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.
 - 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.
13. The proposed extraction meets material site standard 21.29.040(A6); "Provides for alternate post-mining land uses" as evidenced by:
- A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
- B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C3) is necessary to meet this material site standard.
- C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.

STAFF RECOMMENDATION

In reviewing the application staff has determined that the six standards contained in KPB 21.29.040 will be

met and recommends that the Planning Commission deny the processing distance waiver request, approve the conditional land use permit with listed conditions, and adopt the findings of fact subject to the following:

1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicant will provide the recording fee for the resolution to the Planning Department.
4. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit.

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.
 - 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
10. The permittee shall ensure that fuel storage 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.
11. The permittee shall conduct operations 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.

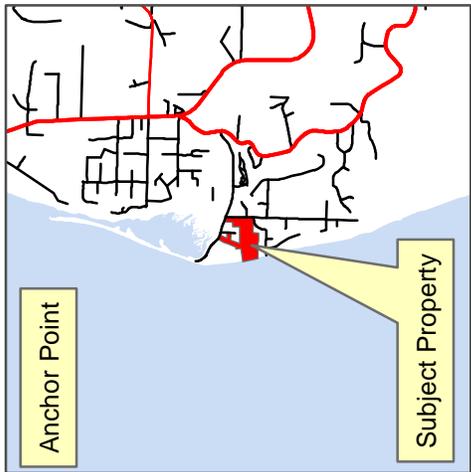
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT

Kenai Peninsula Borough Planning Commission Meeting, July 16, 2018
Conditional Land Use Permit for a Material Site

Parcel Number: 169-010-67
Applicant: Beachcomber LLC

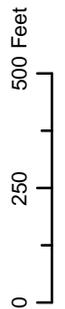


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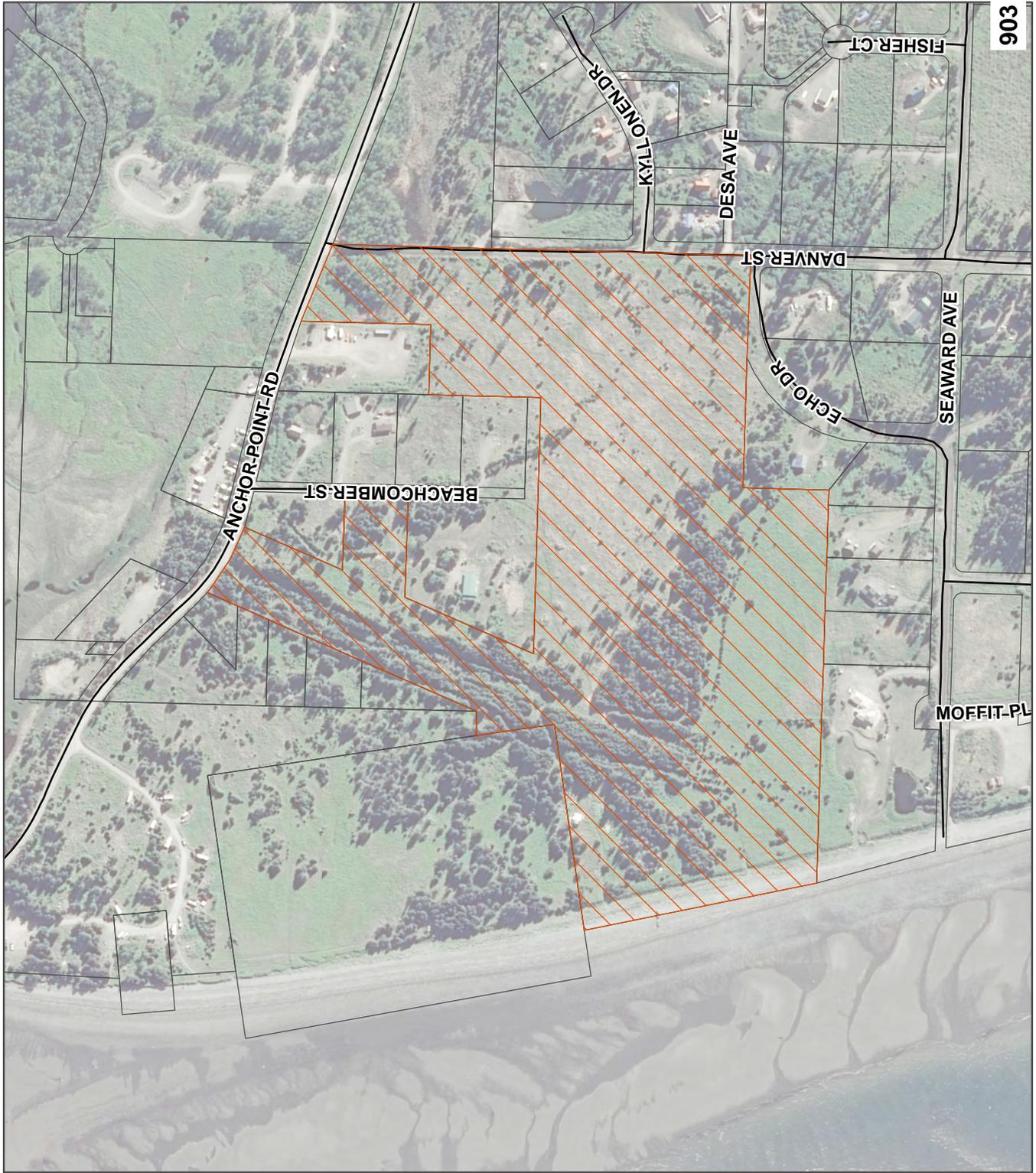


Subject Parcel



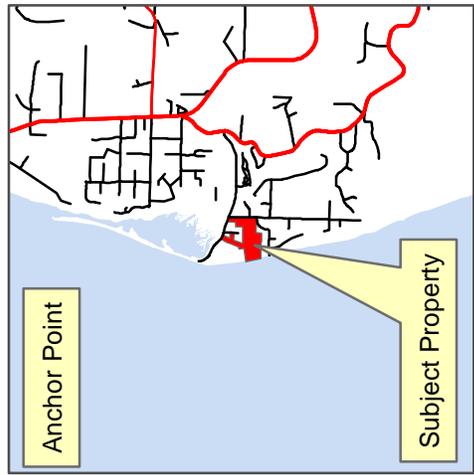
Date: 6/21/2018

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



Kenai Peninsula Borough Planning Commission Meeting, July 16, 2018
 Conditional Land Use Permit for a Material Site

Parcel Number: 169-010-67
 Applicant: Beachcomber LLC



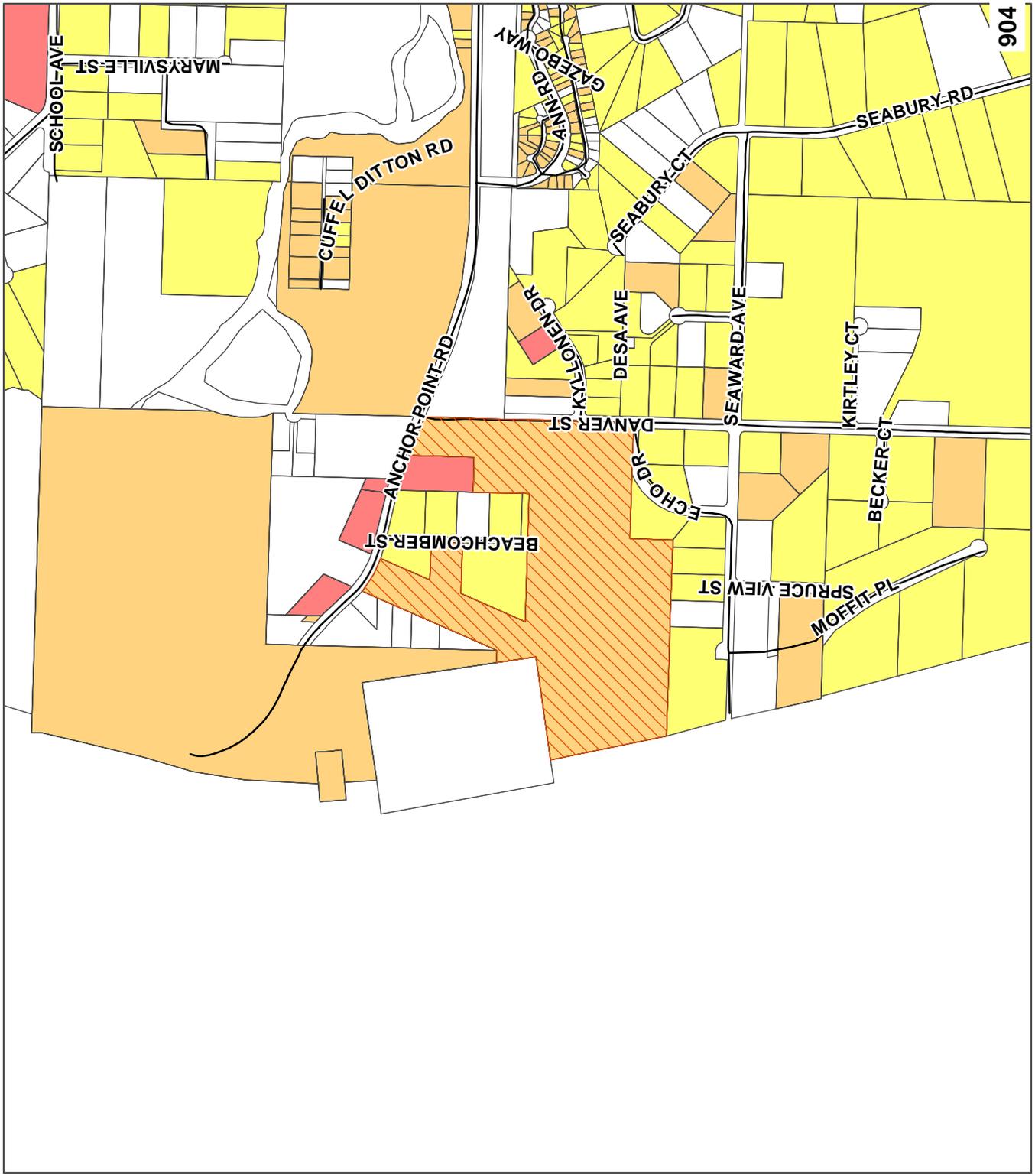
LEGEND

-  Subject Parcel
-  Vacant
-  Residential
-  Commercial
-  Institutional
-  Industrial
-  Accessory Building



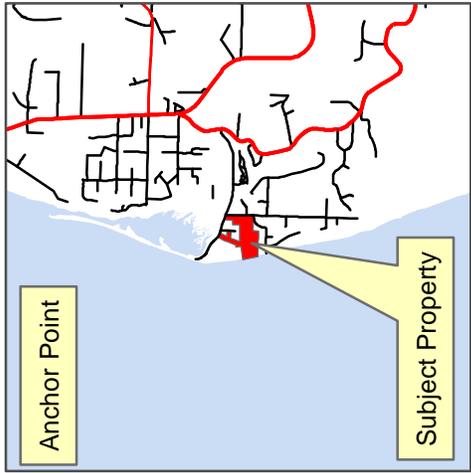
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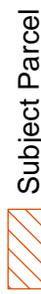


Kenai Peninsula Borough Planning Commission Meeting, July 16, 2018
 Conditional Land Use Permit for a Material Site

Parcel Number: 169-010-67
 Applicant: Beachcomber LLC



LEGEND



Subject Parcel

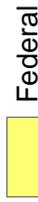
OWNERSHIP



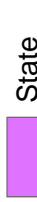
Private



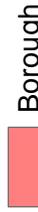
Native Allotment



Federal



State



Borough



Native

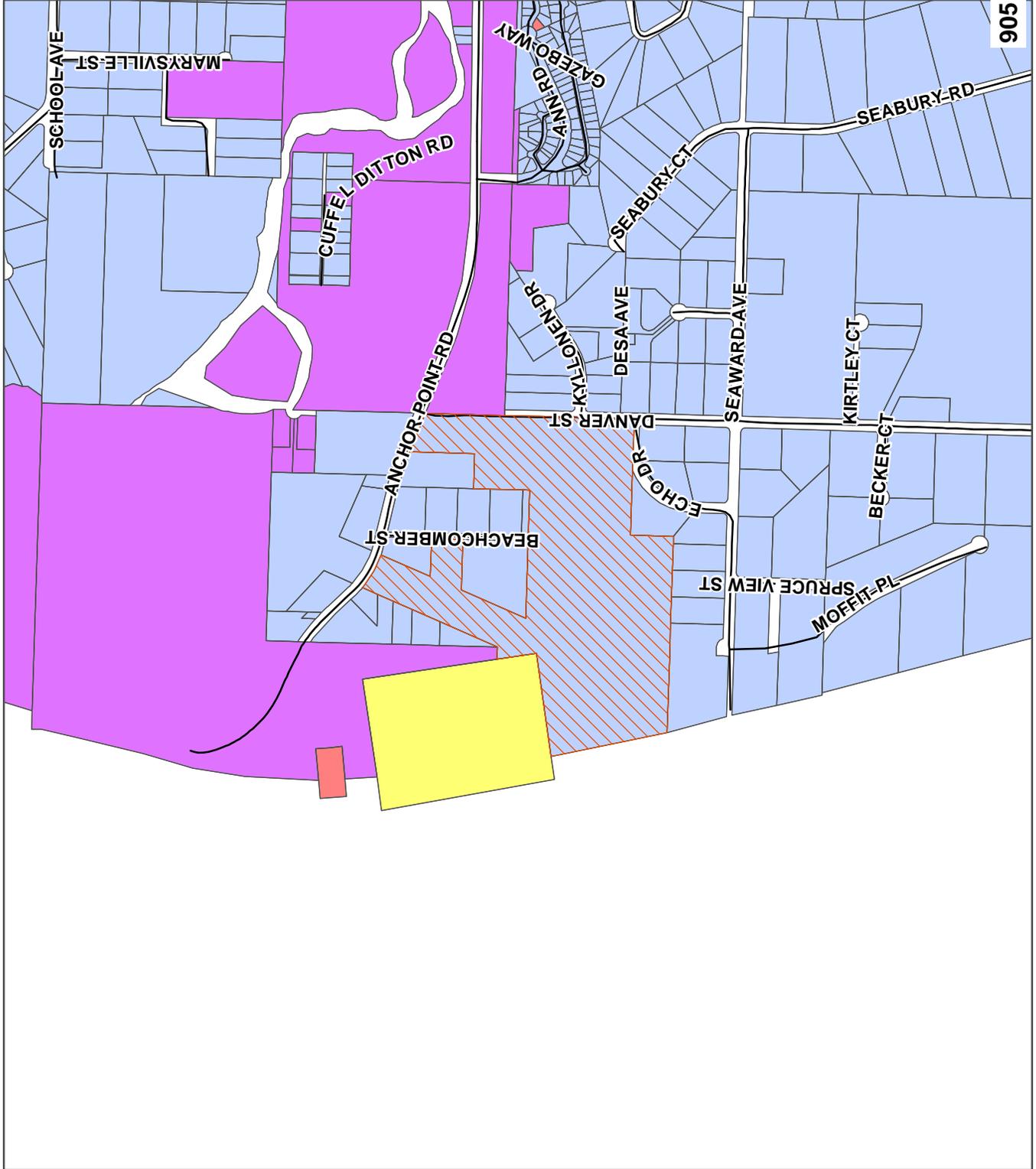


0 500 1,000 Feet

Date: 6/21/2018

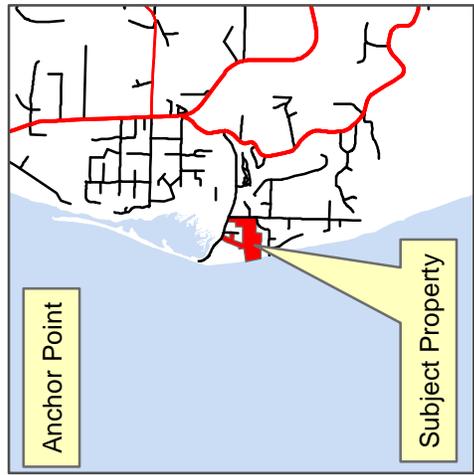
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R26



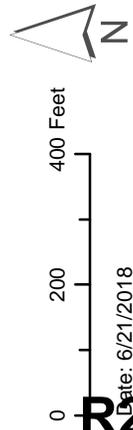
Kenai Peninsula Borough Planning Commission Meeting, July 16, 2018
Conditional Land Use Permit for a Material Site

Parcel Number: 169-010-67
Applicant: Beachcomber LLC



LEGEND

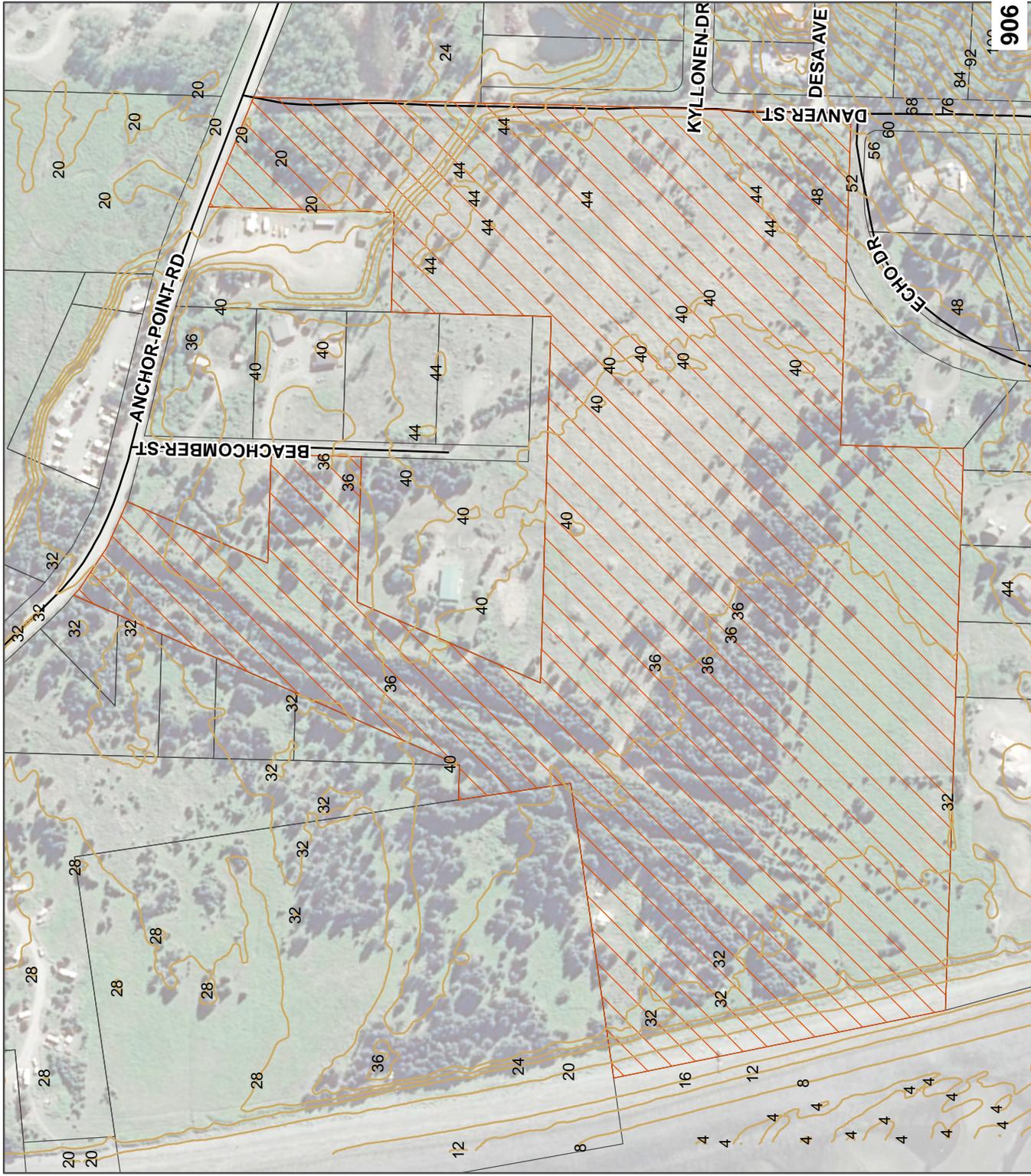
-  4' Contours
-  Subject Parcel



Date: 6/21/2018

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

R27



906

KENAI PENNINSULA PLANNING BOARD

144 BINKLEY STREET

SOLDOTNA, AK 99669

JUNE 26, 2018

I AND MY NEIGHBORS STRONGLY OBJECT TO THE PERMITTING OF THIS PLANNED GRAVEL PIT. THE ROADS THAT WILL BE USED BY THE THOUSANDS OF COMMERCIAL TRUCKS ARE IN DEPLORABLE CONDITION AND WITH THE PLANNED TRUCK TRAFFIC IN AND OUT OF THIS PIT THE ROADS WILL BE DESTROYED. UNLESS BEACHCOMBER LLC POSTS A BOND TO REPLACE AND MAINTAIN THE ROADS THAT THE TRUCKS WILL BE TRAVELING, THIS PERMIT SHOULD NOT BE GRANTED. THE PLANNING BOARD OWES THE RESIDENTS AND CURRENT USERS OF THESE ROADS THE PROTECTION THEY ARE ENTITLED TO FROM BEACHCOMBER LL WHO WILL DO NOTHING BUT RAPE THE LAND AND LEAVE AN UNSIGHTLY MESS AND HOLE IN THE GROUND.

IF THE COMMERCIAL TRUCKS ARE ALLOWED TO USE "THE BEACH ROAD" IT WILL CAUSE HUGE PROBLEMS WITH THE BOATS THAT TRAVEL THIS ROAD TO AND FROM THE TRACTOR LAUNCH WHICH IS A CRITICAL PART OF THE ANCHOR POINT ECONOMY.

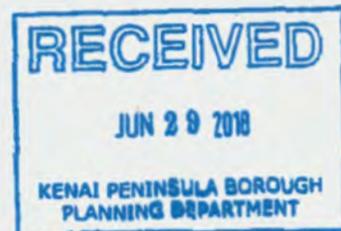
JOHN AND BARBARA GIRTON

PO BOX 869

73460 TWIN PEAKS LOOP

ANCHOR PONT, AK 99556

John R. Gorton
Barbara Gorton



Wall, Bruce

From: james gorman <captainboomer@hotmail.com>
Sent: Tuesday, June 26, 2018 8:31 AM
To: Wall, Bruce
Subject: Beachcomber LLC gravel pit

Dear Chairman-

I received a letter yesterday regarding this proposed development. Although I have no objections to the extraction of the materials from this site, I do have reservations about the transport of same. The corridor, what we call the beach road, is a narrow two-lane road in serious need of an upgrade. The pavement is separating in several places and it has very narrow shoulders, making it hazardous to pedestrians when two wide vehicles travel in opposite directions. Given that there is a popular boat launch and several RV parks along this route, this is not uncommon. Boat and Rv traffic is heavy at times during the summer months.

I would recommend wider shoulders along the beach road portion and repaving this corridor.

I also have a question about the route these trucks would take. Would they cross the Anchor River bridge or use the Old Sterling? If the bridge, I have concerns about its integrity and its narrow width. The Old Sterling is another road in need of an upgrade if that is the route taken.

In conclusion, my concerns are about conflicts in the corridor with the various user groups and the poor condition of the roads.

Any additional information you could forward to me on these matters would be appreciated.

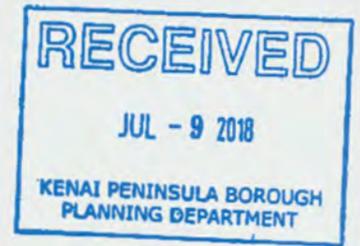
Sincerely,

James Gorman
Anchor Point

Sent from my iPad

Thomas J Brook
PO Box 39004
Ninilchik, AK 99639

July 1, 2018



Planning Commission Chairman
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, AK 99669

To Whom It May Concern,

I am in receipt of the KPB Planning Commission Notice of Public Hearing on the proposed sand, gravel and peat extraction request by Beachcomber LLC, Parcel No 169-010-67 at 74185 Anchor Point Road.

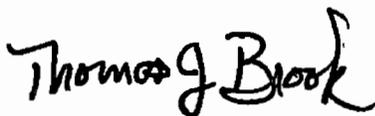
I will not be available on July 16 to attend the meeting and give oral testimony, thus this letter should serve as my input. I am **vehemently and adamantly opposed to the issuance of a permit for sand, gravel, and peat extraction on this site.** Such an endeavor will dramatically detract from the property I currently own abutting Echo Drive and Spruce View Street. This is a developing home site community and the currently existing homes and home values would be seriously devalued should a permit of this type be granted in this area. The deterrents to ~~lot sales~~ and existing homes would be numerous but some of the most serious would be the devaluation of property, the ugly sight of a gravel pit from the road, specifically Denver Street which I use to access Echo and Spruce View Streets, plus along Anchor Point Road, the daily noise of a "gravel pit" which, at the very least is obnoxious, and the dust generated which can have a serious impact on anyone with allergies or lung conditions aggravated by dust and dirt (pollutants) in the air, not to mention the housekeeping nightmares. There is also no way to measure the damage to the ground and surrounding ground with the gravel pit activity and you can't possibly tell me or others that this absolutely WILL NOT affect the ground water servicing our wells. I realize you think berms are meant to provide a barrier, however a 6 foot berm does nothing to alleviate or eradicate the above listed concerns. I don't think it's adequate to say that the Planning Commission approve the conditional land use permit because all six standards have been met.

There's far more at stake here than just meeting the borough's six standards. This is no longer the wild west of Alaska and because Anchor Point has not traditionally been a highly populated area does not automatically make it eligible for a gravel pit land use off Anchor Point Road.

I am shocked that this proposal is even being given consideration. This area has been growing in popularity as a housing area of development for many years now, especially view lots and beachfront (both high and low bluff) and is a highly inappropriate area to put a pit. The Planning Department should have denied this usage request before it even got to this stage. Just imagine for a moment if this were your home or your valuable property and now the view you have from any surrounding hill is this gravel pit. Would you allow this proposal in your neighborhood? I think not, so just because an application meets your technical criteria does not mean it's an appropriate or even necessary usage type. I completely understand the pressure exerted to grant this permit because the owner(s) of this land are obviously anxious to make the potential money, as gravel pits are trying to pop up seemingly everywhere in the borough as very lucrative endeavors. However, this particular one is at the expense of the homes, people and potential for land development in this immediate area. I don't think that can be ignored nor sacrificed for the lucrative potential of a gravel pit just because your criteria does not specifically prohibit this activity.

Again, I cannot stress this point enough, I do not, cannot, and will not support the application for a gravel pit as proposed. Please reconsider your inclination and recommendation to approve this permit.

Sincerely,

A handwritten signature in black ink that reads "Thomas J. Brook". The signature is written in a cursive, slightly slanted style.

Thomas J. Brook

Friday, July 6, 2018

Mr. Bruce Wall
Planner
Kenai Peninsula Borough
144 North Binkley Street
Soldotna, Alaska 99669

Dear Mr. Wall,

We are writing to you on behalf of our small community of Anchor Point neighbors who are upset about a proposed sand, gravel, and peat extraction permit submitted by Emmitt and Mary Trimble of Beachcomber LLC/Coastal Realty. The 40+ acre property in question is located on the west side of Denver St. between Anchor River Road and Echo. We respectfully request that you reconsider your draft recommendation of approval and reject the proposed permit.

We are sorry we cannot be present at your public hearing to be held July 16, 2018 in Soldotna at 7:30 P.M. Unfortunately, Richard and I are already obligated in Washington State, but we hope that this letter can be read to those present at the meeting. The following are our key concerns:

[1] Visual enjoyment of property

Currently, the hillside view overlooking the proposed gravel pit is of a lovely green meadow, spruce and alder trees, and spectacular Cook Inlet and Alaska Range beyond. A dusty gravel pit is not what we had in mind when we purchased our lots here. Those neighbors who abut the property are naturally quite concerned about the potential loss of property value as well as the aesthetics of losing their Alaskan green space. Of course we would all be thrilled to have enough money to purchase enough acres to completely ensure our privacy and solitude. Not being in a financial position to do so, we have trusted our realtors to speak the truth about the land we consider purchasing. We trust the borough officials to protect our interest and desire to live peacefully with our neighbors. We hope that we can together find a solution that will render everyone contented. Surely there must be a suitable, alternative location that the Trimbles can find to locate their sand, gravel, and peat business that does not so negatively impact local Alaskan residents.

[2] Noise

Alaskans take pride in the beauty of their land. Some, like Richard and I, love the pastoral setting and mountain views afforded by a hillside home. Others

prefer the quiet solitude of a home nestled hidden among spruce and alder. **ALL** of us are adamantly opposed to an unpleasant drone of gravel excavators, machinery, and dump trucks next door. Several years ago when the Trimble cleared the property, there was a constant obnoxious noise from heavy equipment, easily heard from all surrounding properties. As you review the proposed three phases of sand, gravel, and peat extraction, we implore you to consider thoughtfully the full import of your decision on our neighborhood as well as the precedent it could set for future Kenai Peninsula communities.

[3] Dust

Richard and I have built our cabin over the past four summers. We have experienced first hand the weather and winds here in Anchor Point. We can appreciate the dismay of Marie Drinkhouse, Lee and Mark Yale, Bob Baker (to name a few) when they were apprised of the proposed permit application. The Anchor Point winds would carry excavation dust, dirt, and debris straight south to their houses. All of us within at least a half mile would be negatively effected by the dust pollution created by such an operation. Today is a sunny, clear day. I hate to imagine what the air would smell, taste, look, or feel like with an excavation project underway.

We understand that there are several sand, gravel, and peat excavation permits under current consideration. Each will succeed or fail on its individual merits or problems. We hope that as you deliberate and examine the concerns, goals, and plans of all parties involved, you also include the honorable aspect of this issue. When all is said and done, it is our hope that everyone will feel good about the outcome. Perhaps someone can offer the Trimble assistance in locating a more suitable location for the business of sand, gravel, and peat. In the end, we are neighbors and a community that wants the best for each and every citizen.

Thank you for your consideration, Mr. Wall. We look forward to hearing from you. If there is anything else we can do to plead our case, please let us know.

Respectfully,

Ann and RC Cline

Wall, Bruce

From: Rokos, Jay M (DNR) <jay.rokos@alaska.gov>
Sent: Friday, July 6, 2018 1:41 PM
To: Wall, Bruce
Subject: Re: KPB CLUP Material Site Application - Parcel 169-010-67
Attachments: Reclamation Plan.pdf

Bruce,

Thank you for the opportunity to comment on the subject public notice. Per AS 27.19, a mining operation must have Reclamation Plan approval with the State of Alaska prior to operations. This requirement is for all land ownerships.

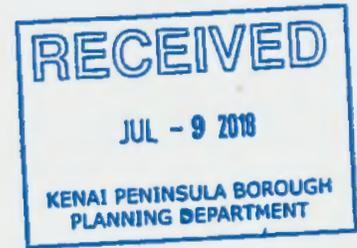
To date, DNR does not have an approved Reclamation Plan for the subject parcel. DNR requests for the applicant to apply for a Reclamation Plan at the Southcentral Regional Office at 269-8503. An application is attached.

Applicant: Beachcomber LLC
Landowner: Beachcomber LLC
Parcel Number: 169-010-67
Legal Description: Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District

Jay Rokos
Natural Resource Technician II
Alaska Department of Natural Resources
Division of Mining, Land and Water
Southcentral Region Office
Leasing Unit
550 W. 7th Ave. Suite 900C

Phone: (907) 269-5047
Fax: (907) 269-8913

July 6, 2018



Bruce Wall, AICP
Planner
Planning Commission Chairman
144 N Binkley Street
Soldotna, AK 99669

Re: Parcel Number 169-010-67, 74185 Anchor Point Road

I would like to pose some questions and concerns on this proposed gravel pit.

Is DEC involved in this process?

Is Beachcomber LLC required to submit a 15 year time line action plan?

Are there other places in the area where this process has been completed and the reclamation process also complete? It would be nice to see this process at various stages. Does the applicant have a history in this type of endeavor? Could we see one of their reclamations?

What are the hours of operation and the usual season of operation? Will the truck traffic be going over the old bridge?

What type of soil is left after this process? What is the reclamation process?

With the tides rising over extended periods of time and this lowering the land by 10 feet close to the inlet don't you have some concern for the long term affect?

There has to be someplace further away from the water and further away from homes that could provide these resources!

How does Fish and Game feel about this operation? Poor Anchor Point has so struggled to get tourism going in the area and this surely can't help the cause.

Does the Anchor Point Chamber of Commerce know about this?

Have you walked the property? What happens to the trees on the property?

Thank you for taking my concerns into consideration. I look forward to your thoughtful answers.. I own the property @ 34925 Echo Drive in Anchor Point.

Marie Drinkhouse
5949 S Hayfield Road
Wasilla, AK 99623
907-3540847

A handwritten signature in black ink that reads "Marie Drinkhouse". The signature is written in a cursive, flowing style.

Wall, Bruce

From: Carver, Nancy
Sent: Friday, July 6, 2018 1:30 PM
To: Wall, Bruce
Subject: RE: KPB CLUP Material Site Application - Parcel 169-010-67

No Habitat concerns

Nancy Carver
Habitat Resource Planner
907-714-2463
ncarver@kpb.us

KENAI PENINSULA BOROUGH
514 Funny River Road
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

Wall, Bruce

From: Marie Carlton <seaburyroad@live.com>
Sent: Sunday, July 8, 2018 11:32 PM
To: Wall, Bruce
Subject: regarding the proposed Beachcomber LLC Gravel Pit site

Dear Bruce, My husband and I live at Parcel 16936027, 73500 Seabury Rd. T5S R 15 W Sec 9 Seward Meridian HM 2001035 Meadow View Estates Tract 15A. We are responding to the public announcement document provided to us by the Kenai Peninsula Borough June, 22 2018 and wish to respond and object to the Beachcomber LLC application as stated. We have grave concerns about the proposed "Gravel Pit." We have a retirement home with a substantial investment and chose Alaska for its beauty, wildlife and solitude. The reviewed documents do not reflect an environmental impact study regarding the proposed "Gravel Pit." This proposed "Gravel Pit" will run the risk of negatively impacting wildlife and wetlands. This is a critical Moose calving area as well as Bald Eagle nesting sites. With rock crushing, dust and noise, we will loose the very reason we chose Alaska as a place to retire. This would terminate the beauty of the wildlife we value and enjoy. With children bicycling, walking to the beach the increased truck congestion may reveal disastrous results. The Anchor Road is always congested but with increased traffic, a failing, narrow road with no path to walk, the risks of a fatality increase substantially. I have witnessed current loaded rock trucks rarely adhering to the speed limit. The dust pollution will affect many areas. We don't look forward to the smell, taste and appearance of blowing dust. This not why we chose Alaska. In Alaska we love the quiet, beauty and solitude of out home and not the unpleasant drone of truck engines and rock crushers. I believe the property value of our homes will plummet. Who wants to purchase a home with a gravel pit in their backyard? We hope you will not approve the application for Beachcomber LLC. We have worked very hard to be able to retire in this beautiful area. Thank you for allowing us a voice. Rick and Marie Carlton 509-430-4304
seaburyroad@live.com

Wall, Bruce

From: Gary L. Gordon <garygordon4@gmail.com>
Sent: Monday, July 9, 2018 12:55 PM
To: Wall, Bruce
Subject: Fwd: Beachcomber LLC Gravel Pit Application

>> My name is Gary L. Gordon, my wife Pamela C. Gordon and I own an assessed \$280,000 view home at 34919 Fisher Court, directly above the proposed gravel pit. We also own two more lots off Danver and High Seas Court, assessed at over \$120,000. We don't want a gravel pit in our view, nor the additional traffic on Danver, resulting in excessive noise and dust. I own and operate a commercial gravel pit here in Dillingham, AK. They are noisy and dusty even if the operator or operators of the gravel pit maintain the public roads. Applicant is not going to operate this gravel pit, nor does he have the experience or equipment to develop the pit. He intends to sell gravel to highest bidder; therefore, if a project, say Anchor Point Bridge comes out to bid, applicants representative will solicit his gravel pit as the extraction source. The contractor will most likely use it, for it is the closest source. That contractor will further develop the source, move man camp in, job trailers, offices, rock crushing plant and an asphalt plant. They will work 84 hours a week, maybe more if weather hinders paving operation. We the land owners and tax payers now get an asphalt smoke screen and an enormous amount of noise and dust blown on us from tidal winds through the summer.

>> Developing the proposed commercial gravel pit operation in heart of the only recreation site Anchor Point has, is not acceptable. There are State camping parks, boat launch facilities, private RV parks and guiding businesses, plus us the home and land owners that will be adversely affected. Locals, other Alaskans and visiting tourists all travel these wore out roads and bridge now, putting fifty or more loaded dump trucks on these roads a day is going to ruin them. Our State has no funding to repair or rebuild this infrastructure that our lives require to occupy our homes and businesses.

>> Another serious consideration is line 7 on page 2 of 4 of permit, gravel extraction into OUR water table, stated again on page 4, monitoring wells. This has a potential to be very bad for all surrounding owners and businesses.

>> I hope the federal land owners between this site and the beach have been notified, as well as the wet land issues north of this site.

>>

>> Bottom Line, This is not good for Anchor Point it's residents or businesses.

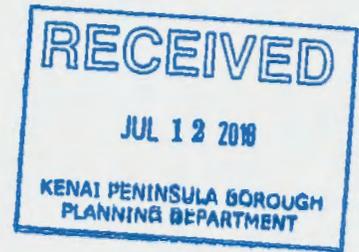
>>

>> Cordially, Gary L. Gordon

>>

>>

Dan and Cathy Millard
35060 Denver St
Anchor Point, AK 99556



July 9, 2018

Dear Planning Commission Chairman,

In regards to the proposed gravel pit, please address that this is in the middle of recreational and residential area. Also, the road is weak and broken already. At times it has extremely heavy traffic as well as pedestrian traffic with no shoulder or walking trails.

There is the problem of silt generated from the pit flowing to wetlands which will not be able to be controlled.

The view property in the area will need to be reassessed for the change of value, as part of the view becomes a large hole/gravel pit.

We are extremely against this proposed gravel pit. It will forever change a much loved and used recreational area as well as devalue residential property.

Kind regards,

Dan and Cathy Millard

R39

July 9, 2018

Planning Commission Chairman
144 N. Binkley St.
Soldotna, Alaska. 99669

Re: Public Testimony Regarding Beachcomber LLC's Application for a Permit for Sand, Gravel, and Peat Extraction on A Portion of Parcel Number 169-010-67, Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104), Location: 74185 Anchor Point Road

Dear Planning Commission:

We are property owners and Party of Record in the vicinity of the above proposed "Gravel Pit". Our property is located at 34860 Seabury Court, Anchor Point, Alaska 99556 (Lot 6-A Silver King Ten, Plat No. 97-41 Homer Recording District). We built our house here in 2004 and have a substantial investment in our property and home.

We are deeply concerned about the proposed "Gravel Pit" and wish to document our objection to the Beachcomber LLC's application as described in public announcement provided us by the Kenai Peninsula Borough June 22, 2018.

Environmental Impact Statement:

There is no reference to there being an Environmental Impact Statement regarding the proposed location of the "Gravel Pit". While the Borough may not deem it is required for this proposal, it is evident that the proposal will effect wildlife and birds in the area which includes the wetlands.

Moose: The specific location and surrounding area is an annual moose calving and rearing area. We know this to be a fact as having lived here for 14 years. Each year, cow moose wander throughout the proposed extraction area and across all the extraction area boundaries to give birth to young moose. This is a critical time for young moose as they are literally born in this area and are nursed and oversaw by cow moose until they are able to fend for themselves. In the 14 years we have lived here, we have personally observed more and more habitats made less available to cow moose birthing due to new home construction and other development. They are extremely sensitive to noise and human activity during this period. There's also concern that cows may abandon their young if enough pressure is brought to bear as proposed by this "Gravel Pit" application.

Birds and Small Game Animals: The specific location and surrounding area is home to numerous birds and small wild animals. From the smallest Chickadee to the largest eagle, they use this area daily and are seen throughout the proposed "Gravel Pit" site. We have personally observed Eagles abandon their nests with young in them due to too much human activity and noise. While there may not be a large number of Eagle nests immediately in the proposed site boundaries, there may be, but we know there are a number of Eagle nests in adjacent locations.

The addition of a 'Rock Crusher' in the project will exacerbate the already large impact of noise and activity many birds and wildlife can't withstand. The noise and intrusion of a 'Rock Crusher' in this critical moose calving area will do immeasurable harm to them.

The area being proposed as a "Gravel Pit" is a disastrous breach of our husbandry of Alaska's bird and wild life. It is near to the State Park and camp ground and world renown fishing river.

If an Environmental Impact Statement isn't demanded by the Kenai Borough regarding this application then we question the integrity of the Borough's interest in the proposed project.

Public Safety:

The Anchor River Road (from the Anchor River Bridge/Old Sterling Highway to the end of it at the Tractor Launch is narrow and in complete disrepair. Major pavement cracks, pot holes, heaving, and other roadway hazards currently exist. During the summer heavy traffic from commercial fishing charters, tourists, and local residents battle these bad road conditions.

The roadway is extremely narrow without any significant shoulders for pedestrians, and bike riders to get away from the heavy summer traffic. There are a number of "blind" corners making even more dangerous for people walking or bike riders. While this roadway is posted with a 25 mile per hour speed limit, very few drivers observe the limit and often are traveling at least 35 miles per hour and even more.

With the proposed application, the applicant will be introducing another layer of traffic to an already problematic roadway. However, this won't be light weight vehicles. They will be at minimum, large dump trucks filled with heavy loads of gravel and sand. In fact, there is no restrictions regarding the size of heavy trucks that can be used. If it's in the applicant's interests to haul using large 'belly dump" rigs he'll likely do so. Regular 'dump trucks' will soon tear up the Anchor River Road to the point it will be unusable for all of us. Lets face it, dump truck operators are on the clock and inevitably push the speed limit as it is. Already, with the limited amount of dump truck use of the Anchor River Road, we observe them driving well over the 25 mph speed limit.

Even if the Anchor River Road surfaces were brought up to standard, there would continue to be a major public safety issue due to the lack of shoulders and blind corners making pedestrian and bike traffic perilous.

No where in the proposed application are these problems addressed. For these reasons alone, we oppose the application for a 'Gravel Pit' in this area.

If the Borough is insistent upon granting this permit, then the applicant and/or Borough should provide a new roadway from Danver to the Old Sterling Highway, thereby, eliminating the Anchor River Road from the equation. There has been a proposal to make this connection by extending Seaward Avenue to the Old Sterling for a number of years.

At minimum, the Kenai Borough should photographically document the existing condition of the Anchor River Road prior to the applicant's engaging in and hauling activity in order to ensure applicant's compliance with KPB 14.40.175 and KPB 14.40 .

Property Values:

When we built our home in 2004, the area adjacent to the proposed "Gravel Pit" was little developed and there were very few homes in our area. We selected our home site understanding that Anchor Point was a tourist destination to enjoy the Anchor River fishing and the beautiful flora and fauna found here. Our home location was and remains relatively quiet and peaceful. We have a secondary view of Cook Inlet and our home's value has increased

substantially since we built it. There was no 'talk' about a 'Gravel Pit' being made near our home. If there had been, we wouldn't have even considered building our house anywhere near it. Now, instead of an almost pristine environment with quiet and solitude, a beautiful river nearby, and almost constant opportunities for bird and wildlife viewing, we will be subject to a layer of human impact that can only subject our home's value to degradation. If this application granted we will be lucky to regain our original investment. No one will be interested in property that is near to a large 'Gravel Pit' operation.

General Comments:

1. Under discussion of groundwater as being 20' and that the depth of the proposed excavation is 18 feet, we are concerned about two issues: 1) This was apparently established by only one test hole on the proposed project site. This seems to be a very limited testing approach given that the project is over 25 acres in scope. It would seem prudent to require additional test hole at various locations throughout the project area to ensure the water table is consistent; 2) There does not appear to be any consideration related to the water table level upon the removal of all surface vegetation. It seems obvious the groundwater level will be effected by such removal. Provisions should be made to protect groundwater throughout the project and adjacent properties to the extent possible.
2. 50 foot buffer zones- We were pleased to see that the Staff have recommended these 50 foot buffer zones be required. However, we would like to see the applicant be required to create a 12 foot berm all along the East boundary of the project inside the 50 foot buffer zone if this project is going to be approved.
3. Staff have recommended that, "The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m." It has been traditional throughout Alaska that construction activities be between the hours of 9:00 a.m. and 9:00 p.m. to give families brief periods of respite from loud noise and general neighborhood disturbances. We believe this should not only include rock crushing activities but hauling activities as well.
4. Regarding permit renewal at the end of five years, we believe it should be required that the public also be notified of a request for permit extension at least 30 days prior to the permit extension and a public hearing be held by the Borough to determine how the applicant has performed under the original permit if its given.

We wish to thank you for your consideration of our comments.

Sincerely,

Gary and Eileen Sheridan

PO Box 661
Anchor Point, Alaska 99556

907-235-5542
twoshar@acsalaska.net

Cc Bruce Wall, AICP
bwall@kpb.us

Wall, Bruce

From: R. O. Baker II <bobkleen@acsalaska.net>
Sent: Tuesday, July 10, 2018 5:39 PM
To: Wall, Bruce; susan@reevesamodio.com
Cc: leeyale2008@yahoo.com; markyale2001@yahoo.com
Subject: Photos taken by you 7.02.18 / 1020 ADT

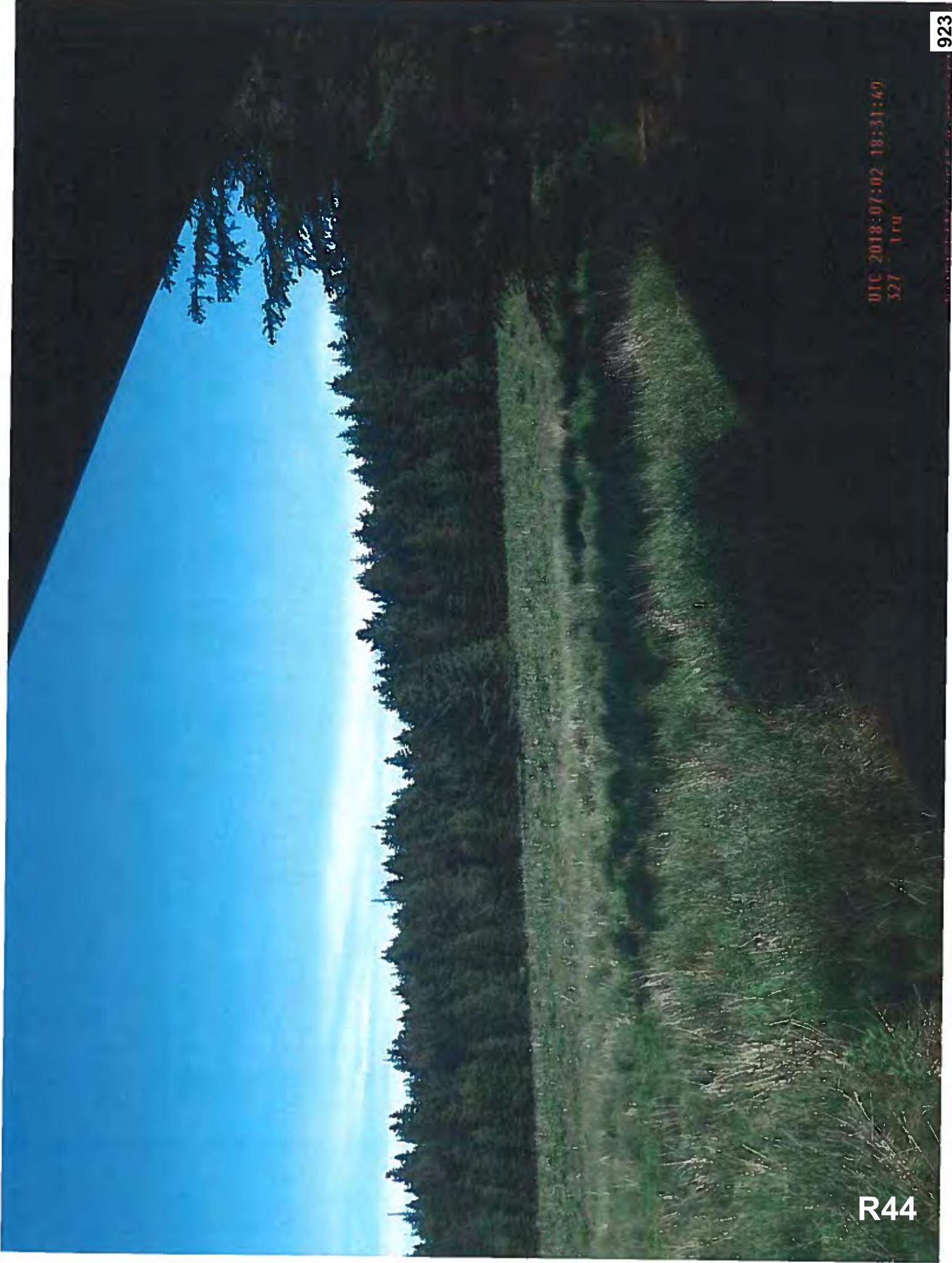
Hi Bruce,

Please insure that enlarged copies of the photos, which you took from my porch, are available for viewing at the meeting scheduled for Monday, 16 July.

Yours,

Bob

Sent from [Mail](#) for Windows 10



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R44

July 10, 2018

Borough Planning Commission,

I am writing in regard to the following agenda item: Applicant for
Conditional Use Permit: Beach Comber LLC
Parcel: 169-010-67
Tract: Tract B, McGee Subdivision

I live within 500 ft. of this proposed gravel pit and am asking that the Planning Commission look hard and long before granting this permit. The community is on the Inlet and adjacent to a state park. Those of us that live there have peace and quiet, and such beautiful scenery, that it is hard to quantify how much it means to us. I am sure those that come to the park also feel that they have rarely seen anything more beautiful.

It may be news to those on the Planning Commission that many people who are living in this area are retired and have invested in new homes and have a quiet, rural lifestyle. We have much pride in our homes and gardens and love this community. This isn't just a summer fishing place where tourists come to visit. The tourists are a part of summer life but Anchor Point is a real community that is growing.

Please ask yourself if you would like to have a 40 acre gravel pit next to your home. Please make this decision as if it was your neighborhood that was about to be invaded with heavy equipment, loud noises, dirt and dust filling the air you breathe, possible loss of water in your well and loss of animals that have been habitating in that 40 acres. How would you like 5,000 loads of gravel traveling on your road that isn't designed well enough to manage the traffic it already has. How would you like to not be able to ride your bike along the road anymore, or even take a walk, because of the large equipment, including dump trucks. Remember that in that world "time is money" and these vehicles don't go slow. How would you like to think that these trucks may not keep the rules that regulate the 11 ton limit going over the old and rickety bridge that covers the Anchor River.

I have no objection to gravel pits that are isolated and away from public view. Gravel is important, but there seems to be adequate gravel pits in our area. I think a "certificate of need" should be required when so much raw land is dug up. There are, potentially, many repercussions that may ensue if this permit is granted to Beach Comber LLC, or if that corporation doesn't follow the requirements specified in the permit.

Is the borough prepared to reduce our personal property taxes? As you might imagine, the property values will go down and our availability to sell our homes will be lost toodue to the 40 acre gravel pit just out our front door.

I ask you once again to really think this permit over as there are many, many peoples lives that will be changed due to this project. Why should one land owner's needs be met in front of the many that have lived in the community for a long time, and have so much to lose.

Thank you for the ability to express my concerns.

Sincerely,

A handwritten signature in cursive script that reads "Vickey Hodnik".

Vickey Hodnik
35031 Moffit Ln.
Anchor Point, Alaska

Wall, Bruce

From: AK Don H <hortons6@gmail.com>
Sent: Tuesday, July 10, 2018 5:59 PM
To: Wall, Bruce
Subject: Gravel pit on Danver st in Anchor Point

Dear Sir,

My wife and I own the lot to the south of purposed gravel pit, we bought it for recreational and maybe to build on someday.

Our only view is looking across the property in question, we have great view of Mt. Redoubt it would suck to look across a gravel pit to see it. I can give you lots of reasons not to approve the permit like noise, dust, dump truck traffic on the beach access rd and danver st both of are already pos roads, a old bridge over the river that is need of repair and isn't rated for that kind of weight anyway, environmental issues to surrounding area, ground water issues to near by wells and the Anchor River, not to mention it will drop mine and everybody else's property value to almost 0. There is no way I would build a house across the street to a gravel pit and wouldn't be able to sell if I wanted to. I'm sure that no one on this planning comision would want this in their front yard like it would be in mine.

Please do not approve this permit in no fashion it will literally ruin the little slice of Heaven/Alaska that we own!

Don and Lori Horton

July 10, 2018

Borough Planning Commission,

I would like to tell you of my concern for the gravel pit permit being sought by Beach Comber LLC, of Anchor Point.

The gravel pit will potentially cover 40 acres and it located near the state park and tractor launch, and the bluff, south of the tractor launch. This area is both park and residential, with gravel roads and nice homes. These homes are expensive and have their own wells and septic systems. Vacation homes make up some of these residences and these people come to relax and enjoy the quiet and beauty of Cook Inlet and the beach.

I chose to move to Anchor Point for my retirement years; I sold everything I owned in Homer and now have invested that money in a new home. Two weeks ago the news of the gravel pit was delivered by mail. If that pit happens, my land values will decrease, and no one would want to buy my property as it is within 500 ft. of the gravel pit.

My concerns lie with the noise, dust, disruption of beautiful property, what happens to the salmon who return to this area, ground water and private wells and the danger of the dump trucks on Danver, River Road and the Old Sterling Highway. The bridge over the Anchor River is not capable of handling more than 11 tons.

Those at the borough have stated that "these permits are never withheld"....really? Do the adjoining residents not have a say about what happens in their neighborhood? Why does a new landowner have his/her desires met over those who have been there for sometime and paid considerable tax dollars to the borough. Will the borough pay the home owners for the lost value of their property due to this gravel pit?

A dramatic change like this in our neighborhood would be heart breaking and also ruin the ambiance of the state park. The parcel of land that this pit could be developed on is beautiful and is a lovely habitat for wildlife, or could become awesome home lots. A gravel pit is not appropriate for this neighborhood.

Upon issuing this permit, who is liable for the dust, noise, disruption of view, increased traffic, possible loss of water for private wells, decline of salmon and disruption of wildlife. Who will make sure that the 5,000/yr. dump truck-loads don't cross the old bridge and that speed violations don't happen on the Old Sterling highway? Who will monitor that this pit doesn't operate 24/7 so that there is no relief for those living near it?

In 2018 why do we have to beg for quality of life in our neighborhoods? There are plenty of gravel pits up and down the Sterling Highway. I don't think there is a need for this pit and I think families and lifestyle should come first.

Respectfully,

G. George Krier

**George Krier
PO Box 1165
35031 Moffit Ln.
Anchor Point, Alaska**

July 10, 2018

Planning Commission Chairman
144 North Binkley Street
Soldotna, AK 99669

Re: Beachcomber LLC Application for Conditional Land Use Permit
for material extraction of sand, gravel, and peat on
a portion of Tract B, McGee Tracts

Location : Anchor Point, AK

Parcel #: 169-010-67

To Whom it May Concern,

My partner and I live at 1/2 mile south Danver Street, Anchor Point – approximately 1/4 mile south of the proposed site for extraction of sand, gravel by Beachcomber LLC. Other than Danver Street traffic, this is a quiet neighborhood and has been since we moved here in 1990.

We are opposed to a business that will create noise, dust, and more traffic on Danver Street, which is well known to have great deal of truck traffic as it is. Danver Street is notorious for people who like to speed and ignore stop signs at the corner of Echo Drive, Kyllonen Drive, Desa Avenue, and Seaward Avenue and cut the corner at Danver and Anchor Point Road.

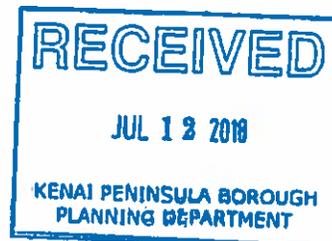
One issue that wasn't mentioned in the Public Hearing Notice is the use and condition of Anchor Point Road. Anchor Point Road is notorious for the lack of maintenance by the State of Alaska. It is a narrow road that has no bike trails, no shoulders, is full of cracks and holes that get filled but never fixed. Add to that in the summer, traffic consists of motor homes driving in and out of four campgrounds, pickups hauling boats and trailers to and from the Cook Inlet boat launch, people driving four wheelers, people walking on the edge of a road that has no shoulders or walking trails, bicyclists sometimes 20 at a time riding in single file in either lane, trucks delivering water, fuel oil, wood etc., not to mention the locals who use it every day – we don't need more traffic on Anchor Point Road, especially trucks hauling sand and gravel to add to the chaos.

Finally, we are opposed to a business in our neighborhood that will likely lower our property values.

Thank you for your consideration.


Mike Wartburg


Sharon Fromong
Co-Owners 35236 Danver Street, Anchor Point, AK
(907) 235-2626



Beachomber L.L.C.

?

Concern:

- Noise
- Dust
- traffic
- Roads

What is the plan for reclamation of the land. ? When the develop planning on selling all the part?

What is to be used for top soil for reclaiming.

Concern Home owners
 David J. Tesar
 Bonnie D. Tesar

Wall, Bruce

From: Mark Yale <markyale2001@yahoo.com>
Sent: Tuesday, July 10, 2018 6:56 PM
To: Wall, Bruce; susan@reevesamodio.com
Cc: R. O. Baker II; mariedrinkhouse@yahoo.com
Subject: Re: Property Line to the house
Attachments: property line 2.jpg; property line.jpg

On Tuesday, July 10, 2018 06:50:05 PM AKDT, Mark Yale <markyale2001@yahoo.com> wrote:

Bruce,

Per our conversation of today of, how close the proposed Gravel Pit Property line is to out back deck on the back sided of our home, please find attached two photographs showing the line is only 5 yards from our home!

The map reflects a 6 foot berm and you stated that the engineer is recommending at least a 12 foot berm. Both of which are going to be insufficient!

Please forward these photos to all commission personnel to convey how unconscionable this proposal is to all three of properties on the south border.

Respectfully Submitted,

Mark and Lee Yale



Property Line
15 feet from deck!!!



Wall, Bruce

From: Hans <catchalaska@alaska.net>
Sent: Wednesday, July 11, 2018 4:47 PM
To: Wall, Bruce
Subject: Anchor Point Road CLUP

Hi Bruce,

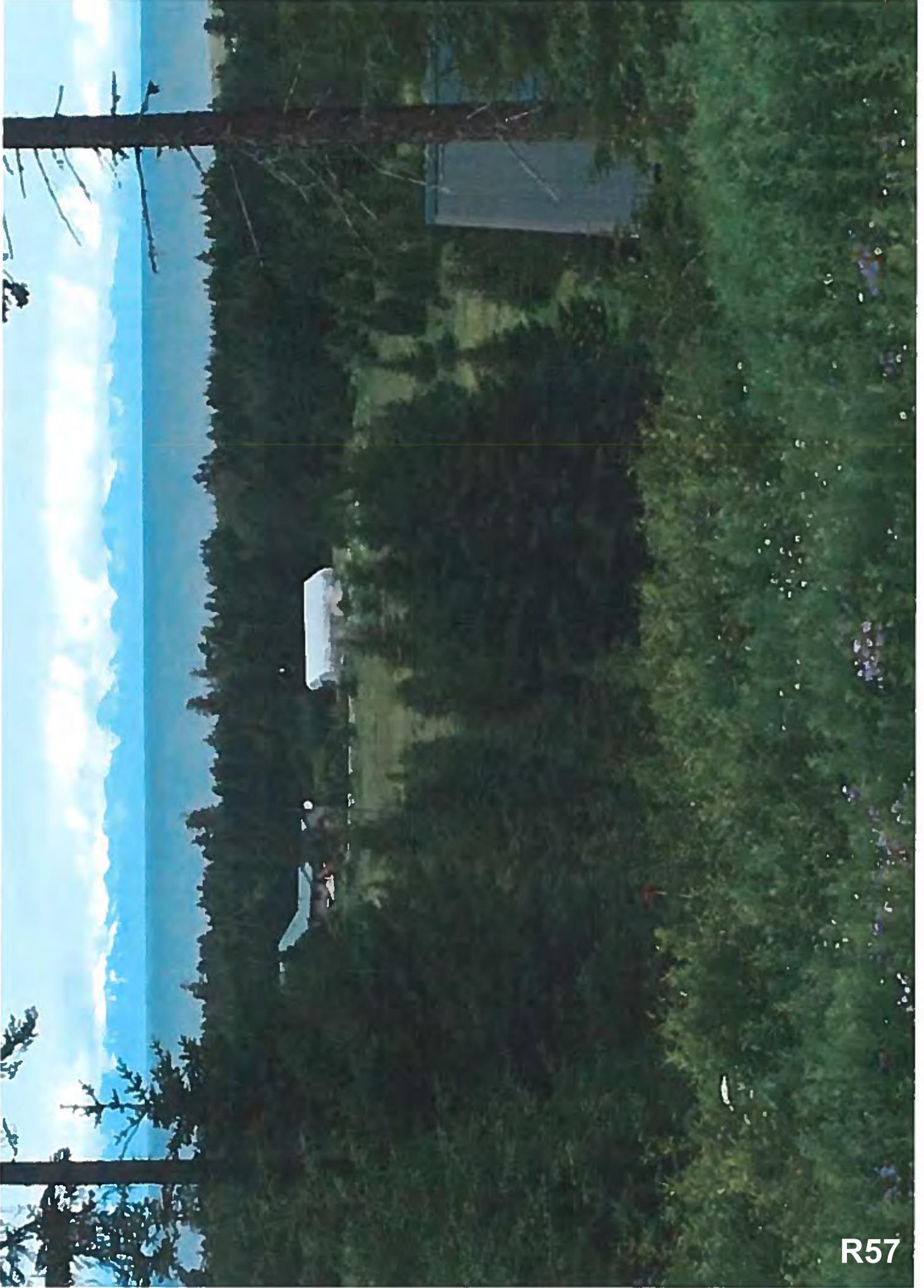
I am attaching two pictures taken from my deck, and overlooking the property which would become a gravel pit if the CLUP for Beachcomber LLC (Emmit Trimble) is granted. As is true with all properties (of which there are many) located at higher elevations than the proposed pit, it is not possible for the applicant to meet Standard #5 — Minimize visual impacts. Because of the unique topography of the area surrounding the proposed site and the way sound is transmitted within the bowl, Standard #4 — Minimize noise disturbance to other properties is also not attainable. In light of the inability of the applicant to meet these two standards, as well as a multitude of other legitimate concerns, this CLUP needs to be denied.

The parcel is located in the very heart of a residential/recreational gem and development of a gravel mine upon it would adversely affect the quality of life for residents, drastically lower property values in the surrounding area, and in all likelihood impact tourism (the lifeblood of Anchor Point) when visitors to the area find camping next to the noise and dust generated by a gravel mine is unacceptable.

Hans Bilben
35039 Danver St
Anchor Point



R56



R57

Philip J. Brna
5601 E. 98th Avenue
Anchorage, AK 99507
(907) 346-2131

July 11, 2018

Planning Commission Chairman
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669
Via email to bwall@kpb.us

RE: Comments on Conditional Land Use Permit for Material Site; Beachcomber LLC; 169-010-67

I am providing comments on the referenced Land Use Permit application.

1. I am opposed to development of a material site and approval of a land use permit at this location. I request that the KPB deny the permit.
2. I am the owner of the residential parcel (PID 169-022-08), which is immediately to the north of the proposed processing area and which is almost completely surrounded by the proposed material site.
3. I purchased this property in 2001 and installed an access road and pad. My intent is to build a recreational cabin at this location. I own another cabin in the Clark Peterson subdivision near the Steelhead Campground and adjacent to the Anchor River. This cabin has experienced flooding in recent years and my wife and I have been investigating building another cabin on our property at PID 169-022-08.
4. Approval of the proposed material site application will preclude me from building another cabin because of noise and dust related disturbances. Additionally, a material site will significantly diminish my property value and will impact my ability to sell this property. Development of a material site at this location effectively constitutes a taking of my property value.
5. This is a residential and recreational area and it is inappropriate for the KPB to allow development of a material site at this location. A material site will significantly impact property values and use and enjoyment of residential and recreational property, including the Anchor River Recreational Unit, a part of the State Park System. A material site will conflict with existing residential and recreational use of the area.

6. There is considerable recreational use of the Anchor Point Road and Denver Street by people, including children, walking, running, walking dogs, bicycle tours, and riding bikes in the summer. Use of these roads by gravel trucks is a disaster waiting to happen.
7. I am concerned that this project could affect ground water input to the Anchor River and its estuary but these affects cannot be quantified without better groundwater data.

If the KPB approves this material site application over the objections of local people, the permit conditions must be adequate for protection of residential and recreational use of adjacent properties. I therefore recommend:

1. There be no onsite processing of gravel, especially crushing. This would mitigate many concerns related to noise and dust.
2. There must be a minimum of a 6 foot high vegetated berm and a separate 50 foot vegetated buffer along the entire northern boundary of the property.
3. The requested waiver from the 300 foot setback of the processing area from the northern boundary should not be approved.
4. There shall be no equipment operations between the hours of 6 p.m. and 8 a.m.
5. If the KPB approves this material site application property taxes of all adjacent properties should be reduced.

Philip J. Brna

Wall, Bruce

From: Coowe Walker <cmwalker9@alaska.edu>
Sent: Wednesday, July 11, 2018 4:55 PM
To: Wall, Bruce
Subject: Fwd: Anchor River estuary, salmon and new potential gravel operations
Attachments: T-1T-31-13 Estuary habitat use by juvenile chinook and coho salmon in a Kenai Lowlands (Anchor) River_Final Report9-20-16.pdf; Hoem-Neher et al. 2013 Estuarine environ as rearing habs TAFS.pdf

Hello Bruce,

I am sharing information from my perspective as an ecologist regarding the potential new gravel operations on the parcels to the east of the Anchor River estuary. I have been studying this estuary (as well as other estuaries in the Kachemak Bay region) since 2009. I am attaching a couple of documents - a final report and a peer reviewed journal article that reflect data on juvenile salmon use specifically in the Anchor River estuary. A few salient points are:

- 1) There are thousands of juvenile salmon (Coho and Chinook salmon primarily), as well as other species (Steelhead, Dolly Varden, Starry Flounders, sculpins, sticklebacks) rearing in the Anchor River estuary;
- 2) Juvenile fish rearing in the Anchor estuary exhibit many different life history patterns, and preliminary data indicates that these patterns reflect genetic diversity in the salmon populations of the estuary.
- 3) Juvenile salmon move broadly throughout the estuary, using tidal channels, pools, as well as river habitats,
- 4) Juvenile salmon are present in the Anchor River estuary year round.
- 5) Conductivity measurements taken in the estuary indicate that groundwater flows are supporting juvenile salmon habitats

I am very concerned that the proposed gravel operations could impact groundwater flows that support salmon habitat, and also create dust that could settle on the surface and adversely affect salmon. The estuary of the Anchor River is relatively small, but is an extremely important component of the Anchor River watershed. All salmon use the estuary as habitat at least twice in their lives, as adults returning from the ocean, and as juveniles transitioning to the ocean. As I pointed out earlier, we know that some juveniles rear in the estuary for prolonged periods, and that these may represent genetically distinct fish. There is no other 'alternative' estuary habitat for the fish of the Anchor River to use. In my opinion, it would better to have more understanding of the potential consequences before any of the proposed operations proceed.

Unfortunately, I won't be able to attend the public meeting. Please let me know if I can provide any more information.

Thanks,
 Coowe

Coowe Walker
 Reserve Manager
 Program Watershed Ecologist
 2181 Kachemak Drive
 Homer, Alaska
 (907) 235-4792

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Estuarine Environments as Rearing Habitats for Juvenile Coho Salmon in Contrasting South-Central Alaska Watersheds

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ARTICLE

Estuarine Environments as Rearing Habitats for Juvenile Coho Salmon in Contrasting South-Central Alaska Watersheds

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Abstract

For Pacific salmon, estuaries are typically considered transitional staging areas between freshwater and marine environments, but their potential as rearing habitat has only recently been recognized. The objectives of this study were two-fold: (1) to determine if Coho Salmon *Oncorhynchus kisutch* were rearing in estuarine habitats, and (2) to characterize and compare the body length, age, condition, and duration and timing of estuarine occupancy of juvenile Coho Salmon between the two contrasting estuaries. We examined use of estuary habitats with analysis of microchemistry and microstructure of sagittal otoliths in two watersheds of south-central Alaska. Juvenile Coho Salmon were classified as estuary residents or nonresidents (recent estuary immigrants) based on otolith Sr : Ca ratios and counts of daily growth increments on otoliths. The estuaries differed in water source (glacial versus snowmelt hydrographs) and in relative estuarine and watershed area. Juvenile Coho Salmon with evidence of estuary rearing were greater in body length and condition than individuals lacking evidence of estuarine rearing. Coho Salmon captured in the glacial estuary had greater variability in body length and condition, and younger age-classes predominated the catch compared with the nearby snowmelt-fed, smaller estuary. Estuary-rearing fish in the glacial estuary arrived later and remained longer (39 versus 24 d of summer growth) during the summer than did fish using the snowmelt estuary. Finally, we observed definitive patterns of overwintering in estuarine and near shore environments in both estuaries. Evidence of estuary rearing and overwintering with differences in fish traits among contrasting estuary types refute the notion that estuaries function as only staging or transitional habitats in the early life history of Coho Salmon.

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Received December 5, 2012; accepted June 10, 2013

Pacific salmon exhibit multiple life histories in response to variability in selection pressures and habitat conditions (Healey 1994, Groot and Margolis 1991). Early marine entry and presmolt growth just prior to entry is a time of severe selective pressure due to the physiological and environmental changes experienced by salmon smolts (Williams 1996; Thorpe et al. 1998; Beamish et al. 2004). This life stage has been linked to an optimal out-migration survival period that corresponds to a period when ocean conditions provide suitable temperatures and abundant resources for growing and feeding (Gargett 1997; Johnsson et al. 1997; Beamish et al. 2008). The period and duration of optimal out-migration timing may change from year to year depending on precipitation levels, wind patterns, and solar energy inputs (Gargett 1997; Beamish et al. 2008). Fish size, body condition, and timing of marine entry are instrumental for optimal timing and to ensure coincidence with both the quantity and quality of available prey and the ability of the individual to use it (Beamish and Mahnken 2001; Hobday and Boehlert 2001).

Estuaries play an important role as transitional habitats prior to the ocean entry phase of salmon smolt. The mixing zone of freshwater and saltwater environments buffers against osmoregulatory and physiological stress in smolts (Healey 1982; McMahon and Holtby 1992; Miller and Sadro 2003; Beamish et al. 2004; Bottom et al. 2005a). Estuaries, however, also have potential to serve as important salmon rearing habitats; Chinook Salmon *Oncorhynchus tshawytscha*, in particular, have increased survival rates (Magnusson and Hilborn 2003) and life history variability (Bottom et al. 2005a; Campbell 2010; Volk et al. 2010) with estuarine habitat use. Factors expected to impact individual fish survival include the duration of estuary occupancy, timing of early marine entry, and environmental conditions that affect body condition (Healey 1982; Bohlin et al. 1993; Beamish et al. 2004). Given their importance for rearing, we anticipated that strong spatial and temporal variability in environmental conditions within estuaries may play a key role in trait expression of individuals subject to overall conditions within these habitats.

Estuaries fed by different freshwater hydrologic regimes may provide contrasting rearing environments for resident biota (Saltveit et al. 2001). Freshwater influx into northern estuaries is expected to be particularly high during snowmelt periods; however, within Alaska, many estuarine habitats are fed by glacial river systems. For these systems, peak freshwater discharge occurs in midsummer rather than early spring, yielding cold, sediment-laden discharge during the warmest months. Differences between glacial and snowmelt-fed estuaries may therefore contribute to variability in the timing and duration of estuarine use for juvenile salmon.

Previous investigations into estuary ecology of juvenile Coho Salmon *O. kisutch* are limited, but indicate that the transition from fresh to salt water life stages is complicated and may differ by age or life stage (McMahon and Holtby 1992). For example, young-of-year fish undertake seasonal migrations within the up-

per estuarine ecotone and freshwater river channels and sloughs, and residency between these areas is estimated to be as long as 8 months (Miller and Sadro 2003; Koski 2009). Fingerling (age-1 and -2) Coho Salmon were present in estuaries for only 2 months (McMahon and Holtby 1992), and individuals within these populations were reported to have short estuary residence times (up to 17 d; Chittenden et al. 2008). Understanding some of the environmental conditions that lead to the differences in use by young salmon may provide insight into critical rearing habitats for conservation and management.

Direct and unbiased documentation of estuarine habitat use by juvenile salmon is difficult, given a limited suite of tracking and marking techniques applicable to small fish. The use of otolith microchemistry in combination with examination of microstructure (incremental growth layers) can be used to determine ontogenetic patterns of habitat occupancy when water chemistry contrasts strongly between habitats (Neilson et al. 1985; Campana 1999; Kennedy et al. 2002; Réveillac et al. 2008). The salinity of the surrounding environment, in particular, has been linked to ratios of strontium to calcium (Sr : Ca) deposited in otoliths, a useful feature for measuring life history patterns in diadromous fishes (Zimmerman 2005). In tandem with microchemical analysis, microstructural analysis of incremental growth patterns and age of fish can allow discernment of habitat transitions through time (Campana and Neilson 1985; Neilson et al. 1985; Volk et al. 2010). It can be difficult, however, to determine and validate daily incremental growth patterns, particularly during periods of low growth (Campana and Neilson 1985). In that case, seasonal growth patterns may provide sufficient resolution to determine history, particularly in the case of estuarine or marine versus freshwater habitat use.

In this study, we investigated and compared the ecology and life history patterns of juvenile Coho Salmon captured within two contrasting estuary environments. Our first question was two-fold: (1) were juvenile Coho Salmon rearing within estuary systems, and (2) did fish rearing within estuaries show trait differences (condition, dates of entry, and weights) from those that did not? Using otolith microanalyses, we determined the timing and duration of use and correspondence with fish traits of different ages of juvenile salmon captured within estuary channels. We hypothesized that fish using estuaries, having a longer time for osmoregulatory adjustment and thereby benefiting from these environments, would exhibit greater lengths and body condition than those without evidence of estuary residence. The second question of our work was, did patterns of estuary use by juvenile Coho Salmon, including timing and duration of occupancy, differ between two estuaries with contrasting freshwater environments? We hypothesized that differences in freshwater discharge regimes (i.e., a glacial-fed versus snowmelt-fed estuary) that result in differences in thermal regimes and available habitats may be factors that drive use of differing estuary systems. This would suggest that physical processes are important drivers of ontogenetic variability in use of estuarine environments and therefore life history expression in juvenile salmon.

STUDY SITE

The large tidal range (>8 m depth) of Kachemak Bay and Cook Inlet (NOAA 2012) in south-central Alaska can create extensive estuarine ecotones with diverse habitat conditions, particularly in glacial rivers with heavy silt deposition zones. Our study compared environmental conditions and fish collected from similar channel habitat types sampled within two contrasting estuaries of the Anchor and the Fox rivers, located approximately 29 km apart, (Figure 1). Juvenile salmon were captured within channels located in the intertidal zone of each estuary, bordered by mud flats and vegetation. Channels were chosen to maximize habitat similarity between the estuaries (i.e., similar connectivity to the main-stem river, locations within the intertidal zones respective of the estuary size, channel shape, and channel length).

The Anchor River delta is a snowmelt and spring-fed, bar-built estuary that abruptly transitions into the marine environ-

ment of southern Cook Inlet; its estuary length is about 0.8 km (measured from the high-water tide line to its confluence with the Cook Inlet). The Fox River delta is a glacially fed estuary that transitions through a large delta, approximately 6 km long, into Kachemak Bay. The Fox River watershed is located in a smaller, more constrained valley and lacks freshwater back-channel areas in the lower river, whereas the Anchor River has numerous side-channel areas in the lower river. Compared with the Anchor River estuary, the Fox River estuary has more gradual, extended ecotones between the marine environments of Cook Inlet and freshwater environments of the Fox River.

METHODS

Habitat characteristics.—We sampled fish and recorded environmental data in tidal channels spaced within the intertidal zone of each estuary. Habitats upstream of these channels are

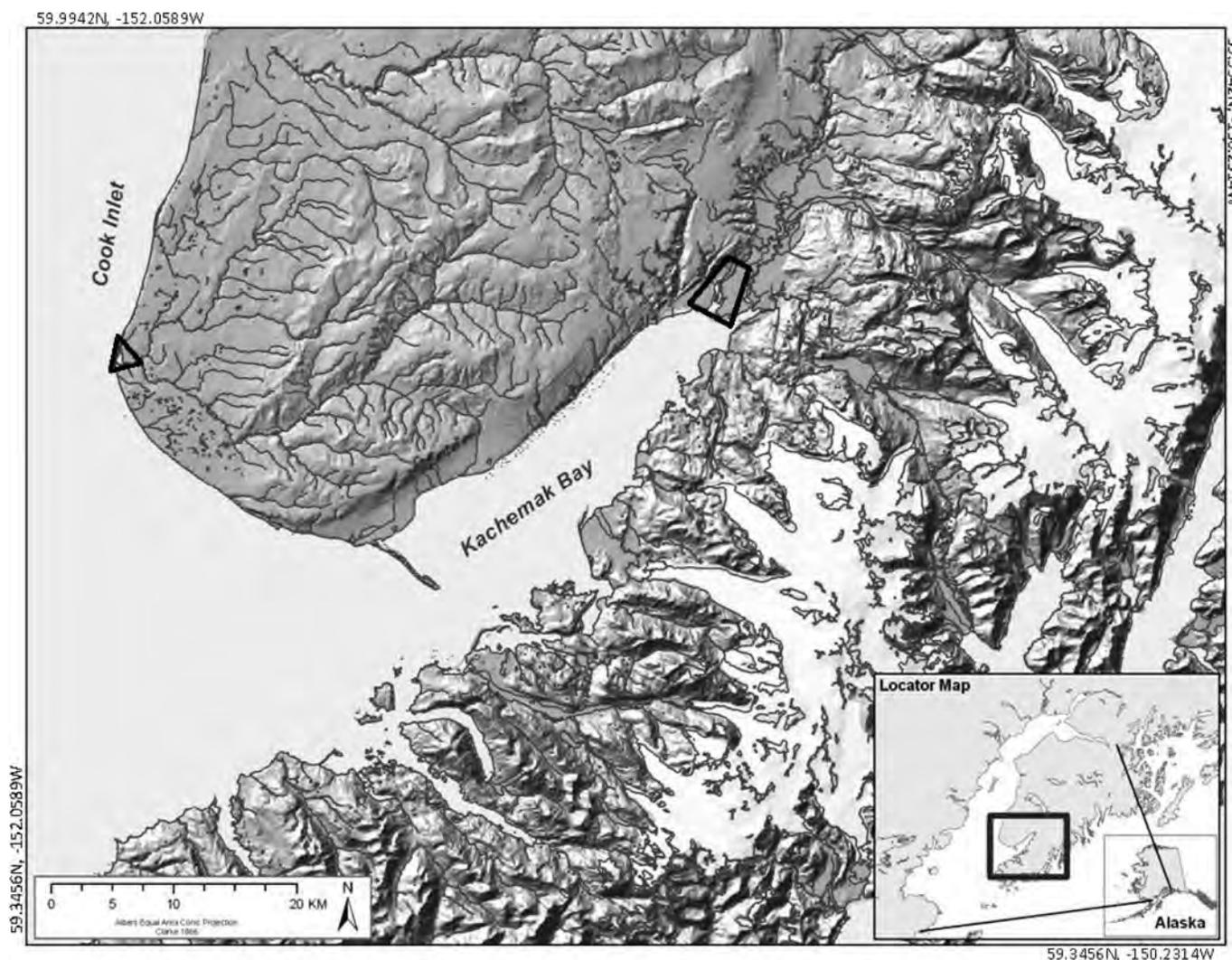


FIGURE 1. The study area on the lower Kenai Peninsula, Alaska, where age-0 to age-2 Coho Salmon were sampled from the Anchor River (triangle) and Fox River (trapezoid) estuaries.

not tidally influenced and therefore were not considered estuary habitats for this study. Four channels were sampled in the Fox River estuary and two channels were sampled in the Anchor River estuary, twice monthly from April through September for a total of 10 sampling events in the Anchor River and 11 sampling events in the Fox River. Sampling occurred during moderate tide levels in both estuaries because some channels could not be sampled at high tide. Sample events in each estuary usually occurred within 7 d of one another, often within the same week. Temperature and depth were measured and recorded using Solinst TM 3001 level loggers (Solinst Canada Ltd., Ontario, Canada) calibrated with a Solinst TM 3000 barologger set onsite. Level loggers were set at 15-min recording intervals and placed in 5 × 25 cm plastic PVC housings attached to steel fence posts driven approximately 25 cm into the substrate. Fence posts were located five meters upstream from the channel mouth in each of the six channels sampled, and one logger was placed along the margin of each river channel. In addition, measurements were taken for each sampling event at a cross-section downstream of the fence posts for each sampling event. Thalweg depth, conductivity (direct and standardized for temperature), salinity (measured as salt concentration), and temperature (with probe at the surface, mid water column, and channel bottom) were measured using a YSI model 30.

Habitat data were summarized for analyses as follows: continuous water level data as 7-d mean, minimum, and maximum depths for each estuary channel and the main-stem river. Continuous temperature data were summarized as daily averages summed for accumulated thermal units by week and month. Point measurements of salinity collected at each sampling event were combined and expressed as monthly mean, minimum, and maximum recordings.

Fish capture.—Juvenile Coho Salmon were captured in tidal channels of the intertidal zones of Fox and Anchor river estuaries within 25-m reaches using three depletion passes with a pole-seine (2.2 × 6.1 m, 0.31 cm mesh) twice per month from late April through September 2011. Prior to fish sampling, each unit was closed with blocking nets (2.2 × 6.1 m, 0.31 cm mesh) secured along the sides and bottom with stakes to prevent fish escape. Fish from each pass were placed in separate, 19-L aerated tubs filled with water from the channel. All fish captured were identified to species and counted. Fifty juvenile Coho Salmon captured from each of three passes of the seine (total, 150 fish/site per each event) were anesthetized in tricaine methanesulfonate (MS-222) at 70 mg/L of water (Bailey et al. 1998; Chittenden et al. 2008) and measured for FL (mm). If more than 150 Coho Salmon were captured at each site, samples were indiscriminately selected by gently stirring the incarcerated fish and removing samples with a hand dip net. Age-classes of Coho Salmon were apparent by length; therefore, three juvenile cohorts ($\leq 10\%$ of the catch) at each were indiscriminately collected at each site: small (age 0, <50 mm FL), medium (age 1, 50–85 mm FL), and large (age 2, >85 mm FL) and sacrificed via overdose of MS-222 at

140 mg/L, labeled, placed on ice, returned to the laboratory, and frozen.

Fish condition.—We used dry weight and Fulton's condition factor measured from the frozen specimens for metrics of condition (Jonas et al. 1996; Pope and Kruse 2007). Fulton's condition, $K = (W/L^3)100,000$, was calculated using laboratory measures of fish length (FL; mm) and whole fish weight (W; g). Dry weights were determined from dissected samples with all tissue other than stomachs and otoliths returned to the sample prior to drying. Coho Salmon samples were placed in a drying oven at 65–70°C for 3 d, weighed, and returned to the oven for 24 h, and then re-weighed. Samples were considered dried when minimal change was detected between consecutive daily weights (Jonas et al. 1996).

Estuary residence time.—We used analysis of otolith microchemistry combined with microstructural analysis to determine if juvenile Coho Salmon were rearing in the saline environments of estuaries. Sagittal otoliths were removed from both sides of the cranial cavity of fish prior to condition analyses, rinsed, and stored in plastic vials. Otoliths were mounted in thermoplastic cement on sections of cover slips and glued to standard microscope slides (Donohoe and Zimmerman 2010). Otoliths were mounted sulcus down, and the sagittal plane was ground with 2,000-grit sand paper to expose a clean, flat surface. The sample was reheated, turned over to expose the sulcus, and ground to expose the nucleus (Zimmerman 2005; Donohoe and Zimmerman 2010). The sample was labeled and aged via winter counts, and the cover slip was cut to remove the mounted sample. The sample was then glued in a 2.54-cm-diameter circle centered on a petrographic slide for analysis. Once the slide was filled, it was washed, rinsed with deionized water, and allowed to air dry prior to processing.

We used the Laser-ablation Inductively Couple Plasma Mass Spectrometer (Agilent mass spectrometer 7500ce fitted with a CS lens stack combined with a New Wave UP213 laser, LA-ICPMS) housed at the Advanced Instrumentation Laboratory of the University of Alaska Fairbanks to complete the microchemical analyses. Transects were ablated from the primordia perpendicular to the growth increments into the mounting medium beyond the distal edge of one otolith from each fish. Count data were collected for the elements strontium (^{88}Sr) and calcium (^{43}Ca). Calcium (^{43}Ca) was used as an internal standard and background-subtracted counts of Sr were adjusted to Ca and calibrated to glass standard reference material (NIST 610, National Institute of Standards and Testing). Calibration standards were run for 10 samples or less, depending on the number of samples on the slides, and one sample duplicate (both sagittal otoliths from one fish) was run for the entire batch. Laser speed was set at 5 $\mu\text{m/s}$ with a 25- μm spot diameter on a single pass transect set to 80% power. The elemental count/s output of the LA-ICPMS was then converted to concentration and sampling distance using the elemental weights for each constituent and the laser settings, respectively. Strontium : calcium (Sr : Ca) ratios were then calculated for each of the distance

measures. Otoliths were photographed under $4\times$, $10\times$, $20\times$, and $40\times$ magnification using a Leica DM1000 compound light microscope fitted with a Leica DFC425 digital camera housed at the Alaska Science Center (Anchorage, Alaska). Images were taken using a 1,000- μm stage standard at all magnifications to calibrate otolith measurements, and the images were digitally processed to enhance clarity of incremental growth patterns. ImageJ software (version 1.46 h, <http://imagej.nih.gov>) was used to process digital images and to overlay distance-ratio graphs on the image, calibrated to the laser distance.

Estuarine residence time was determined by counting incremental growth marks on otoliths from juvenile salmon captured in the estuary (Miller and Simenstad 1997; Neilson et al. 1985). We defined residence time as the daily growth within the saline reaches of the estuary. Residence time was calculated as the number of incremental growth bands following the point of estuarine entry determined by the Sr : Ca inflection point with the distance-matched ratio graph overlaid on the otolith digital image. The inflection point, or estuary signature, was defined as an abrupt increase in Sr : Ca, as visually determined as the consecutive ratio increase of >0.3 per reading; levels remaining at >1.0 followed the freshwater mean ratios (Figure 2). Inflection points often correspond with dark banding, identified by some researchers as an estuary growth check (Lind-Null and Larsen 2011). These growth checks, though not always easily identifiable or consistent among individuals, corresponded to inflection points and provided additional support in identifying the points of estuary entry. All fish were categorized according to the presence or absence of an estuarine salinity signature (inflection point followed by growth), and incremental growth counts were completed to determine duration of estuary use on those with estuary signatures. Duration of estuarine rearing was determined by using a digital image of the otolith taken at $20\times$ magnification overlaid with the distance-matched (μm) Sr : Ca graph. Inflection points were digitally marked on the image and were considered the point of estuarine entry. Growth increments were counted along two different radii from the distal edge of the otolith to the inflection point to determine days of residence (Figure 2). If counts differed between readings, a third count was made, and the median of the three counts was used. One group of salmon overwintered in estuarine/marine environments, therefore comparisons were made using summer season (April-September) residence times calculated as the date of capture less the incremental growth count (days) to the first discernible daily growth increment. The growth increment-time relationship was validated by marking a sample of four fish with alizarin complexone (Zimmerman 2005), holding them in a small net pen in an estuary channel for 6 d, sacrificing the fish, and counting the increments past the Alizarin mark on prepared otoliths. The results from this test verified that incremental growth rings indeed represented a 24-h period, all fish showing six increments corresponding to the 6 d held in captive nets in the estuary.

Statistical analyses.—Based on our study questions, we wanted to determine whether (1) estuaries were used by Coho Salmon for rearing purposes, (2) those salmon that used estuaries for rearing differed from those that showed no evidence of estuarine rearing, (3) salmon rearing in two different estuaries show differences in traits and residence times related to environmental conditions, and (4) factors that contribute most to the variability in fish traits (e.g., presence of estuarine rearing, estuary habitat conditions, or the age of the fish) could be identified. The otolith microchemistry and microstructural analysis described above addressed whether fish were using estuaries for rearing, and we used analyses of empirical data to address the remaining objectives. When possible, confounding sources of variability, such as timing of capture, were included in these analyses, along with several potential sources of error and bias.

Because samples were a subset of the total catch and collected over the summer season, potential sources of bias and error must be addressed. Our protocol sampled evenly across age-classes for fish retained for laboratory analyses; therefore, the composition of the laboratory fish sample did not correspond to catch composition. We therefore tested (chi-square goodness of fit) for differences in age-class composition of measured fish between estuaries and in the laboratory sample versus the measured group age structure. Finding significant differences on both accounts, we ran analyses to compare length, age-class composition, and capture date based on two subsamples of the total catch: those that were caught, measured, and released (hereafter, measured group) versus those sacrificed and analyzed in the laboratory (hereafter, laboratory group). For each sampling event we inferred age-class composition of the measured group via their length-frequency histograms from length groups validated via otolith-determined ages of the laboratory group. Analyses completed with all age-classes pooled were weighted to ensure that the laboratory sample results reflected the composition of the population relative to the total catch of fish; laboratory fish data were weighted by percent composition of each age-class from the measured group of fish for each estuary. We also examined the relationship between capture date and residence time using simple linear regression for each estuary; a strong linear relationship between residence time and date of capture would indicate bias.

For the second objective, we compared those juvenile Coho Salmon that had a marine signature in their otolith, indicating estuarine rearing, with those salmon that were captured in the estuary but lacking detectible marine signature in the otolith. Those comparisons were done to determine whether fish in these groups showed differences in trait patterns (time of entry, condition, length, and weight). Two separate analyses were used: ANCOVA for all age-classes pooled, and Student's *t*-tests for individual age-classes (due to small sample lengths and disproportionate distribution of age-classes between estuaries). We tested data from the laboratory fish group captured in each estuary via ANCOVA analyses. This analysis used the independent

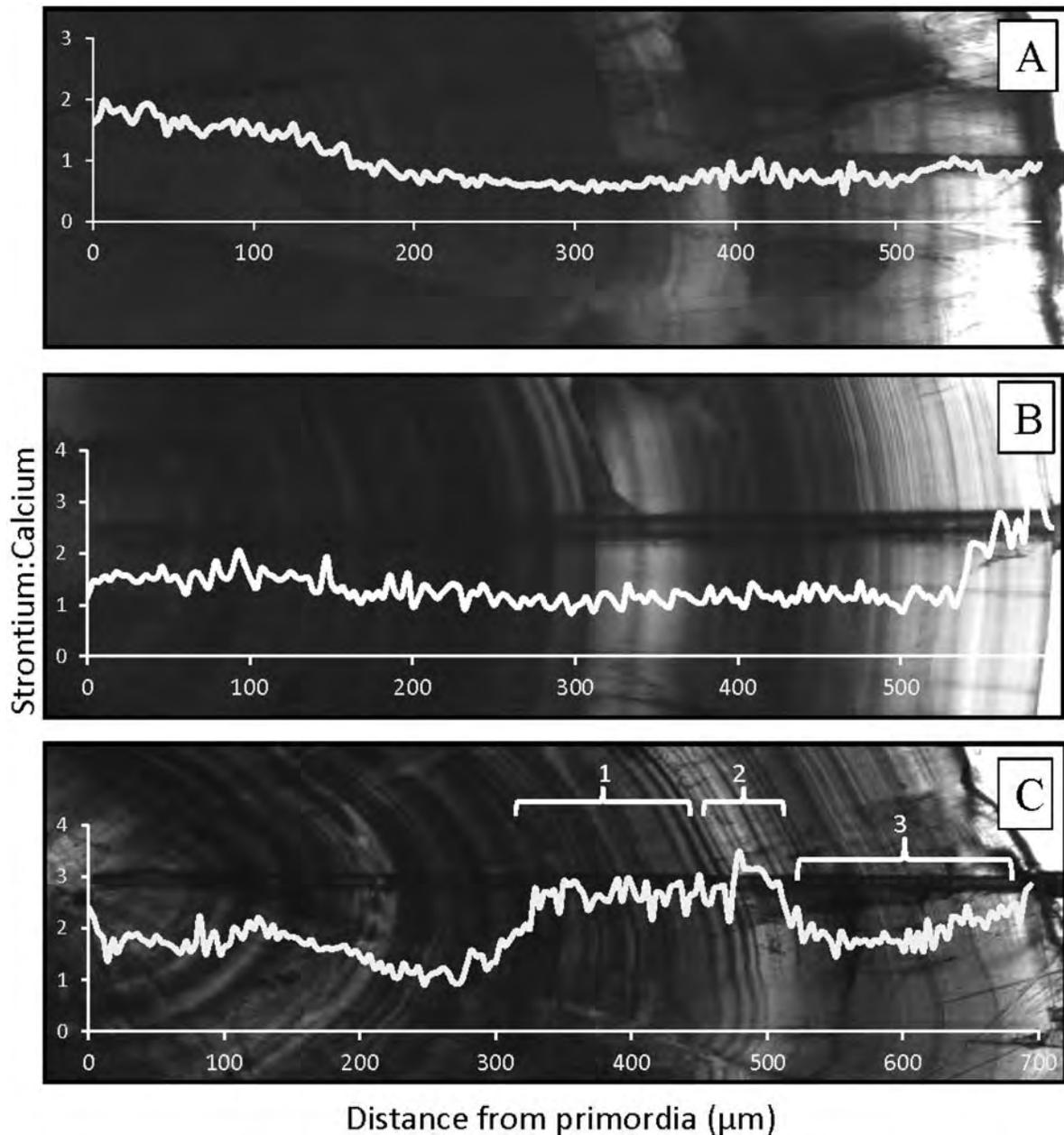


FIGURE 2. Images of otoliths of Coho Salmon from the Fox and Anchor River estuaries showing Sr : Ca ratio graphs overlaid with laser transect distances. Different estuary use patterns are depicted: (A) no estuary use, (B) summer season estuary use signature, and (C) age-2 fish with overwintering signature and variable use of salinities during the summer season, where (1) is the first summer estuary signature, (2) is the winter estuary signature, and (3) is the second summer estuary signature.

variable (condition) and dependent variable (date of capture) with estuary rearing as the covariate for fish comparison for all ages pooled (weighted bycatch). For the age-class comparisons, we compared traits (length, condition, dates of entry, and weights) between signature patterns using Student's unpaired two-sample *t*-tests for each age-class; estuaries were analyzed separately. Because, in this scenario, each variable was repeated a total of four times (for age-0 and age-1 classes by two es-

tuaries), we adjusted our alpha values accordingly (Dunn Sidak correction alpha level 0.013; Abdi 2007).

Our third objective focused on whether fish using the glacial Fox River estuary showed differential trait expression from those using the snowmelt, spring fed Anchor River estuary. Two separate analyses were performed as described above. For the between-age-class comparisons, traits were examined for differences between estuaries using Student's unpaired

two-sample *t*-tests for each age-class. To compare fish traits with all age-classes pooled, we used an ANCOVA analysis with each dependent variable (length, dry weight, condition) and capture date as the independent variable with estuary of capture as the covariate.

The final objective was to examine the influence of three potential factors (age, estuary type, and presence of an estuary signature) in explaining variability in Coho Salmon traits. We used a three-way catch-weighted ANOVA with the laboratory group data to address this question.

Data were standardized to the mean of each variable and fourth-root transformed (when necessary) to meet homogeneity assumptions for all linear tests. Data were checked for equal variance using *F*-tests for age-class comparisons. If samples had unequal variances and could not be transformed to meet this assumption, a Welch two-sample, unpaired *t*-test was used for comparison of age-class data.

RESULTS

Estuary Habitats

Temporal trends in habitat features followed trends and differences anticipated for snowmelt versus glacially fed estuaries. Minimum salinities were higher and more variable in the snowmelt-fed Anchor River estuary channels, particularly in midsummer (Student's two-sample unpaired *t*-test: *t* = 1.32, *P* < 0.001, *df* = 18; Figure 3; Table 1). Data from the stationary loggers placed in the sampling sites showed expected patterns in trends associated with each watershed type. The glacial Fox River showed seasonal increases in water depth and decreases in temperature associated with the glacial runoff, whereas the snowmelt and spring-fed Anchor River exhibited peak water depths and coolest temperatures in the early spring. The highest 7-d average estuarine water temperatures occurred in late May (13.3°C) for the Fox River and late July (15.3°C) for the Anchor River.

Fish

We captured a total of 1,743 Coho Salmon in the Anchor River and measured 532. In the Fox River we captured 4,232 individuals and measured 1,621. We sacrificed and retained 35

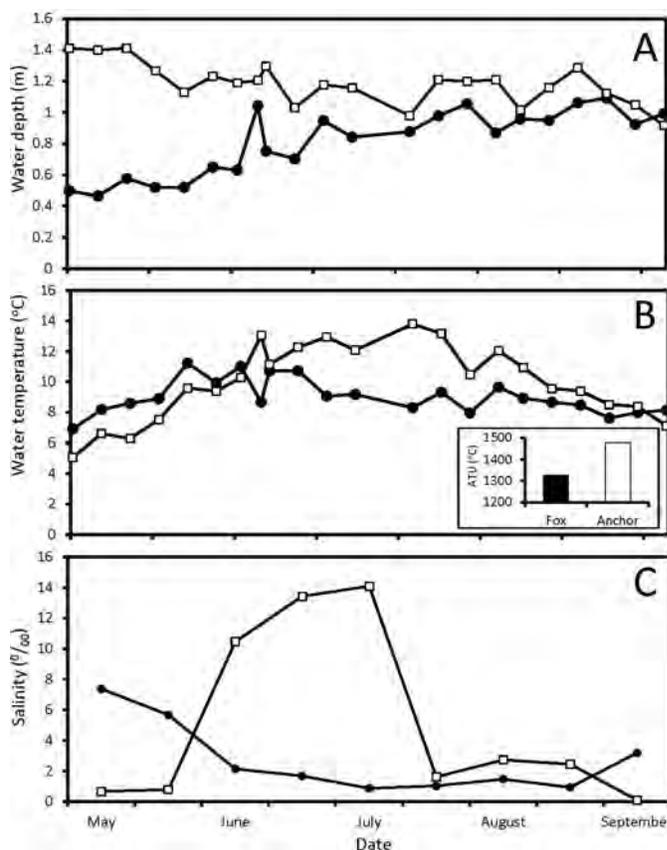


FIGURE 3. Continuous data logger results for the Fox River (black circles) and Anchor River (open squares) estuaries showing the summer-season 7-d average (A) water levels, and (B) water temperatures with an inset in accumulated thermal units (ATU). (C) Average weekly point measurements of salinity.

from the Anchor River estuary and 73 fish from the Fox River estuary for laboratory analysis.

Three age-classes of Coho Salmon were captured in both estuaries (0, 1, 2), though the relative dominance of age-classes within the measured group differed significantly between estuaries ($\chi^2 = 338.4$, *P* < 0.001, *df* = 2, Table 2; Figure 4). Fish captured in the Fox River estuary were primarily composed of younger age-classes (age-0 and age-1 fish), with less than 5% of the catch composed of age-2 fish. The Anchor River estuary

TABLE 1. Mean monthly measures of environmental conditions for the south-central Alaska's Fox and Anchor river estuary channels. Metrics were calculated for all channels combined within the Fox or Anchor estuaries. Water temperature is in accumulated thermal units (ATU).

Month	Fox River: mean (var)			Anchor River: mean (var)		
	Temperature ATU (°C)	Depth (m)	Salinity (mS/cm)	Temperature ATU (°C)	Depth m (var)	Salinity (mS/cm)
May	50.2 (17.3)	0.7 (0.1)	7.8 (4.5)	52.4 (11.4)	1.3 (0.3)	0.7 (1.2)
Jun	74.8 (5.0)	0.7 (0.4)	2.0 (2.5)	78.7 (13.2)	1.2 (0.2)	8.5 (11.1)
Jul	60.0 (10.3)	0.9 (0.4)	1.3 (2.3)	90.7 (9.3)	1.1 (0.2)	7.9 (10.8)
Aug	58.6 (4.0)	1.0 (0.3)	1.5 (1.5)	74.6 (10.6)	1.2 (0.2)	2.5 (1.1)

TABLE 2. Numbers of measured and laboratory Coho Salmon grouped by age for the Fox River and Anchor River estuaries. Counts of fish showing estuary use is denoted for the laboratory group in parentheses.

Estuary	Age 0	Age 1	Age 2	Total
Measured group composition: numbers of fish				
Fox	785	760	76	1,621
Anchor	291	133	108	532
Total	1,076	893	184	2,153
Laboratory group composition: numbers of fish				
Fox	24 (6)	45 (17)	4 (1)	73 (24)
Anchor	9 (3)	14 (11)	12 (10)	35 (24)
Total	33 (9)	59 (28)	16 (11)	108 (48)
Percent of total laboratory group with estuary signature				
Laboratory group	41	48	69	44

measured fish group was composed of over 20% age-2 fish and had a smaller proportion of age-1 fish than the Fox River (Table 2). We were restricted in retaining age-2 fish for individual analysis from the Fox River estuary due to low catch rates of this age-class in the system.

A substantial proportion of laboratory group fish displayed elevated Sr : Ca signatures, indicating growth within the saline reaches of the estuary (44%, 48 of 108 collected fish). Of these, 10 individuals overwintered in saline environments (either estuarine or near shore environments), 13 exhibited summer season use patterns of residence in saline environments followed by use of less saline environments (e.g., Figure 2A). Of the 35 Anchor River fish and 73 Fox River fish analyzed, 24 from each river exhibited evidence of estuary rearing. The Fox River fish showed a significantly lower proportion of fish with estuary signatures. Only two fish from the Fox River estuary showed estuary–marine overwintering signatures (one individual each from age-classes 1 and 2).

Disparity in patterns of capture, estuary use, and entry dates were apparent in comparisons of fish captured in the two estuaries (Table 3). The highest total capture of Coho Salmon occurred in the Anchor River estuary in late August and in late July in the Fox River (Figure 4). In both estuaries, most age-2 individuals were captured in April–June. Age-1 individuals predominated the June and early July catches, and age-0 individuals were not captured until later in June. Fish captured in the Anchor River estuary entered earlier during the sampling period and had shorter and less variable times of use than those captured in the Fox River estuary; however, these differences were not statistically significant (weighted 2-way linear model) for the pooled, catch-composition-weighted data for laboratory group with estuarine rearing: entry dates ($F = 1.71$, $P = 0.20$, $df = 46$) and residence ($F = 2.06$, $P = 0.16$, $df = 463.69$; Table 3). Only two variables were significant (Student's unpaired t -test) among comparisons made between estuaries by

TABLE 3. Mean residence times and capture dates for the laboratory group of Coho Salmon captured in the Fox and Anchor rivers in 2011.

Estuary	Age 0	Age 1	Age 2
Average summer season use (d)			
Fox	49.33	39.23	6.00
Anchor	36.33	29.72	14.80
Mean capture dates (estuary signature)			
Fox	Aug 21	Jul 31	May 28 ^a
Anchor	Aug 8	Jul 20	May 29
Mean capture date (no estuary signature)			
Fox	Jul 13	Jul 18	Jun 17
Anchor	Aug 23	Jul 13	Jul 4

^aSample size was 1.

age-class: laboratory group age-0 entry date ($t = -2.50$, $df = 30$, $P = 0.02$) and condition ($t = -1.92$, $df = 30$, $P = 0.06$).

Generally, fish captured and measured within the two estuaries differed in length, weight, and body condition; however this was only statistically significant when single age-classes were compared (Table 4). Compared with Fox River fish, the Anchor River mean FL at age was significantly (Student's unpaired t -tests) larger and less variable for each age-class in the measured group, i.e., age 0 ($t = -151.15$, $P < 0.01$, $df = 306$), age 1 ($t = -6.22$, $P < 0.01$, $df = 889$), and age 2 ($t = -3.35$, $P < 0.01$, $df = 108$; Table 5). Fish in the laboratory group followed a similar pattern as the measured group; however, these differences were statistically significant only in some comparisons made by separate age-classes (Table 5).

The age and presence or absence of an estuary signature significantly contributed to variability between traits (length, condition, dates of capture, and weights), whereas the estuary of capture did not. Fish that demonstrated more extended estuary use tended to be captured in the estuaries later than those that showed little to no estuary use (weighted 2-way linear model: $F = 5.14$, $P = 0.02$, $df = 103$; Table 5). Fish using the estuary were significantly (weighted 2-way linear models) greater in length and had higher condition when samples from both estuaries were pooled: length ($F = 5.75$, $P < 0.01$, $df = 103$) and condition ($F = 13.12$, $P < 0.01$, $df = 103$; Table 4). Finally, the evidence of estuarine rearing significantly (ANCOVA) accounted for variation in fish condition over time for both the Anchor ($F = 11.06$, $P < 0.01$) and Fox ($F = 6.42$, $P = 0.01$) river estuaries. Generally, fish in both estuaries increased in condition over time. However, fish lacking estuary signatures showed smaller sizes and lower condition when captured, and the condition increased at a greater rate over the summer season than it did among fish with an estuary signature (Figure 5).

In summary, juvenile Coho Salmon used estuaries for rearing, the greatest variability in fish traits (body condition, length, weight, capture date) being explained by the age-class and the presence or absence of estuary rearing. All fish exhibiting estuary use were significantly larger and had greater weights and

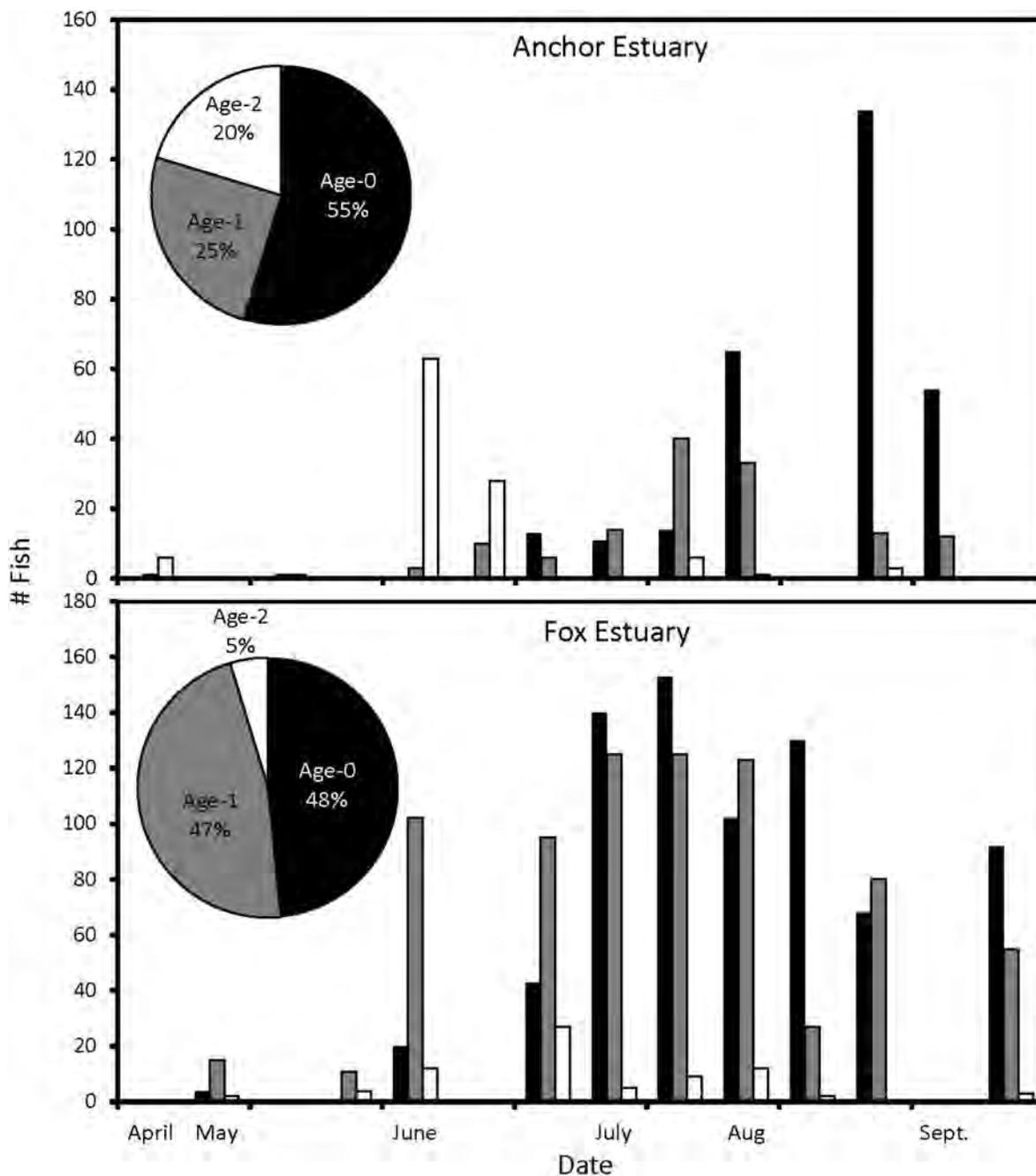


FIGURE 4. Comparison of total sample catch of Coho Salmon separated by age-class in the Fox and Anchor river estuaries. Inset pie charts illustrate age composition.

higher body condition than those lacking estuary-use signatures. Patterns of trait differences between estuaries were apparent, though not statistically significant given our limited sample sizes of estuary residents. Compared with fish in the Fox River estuary, those using the Anchor River estuary showed a higher proportion of overwintering use, and the summer composition of residents was higher in older individuals with greater body condition, length, earlier entry, and shorter times of use.

Finally, we addressed the potential for capture date to bias residence. We found a weak, though significant, positive relationship between capture date and residence days for fish from the Fox River estuary ($P < 0.01$, adjusted $r^2 = 0.18$) but not for fish from the Anchor River estuary ($P = 0.28$, adjusted $r^2 = 0.01$). This relationship could potentially be explained by the differences in behavior patterns of the fish from the two estuaries.

TABLE 4. Mean and variance of body size, weight, and condition for measured ($n = 2,153$) and laboratory ($n = 108$) groups of Coho Salmon captured in the Fox River and Anchor River estuaries.

Estuary	Age 0	Age 1	Age 2
Measured group mean size (variance)			
Fox	40.68 (73.16)	72.86 (176.75)	85.34 (166.70)
Laboratory group mean size (variance)			
Fox	41.91 (117.63)	76.11 (332.58)	90.75 (189.30)
Estuary signature	51.50 (96.30)	79.10 (214.74)	80.10 ^a
No signature	38.50 (85.01)	74.10 (411.18)	93.00 (207.33)
Anchor	48.22 (84.94)	77.90 (173.91)	99.75 (86.75)
Estuary signature	53.30 (114.33)	79.10 (137.69)	98.10 (76.98)
Laboratory group mean dry weight (variance)			
Fox	0.15 (0.02)	1.13 (0.80)	1.47 (0.42)
Estuary signature	0.30 (0.03)	1.22 (0.42)	0.96 ^a
No signature	0.09 (0.01)	1.08 (0.89)	1.60 (0.45)
Anchor	0.25 (0.02)	1.04 (0.40)	1.99 (1.05)
Estuary signature	0.32 (0.04)	1.11 (0.42)	1.91 (1.12)
No signature	0.18 (0.01)	0.70 (0.36)	2.40 (1.08)
Laboratory group Fulton's mean condition (variance)			
Fox	0.91 (0.04)	1.08 (0.02)	1.05 (0.01)
Estuary signature	1.12 (0.01)	1.12 (0.01)	1.14 ^a
No signature	0.84 (0.03)	1.06 (0.04)	1.03 (0.01)
Anchor	1.05 (0.02)	1.12 (0.01)	1.00 (0.02)
Estuary signature	1.12 (0.01)	1.15 (0.00)	1.00 (0.02)
No signature	1.02 (0.03)	0.99 (0.00)	1.02 (0.02)

^aSample size too small for variance calculations.

DISCUSSION

Fish using the estuaries in our study exhibited substantially greater estuary use times in the saline reaches of the estuary than previously reported for juvenile Coho Salmon, particularly older

cohorts (age-1 and age-2 juveniles; McMahon and Holtby 1992; Thorpe 1994; Magnusson and Hilborn 2003). Juvenile Coho Salmon in all age-classes used estuaries for extended periods of time, including overwintering in estuaries or nearshore areas,

TABLE 5. Trait comparisons between estuaries and signature groups for pooled, catch weighted data shown by age-class for Coho Salmon captured in the Fox River and Anchor River estuaries. Only tests with probability values <0.10 are reported.

Metric	Statistical significance	Pattern
Comparisons between estuaries		
Age 0		
Size	$t = 61.27, P < 0.01^a, df = 751$	Measured fish, Anchor fish larger
Entry date	$t = -2.50, P = 0.02, df = 30$	Laboratory fish, Anchor fish earlier entry date
Condition (Fulton's)	$t = -1.92, P = 0.06, df = 30$	Laboratory fish, Anchor fish higher condition
Age 1		
Size (FL)	$t = -5.95, P < 0.01^a, df = 889$	Measured fish, Anchor fish larger
Age 2		
Size (FL)	$t = -3.36, P < 0.01^a, df = 182$	Measured fish, Anchor fish larger
Comparisons between estuary signatures		
Condition (Fulton's)	$F = 13.12, P < 0.01^a, df = 103$	Fish with signature had higher, less variable condition
Dry weight	$F = 3.34, P = 0.07, df = 103$	Fish with signatures had higher, less variable dry weight
Capture date	$F = 5.14, P = 0.02, df = 103$	Fish with signatures showed later entry dates
Size (FL)	$F = 5.75, P = 0.02, df = 103$	Fish with signatures showed larger, less variable size

^aData are shown for all tests, Dunn-Sidak $\alpha = 0.013$ for significant tests.

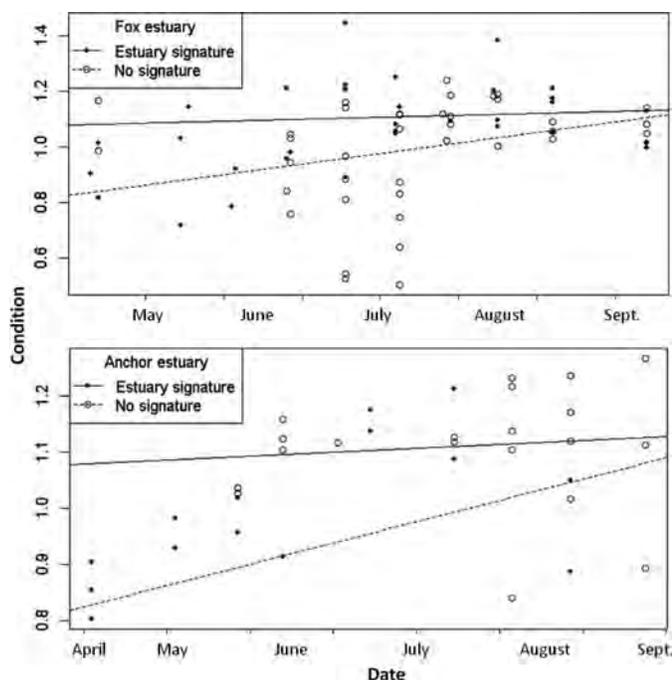


FIGURE 5. Fulton's condition factor for Coho Salmon shown by signature group and collection data from laboratory analyzed fish captured in the Fox River (upper panel) and Anchor River (lower panel) estuaries.

and these patterns of use differed between the two estuaries. The smaller, Anchor River estuary fed by snowmelt and spring water had larger, older fish that overwintered in the estuary or nearshore environments, and these fish used the estuary for shorter and earlier summer season periods prior to outmigration than did juveniles in the Fox River estuary. Fish in the larger, more complex, glacially fed Fox River estuary were composed of younger age-classes with longer summer residence times and few estuarine overwintering fish. Direct measurements of residence of older age-classes (ages 1–2) previously described were substantially shorter than those in our findings: up to 16 d (Chittenden et al. 2008) to 18 d (Miller and Sadro 2003).

Our observation of estuarine and nearshore overwintering juvenile Coho Salmon has theoretical implications regarding life history variability throughout the species range, though our observations are restricted to a central Alaska coastal population. This estuarine–marine overwintering life history pattern may be simply random movement or a response to a saturated or poor quality lower-river rearing habitat (Murphy et al. 1997) or, conversely, high estuarine habitat quality. Alternatively, it could represent exploitation of higher coastal productivity, forage, and nearshore habitat quality. All of these factors are expected to differ over the species range, even among adjacent systems within the same region. We note that incorporation of materials into the otolith matrix and our sampling regime do not allow us to distinguish between overwintering in the estuary channels themselves or the near shore environments of Kachemak Bay and Cook Inlet. The possibility exists that Coho Salmon enter nearshore

marine environments and rear by moving between a number of fjords and estuary habitats such as those that exist along the shoreline of Kachemak Bay and Cook Inlet. Further research is necessary for an understanding of the drivers and full range of overwintering areas used by these estuarine-resident juveniles.

Although we did not examine the mechanisms driving differential patterns of estuarine habitat use, we speculate that differences in timing of use among estuaries may be due to spatial variability in water turbidity, temperature regimes, and environmental factors that affect channel depths. Use of channels by juvenile salmon is often associated with water depth (Miller and Simenstad 1997; Webster et al. 2007; Hering et al. 2010), which in the glacially fed Fox River estuary increased gradually from mid-June to late August. The glacial run-off led to cooler and less variable water temperatures. Anchor River estuary channels are deepest in early spring during peak snowmelt and become most shallow and warm in mid-July and early August, cooling thereafter with fall rains. We captured most fish in late August in the Anchor River and in late July in the Fox River, suggesting a suitable combination of water temperature and channel depth to accommodate most estuary use.

Our findings also suggest variable use of estuaries by young-of-year and older age-classes of Coho Salmon. Miller and Sadro (2003) and Koski (2009) discuss the potentially important role of the “nomad” or young-of-year Coho Salmon that spend up to 8 months in the upper estuary ecotone and then return to freshwater to overwinter. Although a large proportion of young-of-year migrants exhibited summer season patterns of movement between freshwater and estuaries, we found no evidence of movement to freshwater environments to overwinter. The discrepancy here could be due to differences in the relative size and the definition of the estuary ecotones between our study and others or differences in methods. We defined the upper and middle estuary ecotones in which the sampling sites were located as the intertidal zone (point from highest to lowest tidal fluctuations) and may contain some channels with lower mean salinity levels at the upstream region of the intertidal zone. This may result in fewer fish from lower-salinity channels showing estuary use. We did examine the point measures of salinity across the tidal inundation zone and found that the most upstream channel of the Fox River estuary had generally low salinity (average, <2 mS/cm) with the exception of the spring tidal periods. However, we do not believe this biased our results because the sample size of fish was small and the relative proportion of fish with estuary signatures; i.e., fish lacking estuary signatures was similar to the overall sample (1:5 upper channel, 24:73 in the Fox River sample). Additional differences in our study may result from the variability of the tidal range (>8 m) because the Cook Inlet region is most likely very different from locations where other studies have been completed in lower latitudes. Finally, the methods we employed to determine estuarine residency were direct measures of Sr : Ca ratios (salinity of environment) and fish growth, as determined from the otoliths. Many other studies provide inference from mark–recapture work, which may be

biased to shorter periods and short-distance movements in areas where fish can be efficiently recaptured (Gowan et al. 1994).

Our study raises several interesting questions regarding the importance of the freshwater environment and watershed characteristics and their influence on exploitation of the estuarine environment—a point for future investigation. The influence of the watershed type and availability of suitable upstream rearing habitat may play a role in estuary use. Murphy et al. (1997) discuss the importance of lower-river freshwater areas in large glacial river systems for juvenile salmon rearing. We noted that the Fox River lacks the lower-river freshwater areas discussed by Murphy et al., whereas the Anchor River has ample lower-river habitats. The Anchor River estuary had a large proportion of older, larger resident fish with early entrance dates and shorter summer residence times, whereas the Fox River estuary had a smaller proportion of younger residents entering later and staying longer. This suggests that more suitable and extensive freshwater rearing habitat upstream may exist in the Anchor watershed (to allow for greater growth prior to estuary entry) and that temperature differences (cold glacier melt water versus warmer snowmelt and spring water) may contribute to patterns in growth and emergence timing. All but two of the Anchor River age-2 fish exhibited estuary overwintering during their second winter, implying an important role for the estuary, despite its small extent.

We did not determine the overall proportion of fish using the estuary during the juvenile phase in each population. It is possible that fish using the estuary for any amount of time may only contribute small numbers to the overall population within each river; it is probable that this varies from year to year. Simultaneous study of emigrating juvenile populations in the Anchor River (Gutsch 2012) noted a sudden drop in average length of Coho Salmon juveniles from approximately 100 mm to 80 mm toward mid-summer. These smaller individuals may overwinter within the estuary rather than move to the oceanic environment during a suboptimal period or body size—another possibility that warrants investigation. Regardless of the proportion of the reproductive population that these strategies compose, they contribute a unique suite of behaviors that increase trait diversity of each river's Coho Salmon population, diversity that represents adaptive potential that could contribute to population resilience to environmental change (Schindler et al. 2010).

Some interesting directions for future work include investigating the mechanisms for the differences in length, condition, residence times, and age composition found between fish using contrasting estuaries. We note that a possible nonlinear relationship between fish condition and time may exist in both estuaries (Figure 5). Though we are unable to address this question with our study sample, the possibility of influences of other estuarine environmental conditions on smolt condition (such as temperature and salinity) raises interesting questions for further investigation. A broader understanding of the importance of estuaries to different runs of salmon could be ascertained by determining the proportion of estuary residents in adult returns and how this

proportion varies over space, time, and estuarine complexity. Additionally, an understanding of the connections between the watershed, estuary, and near-shore environments during early marine rearing in Coho Salmon will facilitate strategic and knowledge-based management of these fragile and dynamic areas, thereby providing for resilient fisheries.

Prolonged use of estuary habitats (months during the summer and throughout the winter) may represent a distinct life history strategy that contributes to the overall population life history portfolio (Schindler et al. 2010). It follows, then, that pristine, functioning estuary habitats can contribute to resilience of salmon populations to environmental changes in two ways: (1) by providing a place for some individuals to increase in length and condition prior to ocean entry to improve survival, and (2) by providing for alternative life history strategies. Maximizing both the availability of supplemental habitats and life history diversity is particularly important given increasing human populations that stress land and water resource development and fishery resource use. Gaps in our understanding of environmental influences on life history expression arise from the fact that many of the highly studied salmon ecosystems in the Northeast Pacific are disturbed or substantially altered in some manner that has caused loss of variability in life history traits within populations (Miller and Simenstad 1997; Cornwell et al. 2001; Magnusson and Hilborn 2003; Bottom et al. 2005b; Healey 2009). Managers require a thorough understanding of the suite of environmental factors that influence the structure and survival of exploited fish populations to make decisions that provide the greatest benefit to all stakeholders (Bottom et al. 2009). This need stresses the importance of understanding functioning watersheds to inform management of endangered or threatened stocks.

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STATE WILDLIFE GRANT (SWG)

STATE: Alaska

GRANT: T-31-13

PROJECT: P-01

WORK LOCATION: Homer

PERIOD DURATION: February 1, 2015–June 30, 2016

PROJECT REPORTING PERIOD: February 1, 2015–June 30, 2016

PROJECT TITLE: Estuary Habitat Use by Juvenile Chinook and Coho Salmon in a Kenai Lowlands (Anchor) River.

PROJECT AUTHORS: Coowe Moss Walker and Brianna Pierce

Project Objectives:

The purpose of the project: This project investigates key aspects of juvenile salmon use of estuaries in south-central, Alaska, including patterns of movement and residence in different estuary habitats.

Objective 1: Research demographic patterns of juvenile Chinook and Coho Salmon movement and residence through different reaches and channel systems in the estuary.

Objective 2: Identify characteristics (metrics) of tidal channels that potentially relate to fish occupancy, residence and feeding.

Summary of Project Accomplishments:

This project explores key aspects of juvenile salmon estuarine habitat use in a snowmelt, groundwater supported estuary of south-central Alaska. We investigated patterns of juvenile fish movement and residence in estuary habitats (objective 1), including different marsh channels and mainstem sites along a tidal gradient, through repeated fish sampling at the sites, tagging, recaptures and antenna detections. Features of those habitats that related to fish use (objective 2) were investigated through stationary loggers and point sampling. Our results revealed distinct environmental characteristics of the different habitats, with dissolved oxygen and water stratification explaining much of the variability between marsh channels and mainstem sites. Eight fish species were regularly captured in the estuary, including Chinook Salmon (*Oncorhynchus tshawytscha*), Coho Salmon (*O. kisutch*), Dolly Varden (*Salvelinus malma*), Sockeye Salmon (*O. nerka*), staghorn sculpin (*Leptocottus armatus*), starry flounder (*Platichthys steallatus*), steelhead (*O. mykiss*), and three-spine sticklebacks (*Gasterosteus aculateatus*). Fish community assemblages differed between the habitats. In 2016, juvenile Chinook Salmon characterized the middle and upper mainstem habitats; however chinook were rarely captured in 2015, likely due to the low adult return of the previous year. After excluding highly abundant young of the year sticklebacks, juvenile Coho Salmon were the most abundant species in the estuary in both 2015 and 2016, averaging at least 25% of the total catch in all of the habitats. Small, age 0 Coho Salmon continued to enter the estuary from June through November. Marsh channel habitats were utilized by juvenile Coho Salmon, and to a lesser degree by juvenile Chinook Salmon. These marsh channels were characterized by large numbers of staghorn sculpin and three-spine sticklebacks in addition to the salmon. Starry flounder and staghorn sculpin were most

characteristic of the lower mainstem site. Data from tagged, recaptured and antenna detected salmon revealed juvenile Coho Salmon residing in the estuary for nearly 11 months, and juvenile Chinook residing for nearly 1 month. Both juvenile Chinook and Coho were documented moving upstream and downstream throughout the estuary, between mainstem and marsh channel habitats. Collectively, project results demonstrate that juvenile salmon use on a broad array of habitat types within the estuary, and highlight the importance of even small estuaries to juvenile salmon growth and resilience.

Study Site:

The Anchor River is located at the southern end of Cook Inlet (Figure 1), where there is a large tidal range (> 8 m depth) that can potentially create broad ecotones of habitat conditions within estuaries. Hydrology in the Anchor River watershed is driven by snowmelt and shallow ground water. The watershed encompasses over 580 square kilometers, including 266 river kilometers accessible to anadromous fishes (Kervliet *et al.* 2013). The estuary at the mouth of the Anchor abruptly transitions into the marine environment of Cook Inlet after flowing through an expansive marsh habitat, protected from maritime storms and erosion by a gravel and sand bar that extends along the shoreline. Measured from high-water tide line to the confluence with Cook Inlet, the estuary is nearly 3 km in length (Hoem Neher *et al.* 2013b).

We established five sites within the Anchor River estuary, representing a range of conditions, including two marsh sites, one located at the lower extent of the vegetated marsh, and one located in a mid-marsh area, and three sites along the river mainstem (Figure 2).



Figure 1. Overview of the middle marsh area of the Anchor River estuary in mid-summer.



Figure 2. Aerial image of the Anchor River estuary, showing sampling locations. Sampling sites: orange stars = estuary marsh habitat; blue stars = mainstem river sampling sites along a gradient from the upper extent of saltwater influence (light blue) to the lower extent of marsh vegetation (dark blue).

Methods

We collected data in 2015 and 2016, at the five established sites. In 2015, sites were sampled approximately once per week from late-July to early-September, with additional sampling in October and November. In 2016 sites were sampled every other week beginning in late May and continuing through September. Continuous depth, temperature and salinity data were collected from stationary loggers placed in each of the marsh channel habitats (Solinst TM 3001 level loggers, Solinst Canada Ltd., Ontario, Canada), calibrated with a Solinst TM 3000 barologger set onsite. Level loggers were set at 15-min recording intervals and placed in 5 × 25 cm plastic housings attached to steel fence posts driven into the substrate. Point measurements were taken for each sampling event at all of the sites to collect data on maximum depth, flow, temperature, salinity, and dissolved oxygen, taken at three points in the water column (just below the surface, mid-water column, and just above the substrate) using a YSI model 30. Turbidity data were collected using a YSI 6600 series data sonde, with a YSI 6136 turbidity sensor (YSI Instruments Inc.)

Fish were sampled by seining; in the marsh channels, block nets (0.3 cm mesh) were placed at both ends of the 25 m reach and fish were captured in three passes with a pole seine (2.2 × 6 m, 0.3 cm mesh). At mainstem sites, a pole seine was pulled 25 m parallel to the bank in the upstream direction in 2015; and in 2016, we used a 20 ft beach seine, pulling either upstream, or across the channel (Figure 3). Fish were counted, identified to

species, weighed, measured, and returned to the channel. Salmon over 55 mm in length received a Passive Integrated Transponder (PIT) tag, and a subset of fish had their stomach contents sampled via gastric lavage. Fish were held in recovery pens in the channel prior to release.

PIT tag reading antennas were established in four sites in 2015, reduced to three sites for 2016 due to one of the sites becoming too dry (Figure 4). Each antenna array consisted of two antennas so that direction of movement could be detected. Antenna efficiency was calculated for segments of time between each sampling event by dividing the number of unique tags detected at the antenna by the number of tags known to have passed through (as determined by detection or recapture) (Table 1).

To compare fish catch samples across sites, we used log transformed catch per unit effort (CPUE), using the first pass from each sampling event.

$$CPUE = \frac{\text{\#fish per area sampled}}{\text{area sampled}}$$

*area sampled = transect length*net curved-width for mainstem sites and
transect length*average channel width for marsh channels.
average channel width = mean wetted width at 5m intervals along the transect at low tide.
CPUE was log transformed*



Figure 3. Fish were captured using pole seines in block-netted marsh channels (A), or beach seining in the mainstem (B). Salmon > 55 mm in length were PIT tagged (C); gastric lavage was used to collect stomach samples from representatives of all age classes of juvenile Coho and Chinook Salmon (D); fish recovered in protected in-stream pens (E).

To estimate the standard growth rate (SGR) of PIT tagged Coho Salmon and staghorn sculpin, we measured the length and weight of recaptured fish (excluding recaptures within ten days of tagging):

$$\text{Standard Growth Rate} = \ln(\text{recap weight}/\text{initial weight})/\text{days since tagging}$$



Figure 4. PIT tag reading antenna locations, shown as yellow bars.

Results

Channel metrics

Environmental conditions varied temporally and spatially in the different estuary habitats (Figure 5). Mainstem sites were consistently deep (~1 m), with stronger flows (> 20 cm/s), salinities near zero, and consistently high dissolved oxygen levels (> 10 mg/L). Both marsh channels had consistently low flows. Marsh channel B (closest to the river mouth), showed a marked response to extreme tide events, with higher and more variable salinities. This is likely due to each channel's connectivity to the mainstem, where a silt sill at the mouth of the channel requires the tide to reach approximately 4.5 m before the channel is inundated. The mid marsh channel, Marsh channel A, by contrast, is always connected to the mainstem. This physical feature enables Marsh channel B to maintain environmental stability during low and moderate tides. Temperatures at all sites generally increased over the course of the field season, although July rains lowered the temperature and correspondingly increased turbidity in mainstem sites, but not in the marsh channels. At times during mid-summer temperatures in mainstem sites consistently exceeded 15°C. Marsh channel sites were generally cooler (rarely exceeding 15°C), and had much lower dissolved oxygen levels, with the mid marsh channel (A) dropping below 4 mg/L in August.

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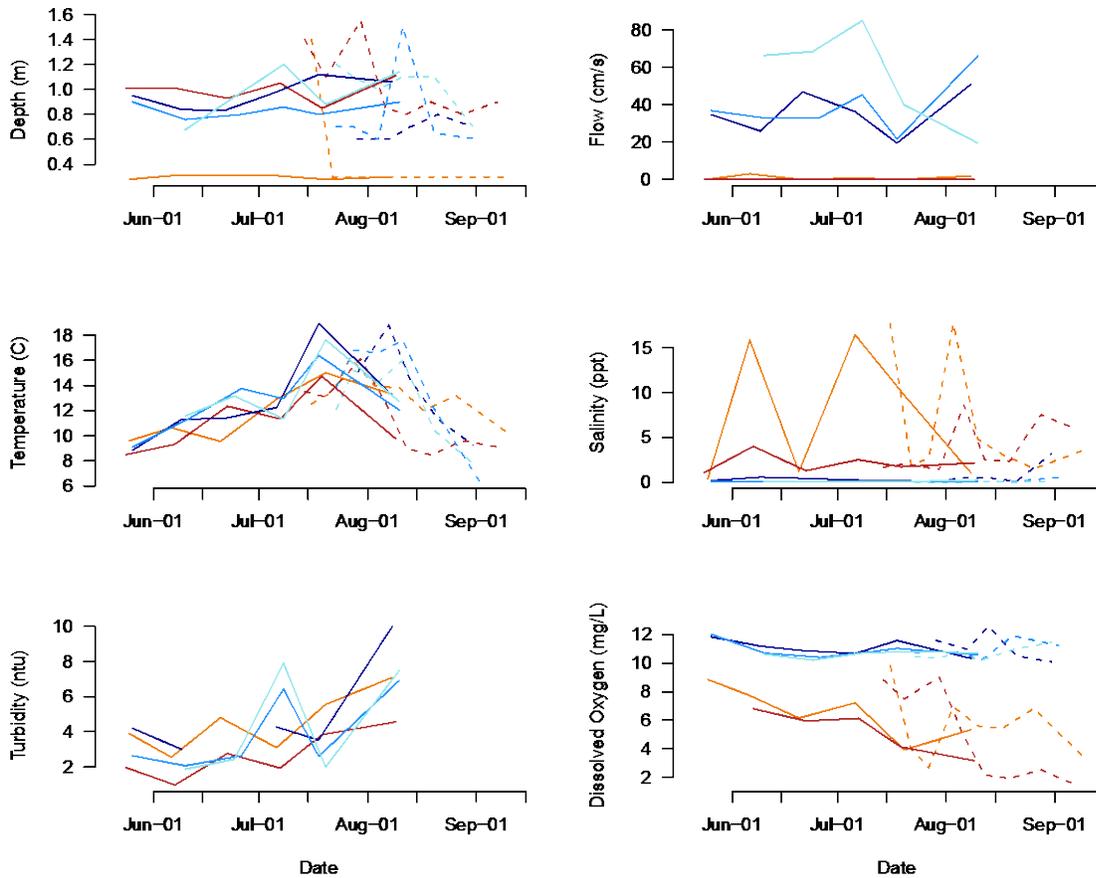


Figure 5. Point measurements of environmental variables over time at each sampling site in 2015 (dashed lines) and 2016 (solid lines). Line colors correspond to sites as indicated in Figure 2 (red = Marsh A, orange = Marsh B, purple = lower mainstem, dark blue = middle mainstem, light blue = upper mainstem). Note: Turbidity and flow were not recorded in 2015.

A Principle Components Analysis (PCA) of environmental variables for 2015 and 2016 revealed that the two marsh channels were distinct from each other, and from the mainstem sites (Figure 6). Substantial variability in the two marsh channels contrasted with the mainstem sites, where the environmental conditions were much more stable. In both years, higher dissolved oxygen levels in the mainstem, and a greater degree of water stratification in the marsh channels were primary drivers of differences in environmental conditions between the different habitats.

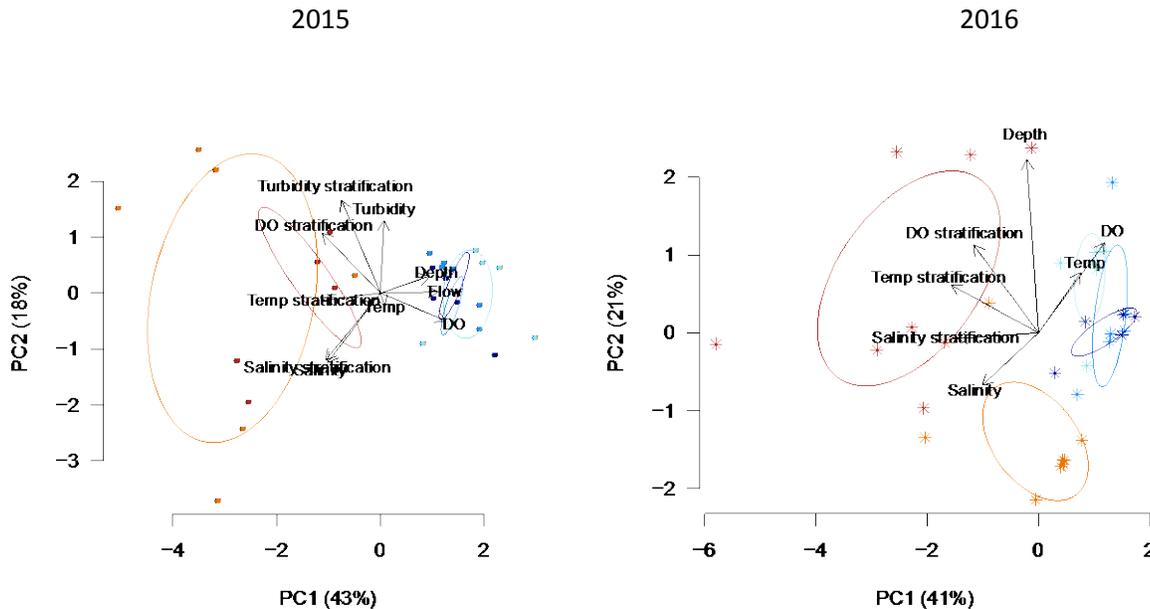


Figure 6. Principle components analysis (PCA) of environmental variables collected during each sampling event for 2015 (left) and 2016 (right). In both years, PC1 explains significantly more variability than would be expected from the null distribution ($p < 0.01$). PC2 is not significant. Points represent individual sampling events and are colored by site, corresponding to colors indicated in Figure 2. Ellipses denote the standard deviation from each site centroid. The association of environmental variables with the principle component axes is illustrated by the vector arrows, with the length of arrow proportional to the variance explained. DO = dissolved oxygen, Temp = temperature. Point readings were taken at three points in the water column (bottom, middle, and surface).

Fish

Similar to other estuaries in Alaska, the Anchor River estuary has relatively low fish diversity. Of the over 16,400 fish sampled, fifteen species were represented, nine of which were present at multiple life history stages, including large numbers of young of the year (< 20 mm) staghorn sculpin and three-spine sticklebacks (Figure 7).

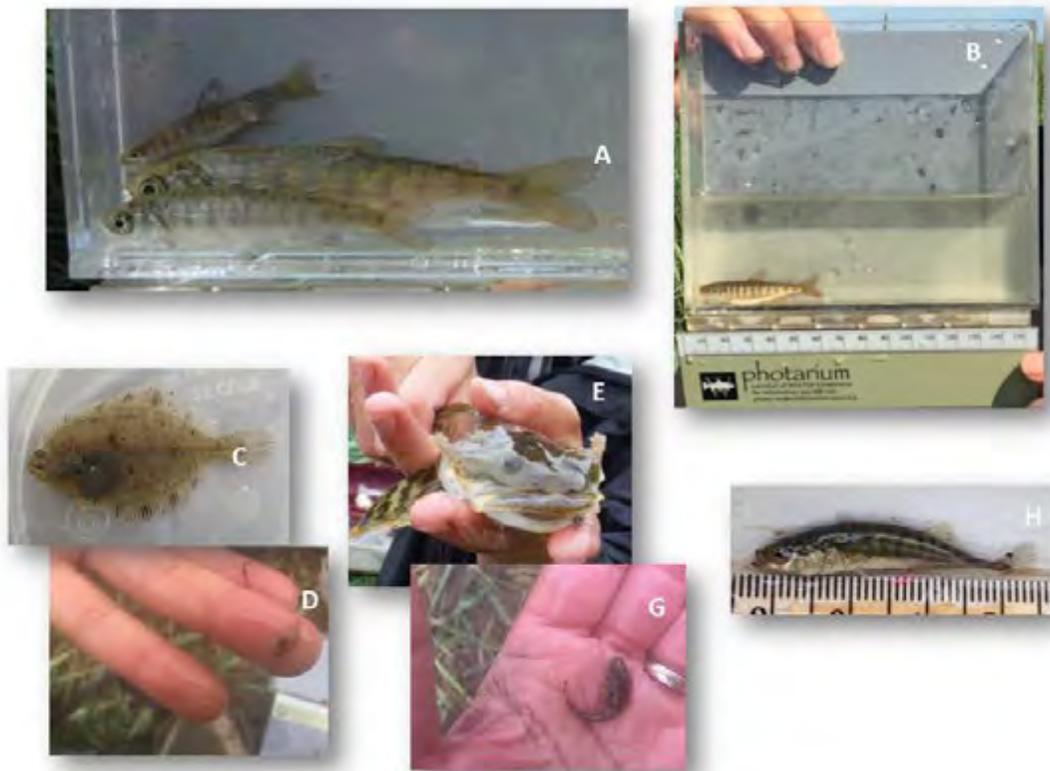


Figure 7. The most abundant captured fish included three age classes of juvenile Coho Salmon (A), juvenile Chinook Salmon (B), starry flounder (C) including young of year (D) staghorn sculpin (E) including young of the year (G), and three-spine stickle backs (H) including young of the year.

Species composition varied across the sites (Figures 8 and 9). Coho Salmon were abundant in all sites, comprising on average nearly three-quarters of the total catch in the mid marsh channel (Marsh A), but only 25% in marsh channel B. In the mainstem channels, Coho were most abundant (although much less so than Chinook Salmon) in the middle mainstem site during late June. Two main pulses of Coho Salmon, one in early June and one in early August, occurred in the marsh channels, and to a lesser degree in the lower mainstem channel, and small, age 0 Coho Salmon continued to enter the estuary into November (Figure 15). Chinook Salmon comprised less than 1% of the catch in 2015, but were commonly found in mainstem sites in 2016. They were abundant early in the season at the upper mainstem site and to a lesser degree in Marsh channel A, with another pulse of juvenile Chinook Salmon at the upper mainstem site in late August. The highest abundance of Chinook Salmon (densities of 4 fish/m²), were in the middle mainstem site in early June. Staghorn sculpin were most abundant in the lower marsh channel (Marsh B), where they increased from June to July, reaching and maintaining densities of 3 fish/m² through early August. Starry flounder were most abundant in the lower mainstem site, and lower marsh channel (Marsh B), with a marked increase in abundance in early August in both marsh channel habitats, as well as the upper mainstem. Dolly Varden were only present in small numbers in the mainstem sites, and three-spine sticklebacks were only present, but in large numbers, in the marsh sites. Small numbers of Sockeye Salmon were captured in all sites, except for the lower mainstem, although they were most abundant in the marsh channels, and Steelhead were found only in the upper and rarely in the middle mainstem site.

Overall, the two marsh channel habitats generally had higher densities of fish than the mainstem sites, with the exception of the middle mainstem site, which had high densities of Chinook Salmon in early June, steadily decreasing throughout the summer. Trends in abundance appear relatively consistent between 2015 and 2016;

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with the exception of Chinook Salmon, which were only present in very small numbers overall in 2015, and juvenile steelhead, which were rare in 2016.

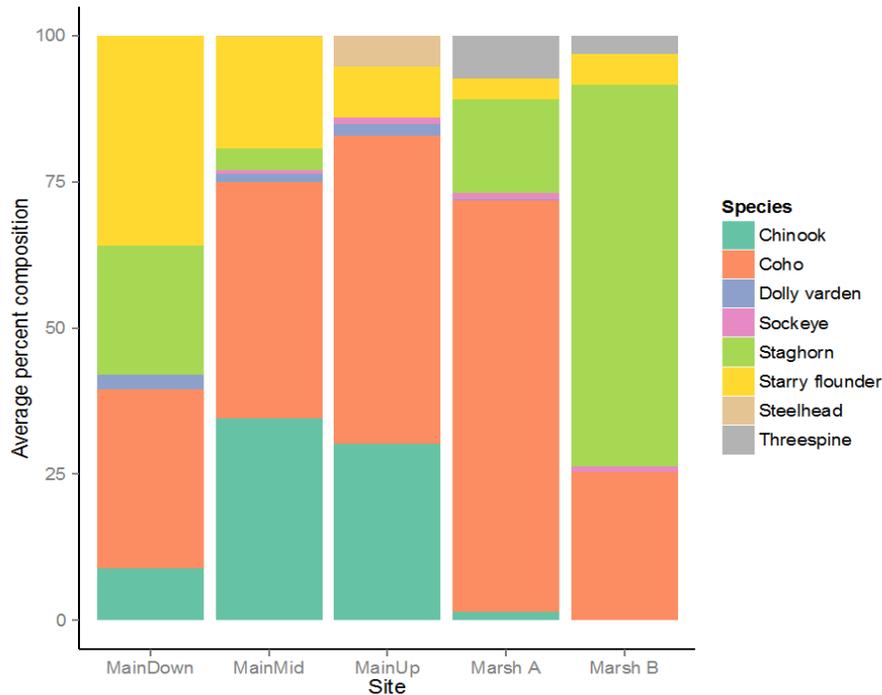


Figure 8. Average species composition at each site (2015 and 2016 data combined) based on log-transformed catch per unit effort. Staghorn = staghorn sculpin, Threespine = three-spine stickleback.

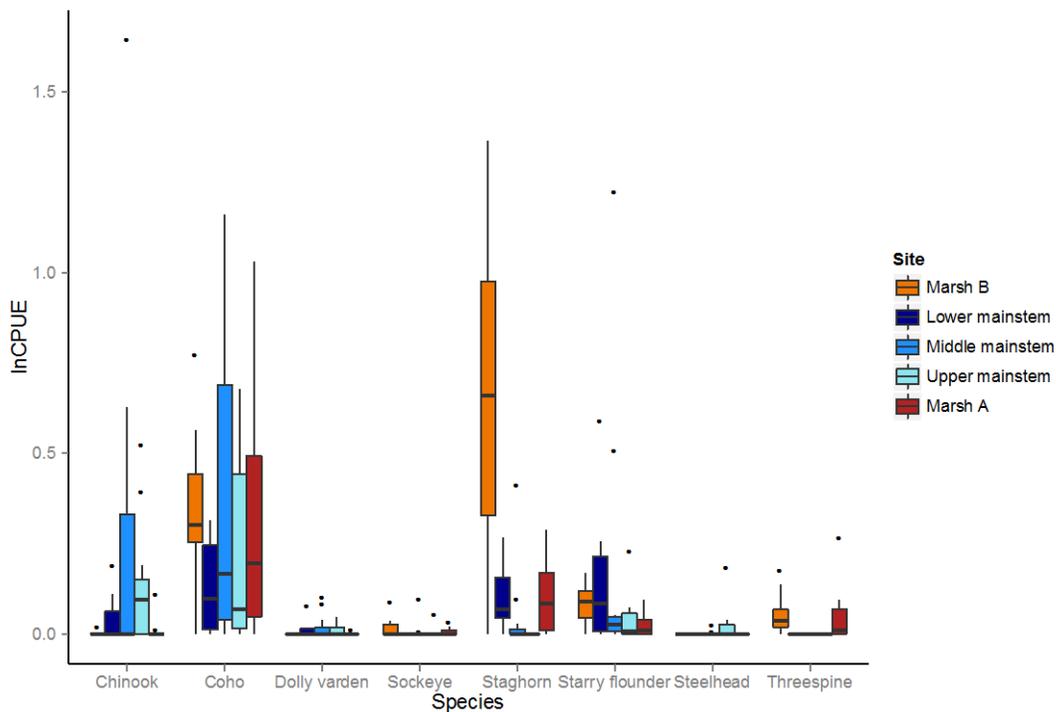


Figure 9. Boxplot of catch per unit effort of the primary fish species at each site (2015 and 2016 data combined). Staghorn = staghorn sculpin, Threespine = three-spine stickleback.

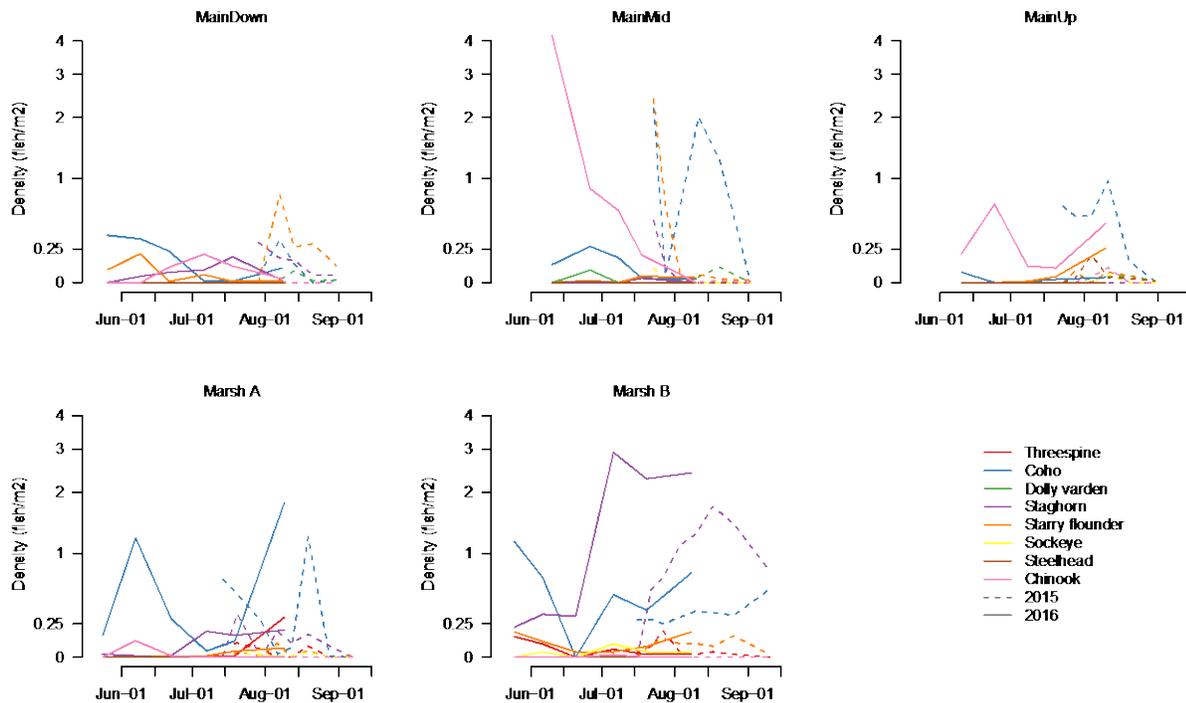


Figure 10. Catch per unit effort over time at each site for the primary fish species. Note log scale on the y-axis. Staghorn = staghorn sculpin, Threespine = three-spine stickleback. Dashed lines are 2015 data, solid lines are 2016 data.

A non-metric multidimensional scaling (NDMS) analysis of relative fish species abundance revealed distinct differences that remained fairly consistent for the two marsh habitats and the lower mainstem habitats. Newly hatched three-spine sticklebacks numerically dominated the fish community in the mid marsh site (Marsh A), staghorn sculpins dominated the lower marsh site (Marsh B), and a mix of staghorn sculpin and starry flounder typified the lower mainstem site (Figure 11). The middle and upper mainstem sites were characterized by Coho Salmon and steelhead in 2015; however Chinook Salmon were the characteristic species for these two sites in 2016 (Figure 11). The middle mainstem site exhibited the most variable fish assemblage in both years, as evidenced by the wide spread of sample points.

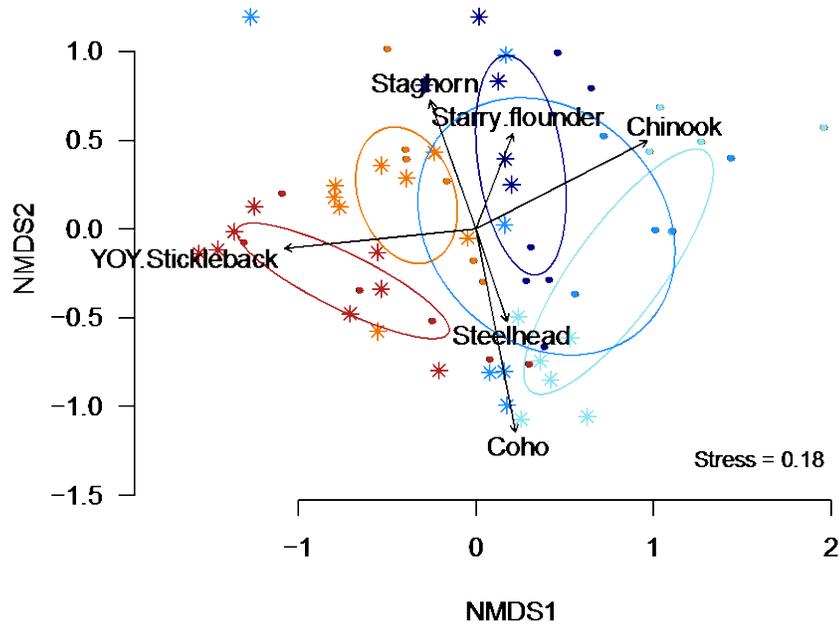


Figure 14. Two-dimensional nonmetric multidimensional scaling plot of relative species abundance for 2015 (stars) and 2016 (points) using Bray-Curtis dissimilarity. CPUE was log-transformed because the data were heavily right-skewed, and then row-standardized to compare relative species abundance across samples. Points represent samples and are colored according to site as indicated in Figure 2. Ellipses represent the dispersion of each site, and are based on the standard deviation to the site centroid. Vectors indicate the magnitude and direction of species loadings (variable weights) on the composite axes. Only those species that significantly contribute to the ordination ($p < 0.01$) are displayed. YOY = young of year sticklebacks (< 20 mm fork length), Staghorn = staghorn sculpin.

In both 2015 and 2016, three age classes of Coho Salmon were present in the estuary habitats. Length frequency distributions for 2015 and 2016 indicates that small, age 0 fish continue to enter the Anchor River estuary throughout the summer and fall (June – November) (Figures 15 and 16).

FEDERAL ASSISTANCE FINAL PERFORMANCE REPORT

ALASKA DEPARTMENT OF FISH AND GAME
SPORT FISH DIVISION
PO Box 115526
Juneau, AK 99811-5526

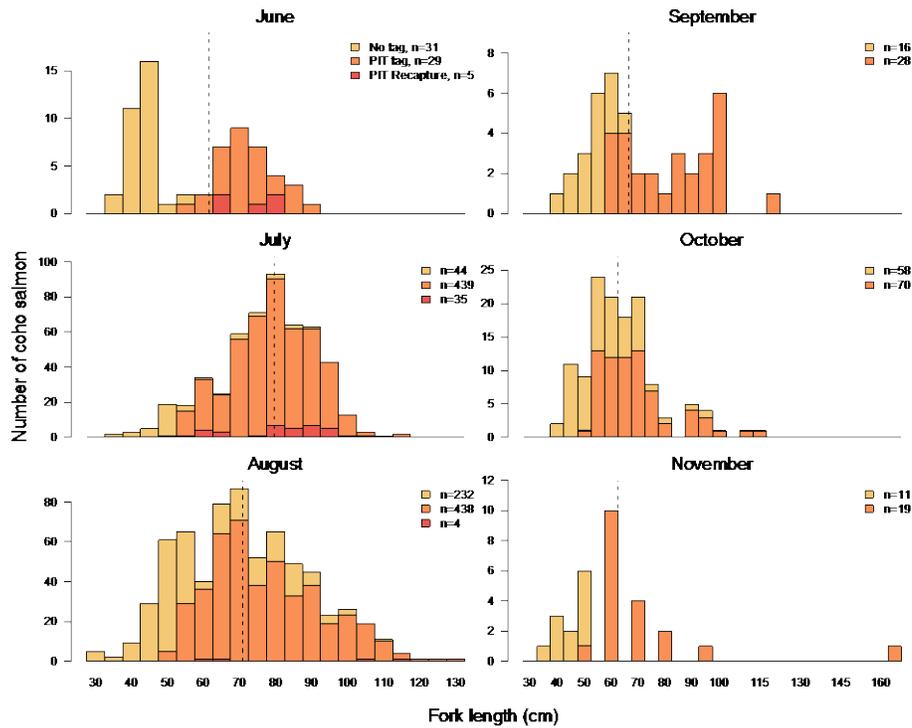


Figure 15. Length frequency histograms for Coho Salmon sampled in 2015. Bars are colored to indicate fish that were not PIT tagged (yellow), PIT tagged (orange), and PIT tagged fish that were later recaptured (pink). The vertical dashed line marks the median length.

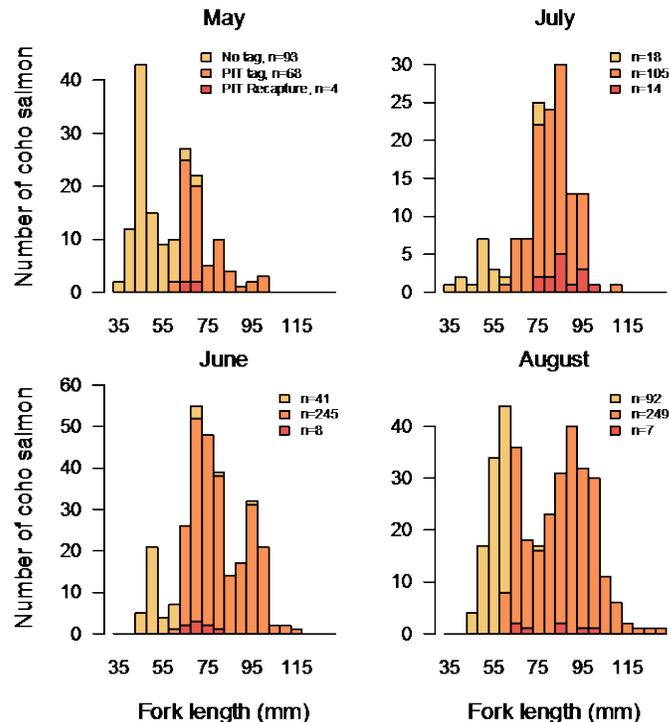


Figure 16. Length frequency histograms for Coho Salmon sampled in 2016. Bars are colored to indicate fish that were not PIT tagged (yellow), PIT tagged (orange), and PIT tagged fish that were later recaptured (pink).

**FEDERAL ASSISTANCE
FINAL PERFORMANCE REPORT**

ALASKA DEPARTMENT OF FISH AND GAME
SPORT FISH DIVISION
PO Box 115526
Juneau, AK 99811-5526

Movement and residence

Unfortunately, the PIT tag detecting antenna arrays were rarely working in synchrony in 2015, and were inoperable during the winter due to severe icing and tidal movement of large pieces of wood debris. Antenna operation was re-established in April 2016, and we calculated detection efficiencies for each antenna that was consistently operational as the number of unique tags detected by the antenna divided by the number of tags known to have passed through (as determined by detection or recapture). As Table 1 shows, detection efficiencies were marginal during most periods (Connolly *et al* 2011).

Table 1. Detection efficiencies for each PIT antenna in 2016 in approximately two-week intervals corresponding to tagging events at each site.

Data range	Marsh A up	Marsh A down	Marsh B up	Marsh B down
Late May – early June	0.381 (8/21)	0.532 (25/47)	0.571 (16/28)	0.571 (8/14)
Mid June	0.097 (3/31)	0.419 (13/31)	0.533 (8/15)	0.00 (0/2)
Late June – early July	0.654 (17/26)	0.442 (19/43)	--	0.500(2/4)
Mid July	0.714 (5/7)	0.000 (0/4)	0.500 (8/16)	0.00 (0/5)
<i>Overall efficiency</i>	<i>0.388 (33/85)</i>	<i>0.456 (57/125)</i>	<i>0.542 (32/59)</i>	<i>0.400 (10/25)</i>

Over three-hundred Chinook Salmon, the majority of which were in the upper and middle mainstem sites, as well as approximately sixteen-hundred Coho Salmon, the majority of which were tagged in the marsh channels, were PIT tagged between 2015 and 2016; (Figure 17). Although recapture rates of PIT tagged fish were low, they appear to reflect the size distribution of tagged fish, indicating that recapture is not biased by fish size (Figures 15 and 16).

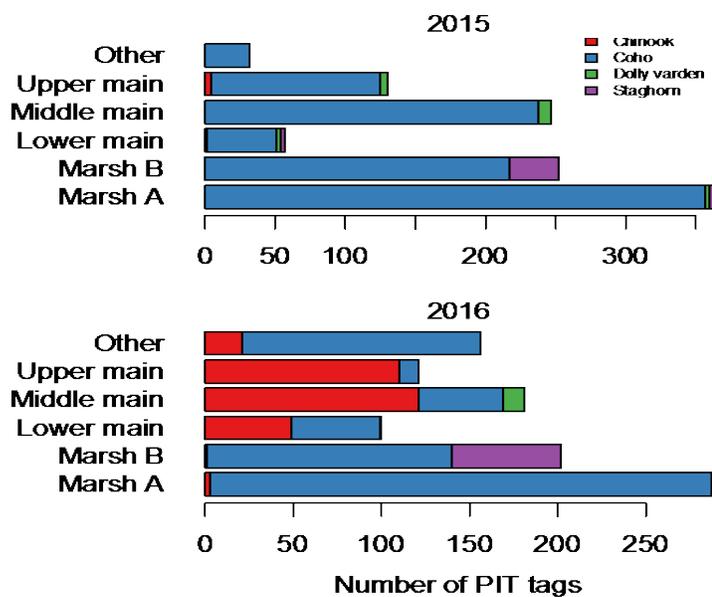


Figure 17. Distribution of PIT tags by site and species in 2015 and 2016. Data extends through 9/2/16.

Through a combination of antenna data and recaptures, we were able to detect fish movement between sites. Although fish were commonly recaptured in the same site that they were first tagged in, they were also frequently recorded in other habitats, indicating a broad range of movement, including upstream and downstream, from the mainstem into marsh channels, and from marsh channels into mainstem habitats (Figure 18).

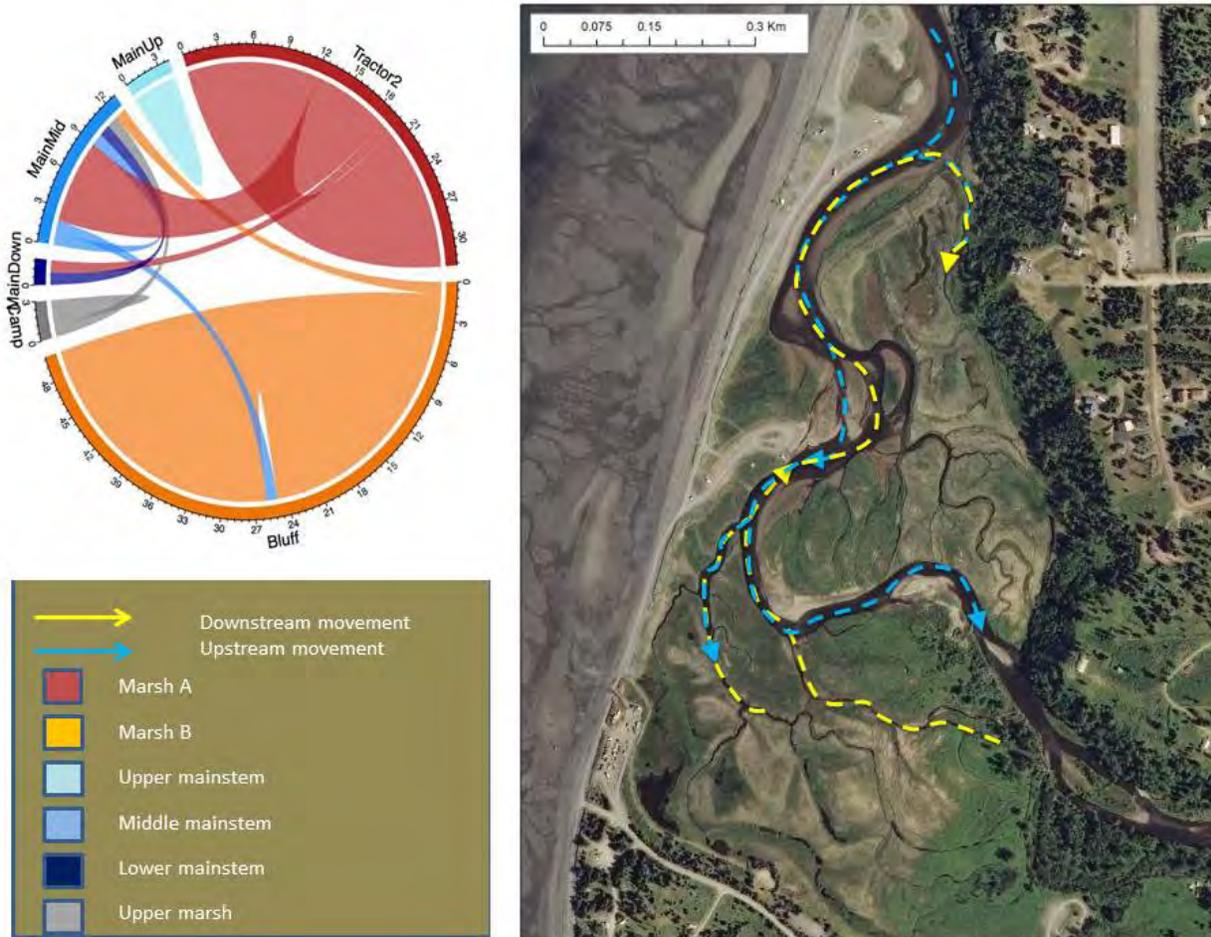


Figure 18. (left top) A chord diagram indicating the number of recaptured Coho Salmon and their movement among sites (colored by original tagging location); and (right) generalized observed patterns of movement.

Recaptured juvenile Coho Salmon and staghorn sculpin showed an average standard growth rate (% increase in body weight per day) of 1.43% and 3.06%, respectively, over the 2016 season. In terms of length, this corresponds to approximately 0.37 mm/d for Coho Salmon and 0.91 mm/d, for staghorn sculpin (Figure 19).

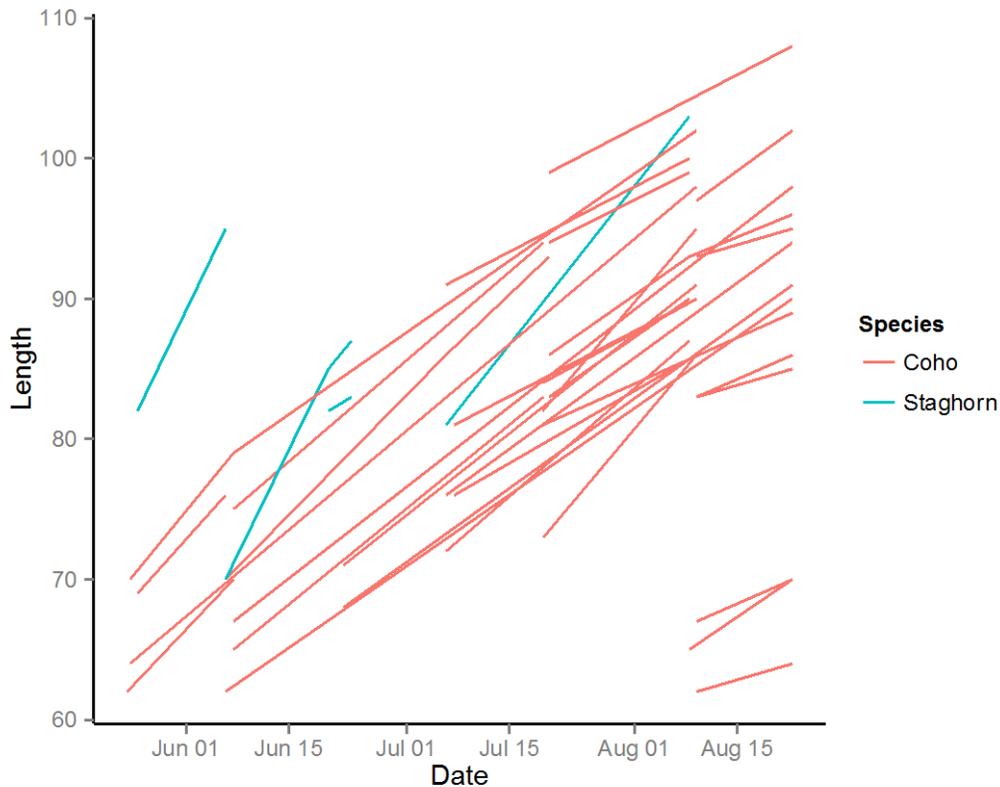


Figure 19. Growth of recaptured fish over time. Each line segment refers to an individual fish indicating its length when it was initially tagged and subsequently recaptured. Data presented here are from 2016 only, extending through 9/2/16.

Discussion

Coho and Chinook Salmon have different life history types, with some individuals spending considerable portions of their life cycle (1-3 years) in freshwater and estuarine environments before migrating to open ocean. It is believed that this diversity in life histories results in high resilience of these salmon populations to environmental variability and change (Bottom *et al.* 2011). Results from this project show that distinct environmental conditions can exist even within a rather small estuary, such as the Anchor, and that juvenile salmon are present across a broad range of habitats. Juvenile Coho Salmon were present in marsh channels and mainstem habitats, with pulses of small, age 0, fish coming into the estuary throughout the summer and fall. The longest record of estuary residence from this study was a Coho Salmon that was initially tagged in mid-June of 2015 in a small channel near the upper mainstem site that went dry soon after the tagging event. Although we thought that the fish present at that site would be trapped by low river flows, it is likely that high tide events allowed the fish to escape, enter the mainstem, and eventually make its way to the mid marsh channel, where it was recaptured 327 days later (mid-June 2016). Residing nearly a year in the estuary, this fish illustrates the long term use of estuary habitats that may be a distinct life history strategy for juvenile Coho Salmon (Miller and Sadro 2003; Koski 2009, Hoem Neher *et al* 2013a). This adds to the growing recognition that estuaries may support alternative life history strategies of Coho Salmon that contribute to overall population resilience and health (Schindler 2010; Hoem Neher *et al* 2013a; Hoem Neher *et al* 2013b).

Chinook Salmon were predominantly present in mainstem sites, although there was some movement into the marsh channel sites as well. In general, Chinook Salmon had lower residence times within the estuary than Coho Salmon, with the longest record being a juvenile Chinook that was tagged in the middle mainstem site in

early July, and was detected at a PIT antenna nearly 30 days later in the mid marsh channel. Interestingly, two other species; staghorn sculpin and Dolly Varden, also exhibited long residence times within the estuary (189 days, and 231 days, respectively). Few Chinook Salmon were captured in 2015, which is likely due to the very low adult returns of the previous year. In 2014, roughly 2,500 adults returned, whereas in 2015, over 10,000 adults Chinook Salmon returned to the Anchor River, with the result that far more juvenile Chinook Salmon were rearing in the estuary in the 2016 season.

The range of environmental conditions present at the different sites in the Anchor, including fast flowing mainstem sites that are well mixed, with high dissolved oxygen levels, to marsh channel sites that have low flows, and a high degree of stratification, provide a broad suite of conditions, and juvenile salmon apparently take advantage of their ability to move between habitats, as evidenced by the observed movement patterns. Further study is needed to understand the drivers of movement. The presence of other fish species likely has some influence on juvenile salmon. For example, small staghorn sculpin were observed as prey for juvenile salmon, yet will become predators of juvenile salmon when they are larger.

The high densities, prolonged residence, movement and growth of juvenile salmon in the Anchor River estuary support the importance of even relatively small estuaries to juvenile salmon rearing. The amount of movement among estuary habitat types supports the concept of conservation for the entire estuary in order to maintain full habitat potential and resilience.

References

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- Connolly PJ, Jezorek IG, Martens KD, Prentice EF. 2011. Measuring the performance of two stationary interrogation systems for detecting downstream and upstream movement of PIT tagged salmonids. *North American Journal of Fisheries Management* 28(2): 402-417.
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- Hoem Neher TD, Rosenberger AE, Zimmerman CE, Walker Cm, Baird SJ. 2013b. Use of glacial river-fed estuary channels by juvenile Coho Salmon: transitional or rearing habitats? *Environ. Biol. Fish.* DOI 10.1007/s10641-013-0183-x
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- Koski KV. 2009. The fate of Coho Salmon nomads: the story of an estuarine-rearing strategy promoting resilience. *Ecology and Society* (online serial)14:article 4.
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**FEDERAL ASSISTANCE
FINAL PERFORMANCE REPORT**

ALASKA DEPARTMENT OF FISH AND GAME
SPORT FISH DIVISION
PO Box 115526
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Schindler DE, Hilborn R, Cghasco B, Boatright CP, Quinn TP, Rogers LA, Webster MS. 2010.
Population diversity and the portfolio effect in an exploited species. Nature 465: 609-612.

Final Report Status: This performance report is the final report for this project during the reporting period (February 1, 2015–June 30, 2016).

Prepared By:

Coowe Moss Walker

Watershed Ecologist, Kachemak Bay National Estaurine Research Reserve, UAA

Brianna Pierce,

MS candidate, University of Washington

Date: September 2016

Wall, Bruce

From: Joseph Sparkman <jay1332@att.net>
Sent: Friday, July 13, 2018 1:41 AM
To: Wall, Bruce
Subject: Proposed gravel pit on Danver street in Anchor Point

Bruce Wall, My wife and I are another couple who are very disturbed by this proposed gravel pit.

We would first ask you to put yourself in our and our fellow neighbors positions of having a mining operation in our back yard. How would you feel about this for you and your family?? Any other state I have lived in this proposal would not have a chance. This is an area of private homes, not of commercial enterprise! The key points you will consider as I understand it are: dust, noise, and visual impacts. All these are inarguably detrimental to all of us around this proposed mining operation and they can not be minimized.

The destruction of our visual enjoyment of our property can not be minimized because we are on a hill overlooking the proposed mine about 80 feet up, a 6 foot berm is not going to hide this operation. We will then have our retirement home overlooking the Anchor River, Cook Inlet and a gravel Pit! It is also obvious there is nothing they can do to minimize the dust, How?? Excavators, Loaders, rock crushers, dump trucks etc = dust and lots of noise. I hope you will consider your fellow neighbors when making this decision.

thanks for your time and consideration of this matter,

Sincerely,

Joseph and Denise Sparkman
73884 Seaward ave
Anchor Point, AK

Wall, Bruce

From: Noyes, Karyn
Sent: Tuesday, July 10, 2018 12:08 PM
To: Wall, Bruce
Subject: RE: KPB CLUP Material Site Application - Parcel 169-010-67

Bruce,

I have reviewed the proposed Conditional Land Use Permit application for a Material Site located in the Anchor Point Area, indicated by the parcel listed below.

Legal Description

T 5S R 15W SEC 5 SEWARD MERIDIAN HM 0800104 MCGEE TRACTS DEED OF RECORD BOUNDARY SURVEY TRACT B

KPB Parcel ID

16901067

Although the State of Alaska has allowed the Coastal program to lapse, the Kenai Peninsula Borough has the coastal program set in Ordinance.

This project is consistent with the Kenai Peninsula Borough's Coastal Management Plan. Future plans to excavate below the water table may require further evaluation to assess the impact changes in groundwater may have on the anadromous Anchor River.

Please feel free to contact me if you have any questions.

Sincerely,

Karyn Noyes

Resource Planner

Ph: (907) 714-2468

KENAI PENINSULA BOROUGH

**514 Funny River Road
Soldotna, Alaska 99669**



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

From: Wall, Bruce

Sent: Friday, July 06, 2018 9:34 AM

To: Best, Max; Carver, Nancy; CEPOA-RD-KFO, POA; Chandler Long (chandler.long@alaska.gov); Charley Palmer (charley.palmer@alaska.gov); Christopher Miller (chris.miller@alaska.gov); Clark Cox (clark.cox@alaska.gov); David May (DMay@kpbsd.k12.ak.us); Dearlove, Tom; Dustin Firestine (firestine.dustin@dol.gov); Harris, Bryr; Jeff Green (jeffrey.green@alaska.gov); Kyle Graham; Malone, Patrick; Mark Fink (mark.fink@alaska.gov); Michael Walton

(michael.walton@alaska.gov); Montague, Holly; Mueller, Marcus; Ninilchik Tribe (ntc@nirilchiktribe-nsn.gov); Noyes, Karyn; Shears, Jennifer; Simpson, Danika L (DOT)

Cc: Gina Debardelaben; emmitttrimble@gmail.com

Subject: KPB CLUP Material Site Application - Parcel 169-010-67

Please see the attached public notice, staff report, application, and associated documents for a conditional land use permit application.

Thanks,

Bruce Wall, AICP

Planner

208-369-0089

KENAI PENINSULA BOROUGH
144 North Eklakley Street
Girdotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

Wall, Bruce

From: Lorri Davis <homesteadart@gmail.com>
Sent: Thursday, July 12, 2018 1:01 PM
To: Wall, Bruce
Subject: Gravel pit at Danver and beach access, Lorri Davis

My comments concerning the proposal for a gravel pit on Danver and the beach access road.

I am a resident of Anchor Point. I was shocked when I heard of a plan to operate a gravel pit in an area where it is quite obvious it is a well established *residential* and *recreation* area. It makes no sense to put one persons desire to run a business of this kind in the area where it will have an impact on all people coming to recreate and live in that area. Anchor Point is a beautiful and bountiful location for families and fisherman. It has been this way for years and a gravel pit right in the middle of it all will become a deterrent to people visiting and enjoying the area. It would adversely affect the economy of Anchor Point in many ways from small businesses, to the boat launch and campgrounds. Here are the reasons I see to not permit this gravel pit.

1. We have well established campgrounds, one that borders on this property and others close by, run privately. A gravel pit next to or near by makes no sense. The noise and dust would be a great downer to anyone trying to enjoy these areas. These businesses will suffer because of it and how can a business so opposite to fishing, wildlife, and recreation fit in this area? This would no longer be a place for recreation. It is like oil and water. They do not mix. It will change the whole perception of the entire area.
2. The beach access road or Anchor Point Rd. will not be able to handle the traffic of large boats, large RV"s and gravel trucks going back and forth. Right now, a person walking on the road is taking their lives into their own hands. The road is somewhat narrow, not to mention the bridge is basically a one lane bridge. Recently there was a gas pad proposal approved on private property just up the hill off the Old Sterling Hwy that will increase truck traffic going back and forth. I am not sure this was even considered with that proposal but I see a huge increase of big trucks on these small windy roads is a disaster waiting to happen.
3. I feel heartsick for the residents who already established homes in the area of the pit. I am sure they never thought they would wake up one day to find their backyard of vegetation, trees and wildlife are to be scoured to unearth gravel. The noise is another factor. Who doesn't enjoy the sound of trucks and machinery over the sound of the ocean and peace and quiet? Many, many of us! I think it is really irresponsible and shows lack of respect for neighbors living in Anchor Point. This will have an impact on everyone's home prices and business prices for sure.
4. The environmental impact to the area is not known but it is not a positive step forward. The Kachemak Bay Bird Festival draws lots of people, every year, from out of state, to the area. One of the areas they encourage Birders to drive to, to observe all kinds of migrating birds is Anchor Point. We all have wildlife sharing our beaches and properties. Take out many acres from this very sensitive area and it will have a direct impact to the amount of wildlife. Noise, dust and loss of habitat is not a positive thing. Personally this is a big concern of mine. I am an artist and have been working on establishing children's art academy for Anchor Point that focuses on introducing kids to the habitat and beauty of Anchor Point. I was looking to purchase a small property in the area for a studio but have now reconsidered due to lack of support for the environment coming from all the proposals that seem to want to change Anchor Point to an industrial area. Frankly, I am really discouraged about the mindset. We have a world class area of recreation known for fishing in the Anchor River and ocean and it seems we would sooner destroy it all for a few people to make financial gains. It goes counter to all groups trying their hardest through volunteer time to their own finances to preserve the river and ocean at Anchor

Point. These are not "tree huggers". They are people wanting to see the area preserved in a way that supports the beauty, wildlife and small businesses that are springing up in Anchor Point that cater to those using the area. The focus is not on gravel for everyone.

In closing, I would like to say there are other profitable things Mr. Trimble can do with that land. It takes getting creative sometimes but subdividing for small cabins or something else that fits in with the mindset when people think of Anchor Point. This would be best for EVERYONE! Gravel pits are a dime a dozen around our area. We do not need more gravel pits! Just take a look at google maps to see all the properties scoured into gravel pits along the Anchor River and other locations. We need the planning committee to understand there are lots of people living in Anchor Point trying to develop a beautiful area for this world class fishing area that draws people to the area including the winter months. I frequent the beach year round and find many others do as well. This is a beloved area and space for people around Ak including those who live out of state but especially those who in live in Anchor Point. Please do not allow this proposal to go forward.

Thank you,
Lorri Davis

72640 Norwegian Woods Road
P.O. Box 946
Anchor Point, AK 99556

Wall, Bruce

From: Palmer, Charley (DEC) <charley.palmer@alaska.gov>
Sent: Thursday, July 12, 2018 1:41 PM
To: Wall, Bruce
Cc: DEC.TWUA@alaska.gov; Forgue, Scott A (DEC); Forgue, Geraldine E (DEC)
Subject: FW: KPB CLUP Material Site Application - Parcel 169-010-67
Attachments: 169-010-67_2018-07-06_Notice.pdf; 169-010-67_2018-07-03_Staff_report.pdf; 169-010-67_2018-06-21_Site_Plan.pdf; 169-010-67_2018-06-18_Application.pdf; 169-010-67_2018-06-21_Contour_Map.pdf; 169-010-67_2018-06-21_Land_Use_Map.pdf; 169-010-67_2018-06-21_Ownership_Map.pdf; 169-010-67_2018-06-21_Aerial_Map.pdf; DEC_PWS_Map.jpg; DEC-EH_DW_Recommendations for General Construction Projects_June_2016.pdf

Bruce,

Thank you for the opportunity to comment with respect to public water system (PWS) sources. Given the location(s) provided, work associated with this CLUP application is near an active registered PWS source (see attached "DEC_PWS_Map.JPG" and summary table below). For this reason, we ask that the applicant please adhere to the attached **Recommendations for General Construction Projects**, where applicable. Also, because this project is associated with a rock/gravel extraction project, we ask that the applicant adhere to the requirements and recommendations in the "[ADEC User's Manual: Best Management Practices for Gravel/Rock Aggregate Extraction Projects](#)" (Revised September 2012).

PWSID: [AK2249882](#)

Water System Name: DIV PARKS SLIDEHOLE

Water System Type: GW (Groundwater)

Water System Classification: NC (Transient, Non-Community water system)

Water System Activity Status: A (Active)

State Assigned Source ID: WL001

Source Name: WL DIV PARKS SLIDEHOLE

Source Facility ID: 35331

Source Type: WL (Well)

Source Activity Status: A (Active)

Regards,

--

Charley Palmer, *Hydrologist*

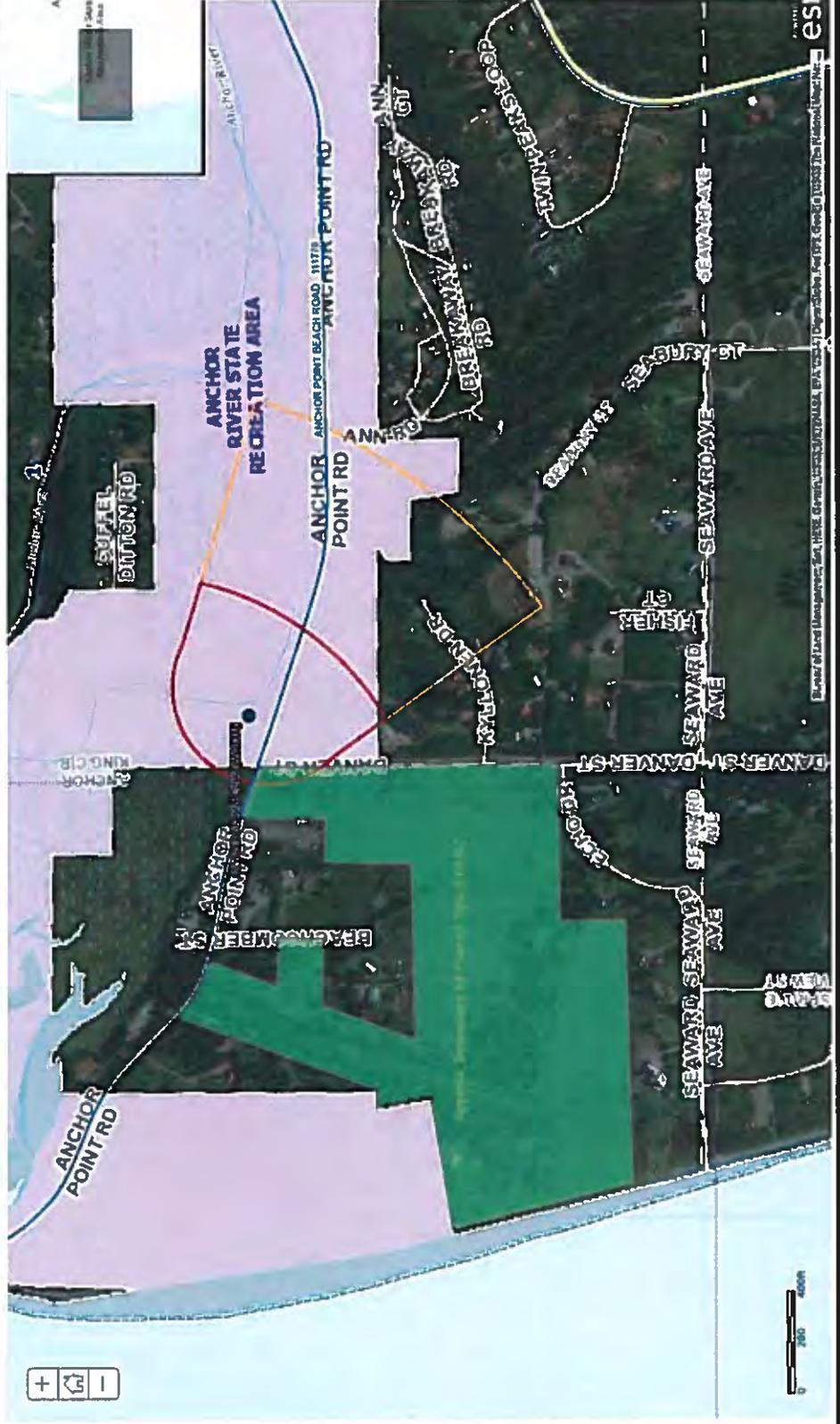
Alaska DEC Drinking Water Protection

907-269-0292

- Active Public Water System (PWS) Source Locations
- Community Water System (C)
- Non-Transient Non-Community Water System (NTNC)
- Non-Community Water System (NC)

Drinking Water Protection Areas

- A: Several Months Time of Travel or SW 1000 ft Buffer
- B: (GW) 2 Yr Time of Travel or SW 1 mile Buffer
- C: Surface Water (Watershed Boundary)
- E: Ground Water Surface Water Influence | 1000 ft Buffer
- F: Ground Water Surface Water Influence (1 mile buffer)
- G: Ground Water Surface Water Influence (Watershed boundary)
- Other Protection Areas





Alaska DEC/Division of Environmental Health-Drinking Water Program

Recommendations for General Construction Projects associated with, or near, a Public Water System (PWS)

1. Identify on a legible map the location of existing public water system (PWS) drinking water protection areas (DWPA) for PWS sources (e.g. springs, wells, or surface water intakes) that intersect the boundary of the proposed project/permit area. The DWPA's can be found using the interactive web map application, "Alaska DEC Drinking Water Protection Areas", located at <http://dec.alaska.gov/das/GIS/apps.htm>. Basic instructions for using this web map can be found at http://dec.alaska.gov/eh/dw/DWP/protection_areas_map.html.
2. Where the project/permit intersects a PWS DWPA, notify the PWS contact. PWS contact information can be obtained using the online application, *Drinking Water Watch*, <http://dec.alaska.gov/DWW/>, by entering the appropriate 6-digit PWS ID (e.g. 220025).
3. Within the identified DWPA, control stormwater discharge.
4. Within the identified DWPA, restrict project/permit activities that could significantly change the natural surface water drainage or groundwater gradient.
5. All data related to the project/permit, including but not limited to, water quality results (field and lab), survey data, water levels, subsurface lithologic descriptions and depth, and groundwater flow direction and gradient information, should be made available to the permitting agency upon request.
 - a. When associated with the development, construction, modification, or operation of a PWS, all water quality sampling and hydrologic data collection should be accomplished under the supervision of a qualified professional and follow a written sampling plan approved by the permitting entity.
6. Limit the amount of equipment storage, maintenance and operation, and other potential sources of contamination, within the following DWPA's:
 - a. Zone A DWPA (several-months-time-of-travel for contributing groundwater, or 1,000-foot buffer of the contributing surface water body and its immediate tributaries);
 - b. Zone E DWPA (1,000-foot buffer of the contributing surface water body and its immediate tributaries for a source using groundwater under the direct influence of surface water (GWUDISW)); or
 - c. *Provisional* DWPA (1,000-foot radius around a PWS source).
7. Implement best management practices where equipment storage, maintenance and operation, or other potential sources of contamination are located within a PWS DWPA and that will minimize the potential for contamination to enter the water source used by a PWS.
8. Immediately notify the nearby PWS of any identified potential contamination, such as spills or excess erosion.

Wall, Bruce

From: Teresa Ann <tajg1234567@gmail.com>
Sent: Thursday, July 12, 2018 11:22 PM
To: Planning Dept,
Cc: Wall, Bruce
Subject: Gravel permit hearing Monday July 16,2018

Kenai Peninsula Borough Planning Commission
 144 N Binkley St Soldotna, Ak 99669

July 12, 2018

Greetings to the Planning Commission Members,

I am an Alaska resident of Anchor Point and a land owner. This letter is regarding the notice we received concerning a Conditional Land use Permit Application for sand, gravel and peat extraction on their beachfront property of 41.72 acres - proposed excavation is 25.6 acres over a 15 year period by Beachcomber LLC which is owned by Emmett and Mary Trimble of Coastal Realty Anchor Point.

The proposed area is located on Anchor Point Road right in the central recreation area of the Anchor River and the Anchor Point Beach area.

Public Hearing Monday July 16, 2018 7:30pm

A gravel pit operation in this location would negatively impact our neighborhood, our community and the Anchor Point Recreation area. 15 years is a very long time to have a gravel pit operation in our residential area and in the Anchor River, Anchor Point Beach Recreational area!

I would Hope the Commission members would drive to this area before even voting on the application and studying the surrounding map of the area.

In the KPB AK code of ordinances 21.29.040.

Standards for sand, gravel or material sites. A. These material site regulatins are intended to protect against aquifer disturbance, roade 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:1-6.

1. Protects against the lowering of water sources serving other properties.

Concerning #1

The one test hole that was dug on the North end of the property indicates the the groundwater is 18 feet but does not indicate which way the ground water is moving. The question needs to be proved -does the ground water re- charge the Anchor River?

Also will the gravel pit affect the nearby residential water wells?

On the map made by the McLane Consulting Engineering.....

5 of the Clup Development Notes states.....

Wells within 100' and/or 300' of the excavation area are shown hereon

Excavation below the water table may be proposed at a future time.

Ground water is indicated at 18 ft and proposed excavation is 10 ft deep.

2. Protects against physical damage to other properties

Concerning #2

Lowering the area's properties value seems to me to be "physical damage".

3. Minimizes off-site movement of dust

Concerning #3

The dust will be on a gravel site and the winds in the area will be blowing dust into residents homes, campsites, rv parks.

4. Minimizes noise disturbance to other properties

Concerning #4

I am a year round resident living up the hill from this proposed gravel pit area.

The neighbor hood around the proposed gravel pit is a very quiet area where we can hear the eagles and seagulls even the ocean surf at times carries up the hill.

The Alaska State Halibut Campground is within hearing distance of where the equipment will be operating.

5. Minimizes visual impacts

Concerning #5

Many residents live above this proposed area so we all will be "visually affected".

There are many homes above this property that look out over this area towards the inlet view. A 6ft berm will not be able to cover the gravel pit from the hillside and hill top residents. The gravel pit area is surrounded immediately by residents and an RV park on the North side.

Further impact is the State Parks on the Anchor Point Road which is the only route for the trucks to haul the sand, gravel, and peat from this proposed gravel site. Campers and visitors to the Anchor River and Anchor Point Beach walk this road with their families and children walk and bike along the Anchor Point road back and forth to the beach area very close by.

6. Provides for alternate post-mining land uses

Concerning #6

Alternate land uses were not listed.

According to the Material Site PermittingCulp.....Conditional Land use permits are valid for only 5 years. This permit is requested for 15 years.

I want to state again:

A gravel pit operation in this location would negatively impact our neighborhood, our community and the Anchor Point Recreation area.

I sincerely Hope that you as members will not allow this gravel pit permit application.

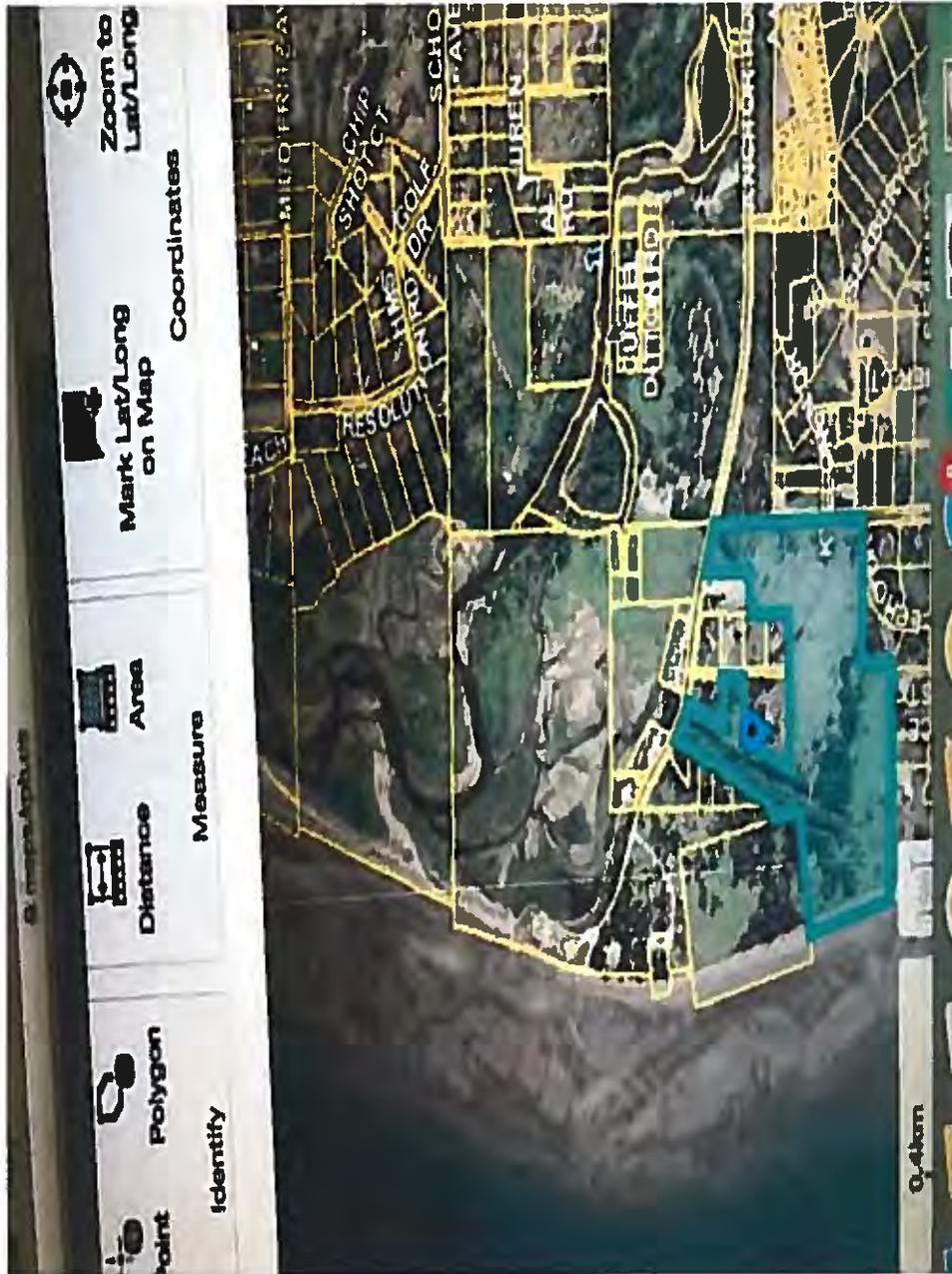
Thank you kindly for reading and listening to our concerns for our community.

Teresa Ann Jacobson Gregory
PO Box 904
Anchor Point, Alaska 99556
907-399-0063

I am adding pictures of the area.....the highlighted area is the property proposed for the gravel pit. As you can see the Anchor River and the State recreation areas are very close.

In the second picture you can see all the residential lots in the area where our homes arethese are on a hill above the proposed gravel pit.

The bottom picture shows they have already begun to remove gravel.





Wall, Bruce

From: shirley gruber <shirleytdx@yahoo.com>
Sent: Thursday, July 12, 2018 5:26 PM
To: Wall, Bruce
Subject: KPB CLUP Material site App AKA Beachcomber LLC GRAVEL PIT

Dear Mr. Bruce Wall

Bruce ,

Thank you for fielding and organizing all the public comments in the permitting process, for Beachcomber LLC gravel pit request. It is not an easy job, in my mind.

Therefore, I too appreciate the chance to submit my (our) concerns with regards to the material extraction...IE: Gravel pit. I see staff recommendation is to approve this permit, it appears to be a boiler plate request, but I ask you to reconsider that assessment for the following reasons.

I am aware of section 21.29.040 and .050 list regulations meant to protect the surrounding areas.

So Resolution 2018-23 Section 1 of Finding the Facts

Paragraph 10 item D states water is below 20 Ft, with intention to dig to only 18'

- Permit requester advocates he can dig down 40' for all the gravel he wants. The borough never checks. Thus my concern is to have water holes for swimming, or teenage hang outs bringing increased crime to the area.

Paragraph 10 item E, does not allow the removal of said water.

- Thus in a round about way the Borough has approved these potential water pits. Yes pumping it would bring habitat issues that would allow contaminated water to end up directly into the neighboring property and the Anchor River itself. Thus I also disagree with Nancy Carver that there is no habitat concerns, the loss of gravel will no longer cleanse the ground water that runs to and into the Anchor River, thus this brings us to damages.

Paragraph 11, Other property damage.

- Damage comes in two ways, physical and financial, it has been noted that the connecting property values will decline, while that gravel pit's value will have increased.

- Will the loss of tax revenue from the existing home/property owners be offset by the increase tax revenue from this pit? In this case it is likely that even the Borough will have some damages (monetary) if approving this permit.

- There is a complete buffer now in one section next to Beachcomber street and a new camp ground. To tear down those trees only to replace it with a berm for visual buffer, will cause revenue damage since a treed back drop is one reason campers stay there.

Paragraph 12, Dust control:

- As noted in the permit, Danver Road is the haul out road, Danver road is gravel road so calcium chlorides or water would be sufficient, HOWEVER this borough road is not the only haul out road to be used. Danver Road is a dead end road. In order to reach the Sterling Highway, trucks must travel the Anchor Point Beach access road. This is a paved 2 lane no shoulder road. Calcium Chloride does not work on pavement and to continually wet this road would only create a muddy and slippery surface for the other road users. And this does not address the Anchor River Bridge, which cannot support the load.

Paragraph 13 and 14 Minimizing noise and visual impacts

- Other Road users will be extremely impacted with both noise, sights and added dangers from the haul trucks. The Anchor Point Road (beach access road) is a road that is loved to death. It is a highly used road, kids, bikes boats, pets, tourists, 4th of July parades, but not eligible for much financial or DOT support. Heavy commercial use on this already loved to death road will meet its end or someone on it will.
- It is the only way in and out for the families from their home and for beach goers that utilize the boat launch plus there are 5 Camp grounds on this road. And if anything bad happens, no evacuation could occur and no emergency vehicles could get in. There needs to be an alternate route to take out the gravel.
- The vegetation berms, are good, but only if you live at the flat ground level, any one who has a home that looks to the ocean also will have to watch equipment, rock crusher, gravel shaker, the full blown commercial operation.

For these reasons I don't think it passes the grade of the Code,-but each has there own interpretation, do I think it could pass, yes with a bit of fine tuning, versus a standard boiler plate permit version, as it appears now.

Lastly, yes everyone is of the nature that "not in my back yard", so it is easy to protest and complain, but hard to have a solution. Progress comes with a price, and heck who does not have a gravel drive, or pad on their lot, **I simply ask** that the commission post pone the approval until an alternate route can be established. And some of the concerns listed be fined tuned to allow the permitting, Currently there is another gravel pit on the docket, so getting gravel should not be a hardship, and if the Borough needed a reason to finish Danver Road to the south, well that time is now.

Respectfully

Shirley Gruber

73510 Twin Peaks Loop

Anchor Point.

Wall, Bruce

From: Coowe Walker <cmwalker9@alaska.edu>
Sent: Thursday, July 12, 2018 11:13 AM
To: Wall, Bruce
Cc: Bob Shavelson; Lynn Whitmore; Sue Mauger; Blackwell, Jack D (DNR); Steven Baird; Jacob Argueta Jacobs
Subject: groundwater flow paths south of the Anchor River estuary
Attachments: AnchorEstuaryFlowpaths.jpg

Good morning.

I am attaching an image showing groundwater flowpaths associated with the Beachcomber gravel site and the Anchor River. Parcels owned by Beachcomber LLC are outlined in blue, the Anchor River watershed is outlined in yellow, and groundwater flowpaths supporting the river are shown in purple. It will be very important to not disrupt the flowpaths and keep all potential gravel operations out of the Anchor River watershed, meaning no operations north or east of the yellow line.

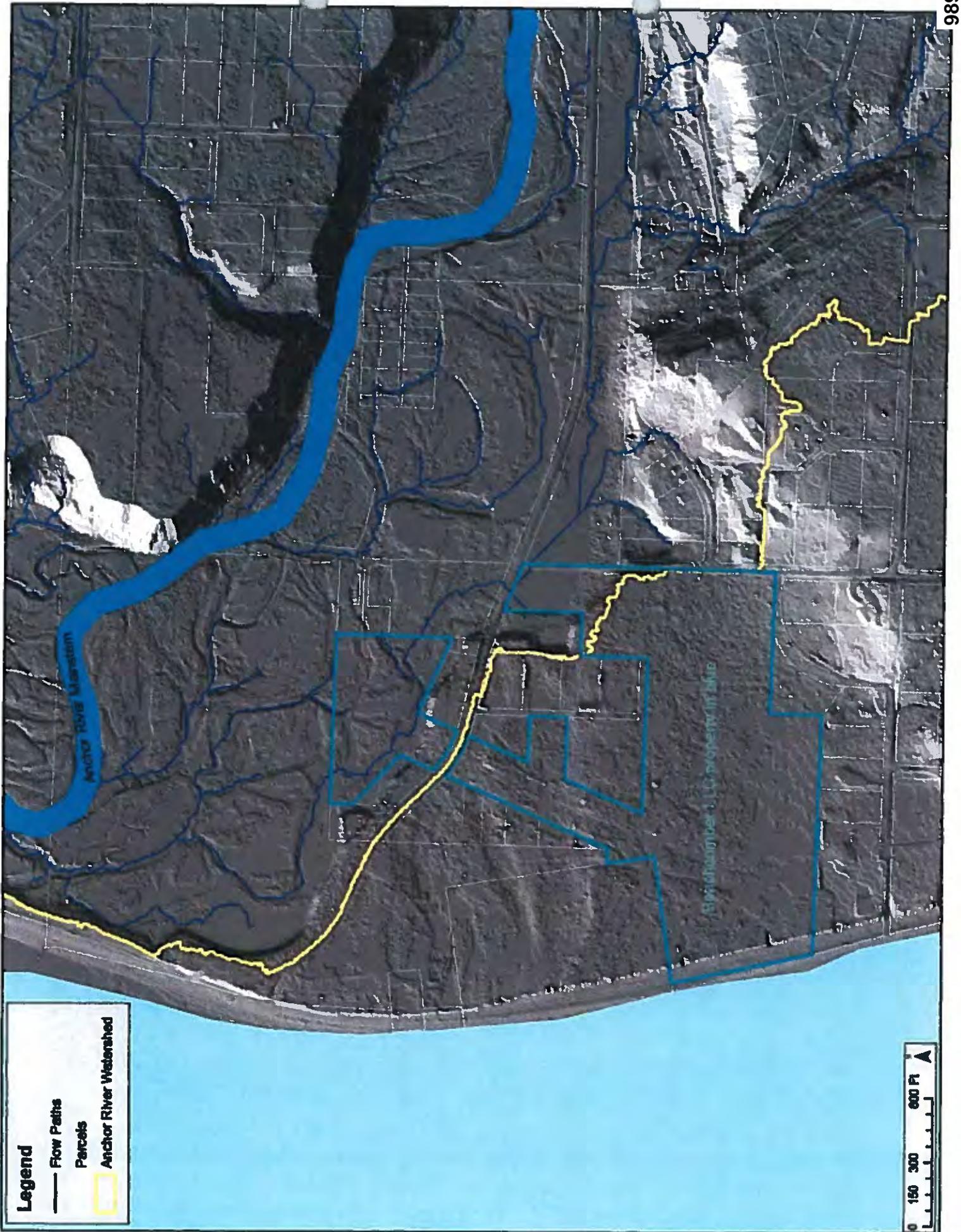
Please let me know if you have any questions, or would like more information.

Coowe

Coowe Walker
Reserve Manager
Program Watershed Ecologist
2181 Kachemak Drive
Homer, Alaska
(907) 235-4792



Kachemak Bay National Estuarine Research Reserve
Alaska Center for Conservation Science
UNIVERSITY of ALASKA ANCHORAGE



Legend

- Flow Paths
- Parcels
- Anchor River Watershed



R110

To: Kenai Borough Planning Commission Chairman
From: Linda and Mike Patrick
34897 Fisher Ct.
Anchor Point, Ak.
Phone: 907-299-2165
Subject: Beachcomber LLC proposed surface mining project

We object to the development of the site on the following grounds:

1. At a public meeting in Anchor Point(July 11, 2018), the Owner of the said Beachcomber LLC. , did not demonstrate much knowledge of the water sources in this area. Water sources are complex, full of wells at different depths and underground springs flowing towards the inlet. In my opinion, this site requires a lot more scrutiny than some other possible inland sites. I cannot prove it will interfere with water supplies, nor can Beachcomber LLC prove that it won't. * Should we not do more than drill one hole in the ground to determine the water ecology in this area due to the close proximity to residential area, Cook Inlet, and the Anchor River.
2. How does this plan protect against damage to other properties? For example, 50,000 cubic yards of material, equates to approximately 5,000 truck loads at about 52,000 pounds each, will this not damage Danver/River Road intersection, River Road itself (which is already falling apart), and a very fragile bridge over the Anchor Point river. This pathway is not only essential to Anchor Point residents, tourists from all over the world, charter businesses, campers in the State Park, and the safety of all who use the narrow road for access to their homes, State Parks, Cook Inlet, and the farthest westerly point on the United States highway system.
3. What is the plan to minimize off-site movement of dust? Regular residential traffic on Danver Rd. stirs up dust. I cannot imagine the amount of dust that will be generated by 1000's of dump trucks, gravel processors, excavating machinery, and gravel loaders. This area is subject to a sea breeze and a land breeze cycle. Sea breezes blow the dust towards residential areas and

land breezes directs dust towards beach habitat where eagles, gulls, shore birds, and marine mammals frequent, not to mention birders and other beachcombers roam. These breezes are substantial. Exactly how is the dust going to be abated and who will monitor this? Will the dust have an effect on human inhabitants near the site? Will dust affect the salmon/trout that swim nearby to enter the river and leave the river? Will dust enter the river itself and affect the reproduction of said fish? Will the dust impact plants, birds, moose, and domestic animals. Will the quality of water in Danver Lake directly across the street from the proposed site be impacted? Will the water level in that lake be impacted? Will lakes be created similar to Danver Lake during land reclamation by Beachcomber LLC. Do these lakes serve as expanded breeding grounds for mosquitoes?

4. Noise pollution abatement plan?

Land structure around the Anchor Point area in question is like an amphitheater, I can hear dogs barking on the bluffs across the river, a rooster crow just down the hill, neighbors talking on their porches, and the surf falling on the beach. I can't imagine how loud the noise would be from a gravel mine a few hundred yards away. How pleasant will it be for people to camp at the state campground with dump trucks roaring by, dust permeating the air from the operating pit and dust blowing off the trucks themselves. And yes, there is a private RV park adjacent to the proposed gravel mine. Several residences are nearby and elevated above the site, 18 foot berms (permit indicated 6ft berms) would not impact sound transmission to elevated residences. My house is about 200 yards away and approximately 80 feet above the tract of land in question. Over the past 26 years I have witnessed over 2 dozen moose born on or adjacent to my property. Will this level of noise impact the moose population in the Anchor Point area?

5. Visual impact? What is the plan to spare the several homes that overlook this area from a higher elevation from an unobstructed view of the pit?
6. Property values? The owner of Beachcomber LLC, a real estate agent, stated this permit would improve the value of his land and in response to another question, he said it could decrease the

value of the surrounding view properties. There were approximately 50 people there at the meeting at the VFW in Anchor Point on the 11th of July. Very few of them were happy.

****** This permit should not be issued for this area because of a lack of healthy infrastructure to support it. It will create an safety hazard to all that travel the River Road and Danver Road. It will impact living organisms (humans, plants, animals) in a negative way with its noise and dust. Keep in mind that this will impact thousands of people who visit this area during the summer. And, it will destroy the property of the Alaskan people in the form of the state maintained road and bridge at a time when the state is in financial turmoil and cannot afford to fix this infrastructure.**

July 12, 2013

Planning Commission Chairman
144 N. Binkley St.
Soldotna, Alaska 99669

RE: Addendum to our written Testimony dated July 9, 2018, Regarding Beachcomber LLC's Application for a Permit for Sand, Gravel, and Peat Extraction on A Portion of Parcel Number 169-010-67, Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104), Location: 74185 Anchor Point Road

Dear Planning Commission:

We attended a meeting last night with Emmitt Trimble at the Anchor Point VFS, who we found out was owner of the land, and Beachcomber LLC's. At the meeting he said, that he had not had anyone come to him about his plan for the above Gravel Pit. He also mentioned he had given his mineral rights over to some (he was not specific on who) oil and gas company, and he only planned to do a small amount of extraction at this time and as neighborhood persons attending this meeting, we should trust him. When asked why he was then asking for these permits covering the whole area, he said he was asking for this permit as there were suppose to be a changes to Kenai Peninsula Borough more stringent regulations sometime in September for Gravel Pits. He wanted to get the permits to cover so he'd have the permit before any new requirements were made.

At the meeting we were told the Planning Board made your determination as to if a party could get these permits was by satisfying the current Regulations: "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: (if an oil and gas company took this property area, this might be a factor, which Mr. Emmitt has the right to sell it to.) Plus, the wetland areas, water birds, etc. would be affected by this. Water is like "gold" here to make it drinkable.

2. Protects against physical damage to other properties; our way of exit from Anchor point is from Danver and the State Road, Anchor Point Road, and the Borough Roads, of the old Sterling Highway. (The problems of the roads and physical damage is covered in our original message Under **Public Safety**. We know you aren't interested in hearing about the State road; however, Danver is very important to us. Actually, our road Seabury Court is more a trail then a road in the borough.

3. Minimize the off-date movement of dust: that is pretty hard to do and would require a lot more water, etc. to do this. We lived in an apartment near a gravel area with trucks moving a lot, and the extra dust in the house is tremendous even with care. This can cause more upper respiratory conditions.

4. Minimizes noise disturbance to other properties. In our original written testimony we address that under **General Comments, and Environmental Impact Statement**. The proposed gravel pit site is centered in a large bowl enclosed by 50 to 100 foot hill sides on two sides and most of a 3rd side on the South side. We can hear loud noises in the Park area throughout the summer so we know a large gravel operation to include a major rock crushing operation will disturb us. Heavy trucks that now infrequently use the Anchor River Road and Danver Ave. create noise levels that already create a disturbance. The increased use of heavy trucks and a rock crusher will make our peace and quiet a thing of the past. When asked, if the development of a gravel pit where it is proposed will lower all the homeowner property values at a meeting with him last night, he admitted that all our property values will be lowered due to such activity. The application proposes to operate the gravel pit from 6:00 a.m. to 10:00 p.m.

July 12, 2013

This is unacceptable to us as a private property owners. The idea that a 50 foot buffer on some of the sides of the project is ludicrous. We already know how periodic noise from heavy duty trucks and road graders negatively effect our enjoyment of our property. And thats before the applicant has even removed more trees and natural habitat in the proposed gravel pit area. What are we to do when the applicant himself admits that a gravel pit where he proposes to place it will lower all our property values? It seems this regulation is the only one that has any hope of protecting us from the noise pollution the gravel pit will create.

5. Minimizes visual impacts..even a 12 foot berm is not something to eliminate or minimize the visual impact. (Our testimony on Property Value and General Comments talks to that.)

6. Provides for alternate post-mining land uses. Selling the area to an Oil and Gas Company or another big Gravel Pit company could be done, etc. The permitting doesn't talk to that.

Sincerely,

Gary L. Sheridan
Eileen D. Sheridan
P.O. Box 661
Anchor Point, Ak 99556-0661

1-907-235-5542
CC: Bruce Wall, AICP. bwall@kpb.us

R115

Wall, Bruce

From: Tom Alexander <pmedic1568@yahoo.com>
Sent: Friday, July 13, 2018 4:59 PM
To: Wall, Bruce
Subject: Opposition to Denver Gravel Pit Project

Dear Sir,

This letter constitutes my wife and I's objection to the placement of a gravel pit at the southwest corner of the intersection of Denver Road and Anchor Point Beach Road. We are property owners and taxpayers at 73734 Seaward Avenue, Anchor Point, Alaska 99665. In our opinion, Beachcomber, LLC has not shown, and has no intention of showing any good faith as a responsible gravel pit owner/operator at this location. The myriad concerns brought up during a recent public meeting at the Anchor Point VFW were met with very negative remarks by Beachcomber, LLC, and with no attempts at offering any solutions to any of the concerns. Our wish would be that Beachcomber, LLC NOT be granted a permit to continue with this venture. Thank you in this matter.

Sincerely,

Tom and Patty Alexander

Wall, Bruce

From: Joseph Allred <hungryegret@outlook.com>
Sent: Friday, July 13, 2018 6:32 PM
To: Wall, Bruce
Subject: Tremble gravel pit.

I hope that the borough will look at this

Project critically.. while I understand the value and necessity of gravel in our lives, I also understand the not so obvious value. There is an estuary just north, homes all around. And in summer, Anchor points economic engine. All at ground zero. Water migrates thru the whole area, (into the estuary/river) as a purifying system, its value inestimable.

Also there will be an economic Loss to all who own real estate in the area. Thanks for your careful consideration.

Safety and The condition of the roads must be

Factored in as well. Thanks.

Get [Outlook for Android](#)

REEVES AMODIO LLC
ATTORNEYS AT LAW



Direct Phone
(907) 222.7107

Direct Facsimile
(907) 222.7199

E-Mail
rob@reevesamodio.ca

July 13, 2018

Blair Martin
Chairman
Kenai Peninsula Borough Planning Commission
144 N. Binkley Street
Soldotna, AK 99669

Re: Conditional Use Permit application for a Material Site by Beachcomber, LLC, at Parcel Number 169-010-67

Dear Mr. Martin:

Reeves Amodio, LLC, submits comments on a Conditional Use Permit application for a Material Site by Beachcomber, LLC, at Parcel Number 169-010-67, on behalf of Robert Baker II as Trustee for the R O Baker II Revocable Trust ("Baker"). Baker owns Parcel Number 169-230-19, at 74160 Seaward Avenue, Anchor Point, AK 99556 ("Baker Parcel"). The Baker Parcel is one of six residential properties bordering Parcel Number 169-010-67, 74185 Anchor Point Road, Anchor Point, AK 99556 ("Beachcomber Parcel") to the south. Beachcomber LLC ("Beachcomber") owns the Beachcomber Parcel.

Baker opposes Beachcomber's application for a Conditional Use Permit for a gravel pit on the Beachcomber Parcel ("Application").

1. A gravel pit at this location cannot be adequately regulated to protect the environment.

The Beachcomber Parcel is bounded to the west by a Cook Inlet beach where eagles regularly feed, seals and sea otters rest and swim, Boy Scouts camp, and local homeowners regularly picnic. To the north is a large undeveloped Bureau of Land Management Parcel (which itself backs up to the Anchor River State Recreation Area), and immediately across the Anchor Point Road is a world-class estuary for the Anchor River itself, which supports three anadromous salmon (king, silver, and pink salmon) plus Dolly Varden and steelhead trout.

Dewatering and drainage will impact groundwater flowing downgradient from the pit and into the Anchor River. The current Application proposes to provide a 2' vertical buffer to groundwater, half of the 4' vertical separation between extraction operations and

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the seasonal high water table¹ recommended by the Alaska Department of Environmental Conservation (ADEC). Increasing the risk to groundwater even further, the Application also states that Beachcomber intends to modify the permit and enter the water table in the future. This seems likely to mean that Beachcomber will be dewatering the pit, altering groundwater flow. Fish are sensitive to such alterations, including both dewatering and flooding activities.²

Beachcomber's application is misleading regarding depth to groundwater. Beachcomber drilled its well at essentially the highest point in the parcel,³ adjacent to the lowest point in the parcel.⁴ We believe that sampling at this location, due to the extreme differential from the embankment, provides insufficient data to accurately measure depth to groundwater. In fact, we question whether groundwater is at a 20' depth. Considering that most of the property is at around 40' in elevation, with the highest portion to the southeast, the groundwater is likely to be encountered at much shallower depths throughout most of Beachcomber's property.

Coastal erosion is also factor. Development of this gravel pit adjacent to the beach will exacerbate erosion. Kenai Peninsula Borough (KPB or Borough) records show that the adjacent beach is eroding at a rate of between 0.5-0.9 feet per year. Although Beachcomber is suggesting a buffer of at least 50' to the beach, over the development's lifespan that buffer is estimated to be cut down by up to 13.5'. Climate change and rising sea levels will only exacerbate this erosion. Water is likely to eventually spill into the pit and erode into other adjacent properties.

The Beachcomber Parcel itself holds numerous nesting sites, and our client observed one or more eagle nests. The noise from equipment, traffic, and the crusher, which is likely to exceed 90 dB(A),⁵ the equivalent of operating a lawnmower or a motorcycle,⁶ will harass wildlife and drive it away. Developing a gravel pit at this site will also destroy the high habitat values of the parcel.⁷ Fugitive dust also will be driven by wind from the gravel pit into the estuary, potentially adversely affecting water quality in the Anchor River. Calcium chloride and water will be used to reduce dust generated by trucks and mining operations within the pit, but it cannot be used in winter. Furthermore, calcium chloride will do nothing to address dust generated by operating

¹ SHANNON & WILSON, INC., ALASKA DEP'T OF ENVTL. CONS., BEST MANAGEMENT PRACTICES FOR GRAVEL/ROCK AGGREGATE EXTRACTION PROJECTS 12 (2012) (hereinafter "ADEC USER MANUAL").

² LA ROCHE + ASSOCIATES & KENAI PEN. BOROUGH COASTAL MGMT. PROGRAM STAFF, KENAI PENINSULA BOROUGH COASTAL ZONE MANAGEMENT PLAN 119 (2008) (hereinafter "CZMP").

³ Excepting an outlier peak in the southeast corner, which is a component of the larger substantial uphill grade to the southeast.

⁴ Excepting the beach itself, below the 30' bluff.

⁵ E. R. BAUER & E. R. SPENCER, SNAPSHOT OF NOISE AND WORKER EXPOSURES IN SAND AND GRAVEL OPERATIONS 1 (2018), available at <http://www.vyccares.ca/wp-content/uploads/2018/01/sonaw.pdf> (last accessed July 13, 2018).

⁶ IAC ACOUSTICS, SOUND SEAL INC., COMPARATIVE EXAMPLES OF NOISE LEVELS 1 (2018), at <http://www.industrialnoisecontrol.com/comparative-noise-examples.htm> (last accessed July 13, 2018).

⁷ While clearing the trees will also destroy habitat, even a residential development will destroy significantly less habitat, and will ultimately provide continued space for wildlife corridors.

equipment such as the crusher and/or aggregate separator. The Coastal Zone Management Plan adopted by the Borough as a planning document states that, in siting facilities and development activities, the KPB should “[s]ite developments away from highly sensitive wildlife habitats and use area including . . . waterfowl and shorebird nesting, molting, and staging areas; . . . [and] marine mammal haul-outs”⁸

2. A gravel pit at this location will undermine recreational values.

As earlier discussed, noise and habitat destruction could drive wildlife away not only from the Beachcomber Parcel, but also from adjacent federal and state lands, including the Anchor River State Recreation Area. Anchor Point’s economy is significantly influenced by seasonal recreation, in the summer, when construction activities and the gravel pit’s operations will be heaviest. Anglers fishing on the Anchor River only 1500’ away will be negatively affected by equipment noise and fugitive dust. Similarly, campers in the Anchor River State Recreation Area campgrounds, as close as 750’ away, will be affected. With wildlife being pushed away, the opportunities to observe and photograph birds and marine mammals will also be gone.

The Anchor Point Road is the public access to the Anchor River State Recreation Area and the tractor launch permitted by Alaska State Parks. This road is extremely narrow and not designed to withstand the regular use from heavy dump trucks.⁹ Nonetheless, Beachcomber proposes to use the Anchor River Road, adding its dump trucks to the existing car, boat and motor home traffic. It is easy to foresee incidents between local residents or tourists with trucks. There is no shoulder on this road, and it is bordered by ditches. There is a legitimate safety concern.

3. A gravel pit at this location will destroy the residential character of the neighborhood.

Beachcomber is proposing to place a 27.7-acre industrial site in the center of a residential neighborhood. KPB records show 13 “residential” classified parcels either bordering the Beachcomber Parcel or very near to it. Without including the dozen or so parcels classified as “undeveloped” and likely destined to have houses, there are approximately 40 “residential” parcels within 1500’ of Beachcomber’s proposed pit.

There are wetlands in the parcel’s extreme northeast corner. Beachcomber’s only access route will be down Denver Street (which presently serves only residences), onto the Anchor River Road and to the Old Sterling Highway. Denver Street does not satisfy ADEC’s best management practices for access to material extraction sites because it is not a dedicated haul road and it is too narrow.¹⁰ Further, there are well over 100 residences that depend on the Anchor River Road for access. Each of those home owners and their families will be forced to compete with heavy dump trucks in trips to and from their homes, in addition to the summer seasonal traffic. Although the

⁸ CZMP, *supra* n.2, at 114.

⁹ The road suffers significantly just from the existing traffic; even after being paved, the increased seasonal recreational traffic with the tractor launch’s opening, combined with the lack of quality underlayment, causes substantial cracks, ruts, and dips in the road even today.

¹⁰ ADEC USER MANUAL, *supra* n.1 at 46.

Anchor River Road is maintained by the State, Danver Street is maintained by the Borough. The Borough will see increased road maintenance costs.

Beachcomber proposes only 6' high berms as a buffer for the adjacent residential parcels. This berm will do very little to impede noise into those homes, especially since most were built above grade with crawlspaces because of the high-water tables in the area. A house built on a 3' crawlspace places the top of the berm at a homeowner's waist height. Noise will travel directly to and through windows and doors, even on a first floor. As noted above, noise will exceed 90 dB(A). The windows on the second floors will provide a clear views of Beachcomber's industrial activities; namely, the rock crusher.

A berm will do nothing to prevent children from crossing into the industrial area. It will be an attractive nuisance. Children could play in or on the equipment, creating a public safety hazard. The Beachcomber Parcel is less than a mile from Chapman Elementary School, and children ride bicycles and ATVs to/from the school (as a play area when it is closed) and to and from the Anchor Point beach. Children using the school playground could also be affected by fugitive dust, and, perhaps more significantly, the learning environment will be disturbed by noise from the gravel pit's operation.

Recent testimony before the Materials Site Working Group documented how winds carry gravel fugitive dust from pits onto adjacent residences. One commenter in particular described how in the winter, extreme winds effectively sandblast his home, vehicles, etc. Given the proximity to Cook Inlet and the Anchor River flats, which is located within a HUD wind classification Zone III,¹¹ even a generous application of water or calcium chloride will not stop a 110 mph wind from blasting dust throughout the area.

A person's home is his family's largest financial investment. During recent testimony before the Material Site Working Group, the Borough Assessor stated that although a gravel pit nearby does not automatically reduce an assessment, any comparable sales that show a reduction in home value based on the gravel pit will cause the assessor to reduce assessments for all homes near the operation. Families do not want to live next to an industrial operation, particularly one that runs nearly continuously during the summer. Residents along Danver Street can expect their property appraisals (and assessments) to fall by approximately 36%¹² if the Planning Commission approves the Application.

While Baker recognizes Beachcomber's right to develop its property, he reasonably did not expect a 27.7-acre industrial facility adjacent to his backyard and within his view shed. Based on the development patterns off Danver Street, he reasonably expected low-density rural residential and/or recreational property development for the Beachcomber Parcel. This would

¹¹ FEDERAL EMERGENCY MANAGEMENT AGENCY, WIND ZONE COMPARISONS G-3 (2013), available at https://www.fema.gov/media-library-data/20130726-1501-20490-5921/fema_p85_apndx_g.pdf (last accessed July 13, 2018).

¹² See DIANE HITE, SUMMARY ANALYSIS: IMPACT OF OPERATIONAL GRAVEL PIT ON HOUSE VALUES, DELAWARE COUNTY, OHIO 2 (2006).

bring more neighbors, more back yards and houses. Under no circumstances is it reasonable to replace those houses with a large industrial complex.

Fundamentally, gravel pits are not pretty. While the 50' buffer the staff recommends may alleviate some of the impacts to the east, it does nothing for Baker and others on the Seaward Avenue parcels to the south. Even the proposed 12' high berm, with no buffer, will not mitigate fugitive dust or muffle sound in second story bedrooms. If it issues a permit, the Planning Commission should require both a 12' high berm and a 50' vegetated buffer around the entire Beachcomber Parcel as a permit condition under its authority in KPB 21.29.050(A)(2)(c).

The staff recommends prohibiting operation of rock crushing equipment between 10:00 p.m. and 6:00 a.m. This condition does not help residents who work nights. Baker, for example, travels to and from his work assignments at odd hours. Furthermore, the noise and dust from a rock crusher operating between 3:00 p.m. to 5:00 p.m. will interfere with after-school activities, including play and homework. Noise and dust from 5:00 p.m. to 10:00 p.m. interferes with families' evening activities (reading, watching television, or conversing with family over dinner). Certainly, 90 dB(A) of noise eliminates the possibility of enjoying any outdoors time in the backyard.

4. Anchor Point does not need an additional gravel pit.

As the Planning Commission is certainly aware, gravel pit development is rampant, and permitting such pits has been a hotly contested issue in the Anchor Point community in the past. KPB records show at least 50 parcels in the area that either qualify as a Prior Existing Use pit or have a Conditional Land Use Permit to operate a gravel pit. While the availability of low cost gravel and a few jobs in the materials industry could be important for a small community, Anchor Point is flush with gravel sites. Many of these pits are in more rural areas. There is no need to authorize a new gravel pit in a residential and recreational area close to Anchor Point's downtown core. There is much gravel already available locally.

5. The Application should be denied until the Kenai Peninsula Borough implements recommendations from the Material Site Work Group.

Earlier this year, the KPB adopted Resolution 2018-004, establishing a Material Site Work Group. The resolution discusses the fact that the last code update took place over 12 years ago and that members of the public expressed many concerns "about dust, noise, water, and negative secondary impacts of material sites." The KPB Assembly's stated intent was to collaborate with the public and industry to discuss changes to the material site code. Numerous homeowners living near existing gravel pits voiced concerns regarding their individual experiences with ruined water, flooding, noise (both from crushers and hauling), and dust. Although the Material Site Work Group took public testimony and considered reclamation, buffers, noise, dust, roads, public safety, and quality of life for home owners, it took no action and adjourned for the summer of 2018 *at industry request* due to the construction season.

Beachcomber wishes to avoid the public concerns being addressed by seeking authorization *while* the changes are being addressed. The Planning Commission should not allow

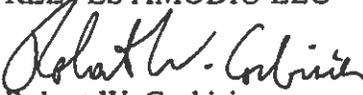
July 13, 2018
Page 6

Beachcomber to use industry's requested delay to avoid community concerns. Rather than grant the application, the Planning Commission should deny or stay the application and process it only after the Material Site Work Group's recommendations are considered and acted upon by the KPB Assembly.

If the Planning Commission is unwilling to deny or stay the Application, it should only approve Beachcomber's Phase I development: the 6.2-acre area in the northeast. At Beachcomber's proposed cumulative acreage disturbance plan over 15-year life, it would take 3.3 years to develop Phase I. This would give the Material Site Working Group and the KPB enough time to develop and implement a comprehensive regulatory scheme that addresses homeowner concerns.

CONCLUSION

For the foregoing reasons, Baker urges the Planning Commission to deny the permit. If it issues any permit, even for the limited Phase I development, the commission should require additional conditions to restrict operational times and require Beachcomber to provide a 50' or greater vegetated buffer along the southern border along with the 12' high berms.

Sincerely,
REEVES AMODIO LLC

Robert W. Corbisier
Counsel for Robert Baker, II, as Trustee

Cc: Cook Inlet Keeper
3734 Ben Walters Lane
Homer, AK 99603

R123

13 July 2018

Kenai Peninsula Planning Commission
144 Binkley Street
Soldotna, AK 99669

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed conditional land use permit for parcel 169-010-67 (applicant Beachcomber LLC).

I am the current owner of Sleepy Bear Cabins LLC located at 34053 North Fork Road, Anchor Point, AK 99556. I have the following concerns and proposals:

1. **Issue - Negative impact to the Anchor River State Recreational Area:** The Anchor Point Community and its businesses rely heavily on the recreation area. Whether directly or indirectly the residents and businesses will be negatively impacted by the noise pollution and industrial traffic the location of this gravel pit will cause. The recreational area is financially vital to the Anchor Point tourism industry. My business as well as others rely on the tourist activity that the park brings for the river, boat launch, and beach. The additional noise of the heavy equipment coming from the gravel pit will disrupt the visitors and park guests. This will drive down the number of tourists wishing to visit the recreational area and therefore Anchor Point, which will financially impact and potentially devastate our local businesses and economy.
2. **Issue - Condition of and safety issue with the Anchor Point Road:** Due to its current condition, the Anchor Point Road is currently not equipped to handle the additional industrial trucks and heavy equipment. The road does not have adequate shoulders or any sidewalks / bike paths for pedestrians and bicyclists. There is great potential not only for the road to be devastated and therefore access to the recreational area to be heavily impacted, but also an increase for accident and injury.

Proposals:

1. **Postpone a decision on this permit:** Allow more time for the Planning Commission as well as residents to further investigate and understand the overall impact to residential property, the Anchor Point Road, the state recreation area, and the Anchor Point community as a whole, and better determine additional requirement that must be met in order for the permit to be issued. the location of the property is unique and therefore poses unique issues. The application appears to abide by the regulations currently in place. However, the current regulations do not take into account the uniqueness of the surrounding properties and recreation area.
2. **If the permit is approved the following additional requirements should be considered:**
 - a. Larger vegetation buffer: The minimum buffer should be more than 50 feet
 - b. All berms should be 12 feet
 - c. The entire property should be required to have vegetation buffers and 12-foot berms (with the exception of the access point to the property)
 - d. The minimum distance from waterbodies should be more than 100 feet and digging below the water table should not be permitted

- e. The applicant should voluntarily restrict operation days and hours to include digging, processing, and hauling as to not impede the quality of life for residents and recreational area visitors (i.e. operating hours 9am-6pm, no operation on weekends, etc.)
- f. Improvements to Anchor Point road should be done to correct the before mentioned issues prior to the permit being approved. A maintenance / repair provision on the part of the applicant should be in place as well

When I moved back home to Alaska four years ago and chose Anchor Point as my new permanent home, I did so to live back in a rural community where nature and the wild of Alaska are out my front door. I am not one to impede another's ability to prosper and do as they wish with their land. However, I do find I am put in a position to speak up when it impedes myself and others from doing the same.

As a community we need to find ways to work together to resolve conflicts of interest to ensure harmony with our neighbors. What is best for one may not be what is best for the majority or the community. Open communication and cooperation are needed to ensure a healthy community. Like myself, I don't believe the majority here wish to live, work, and play in an industrial area.

Thank you for taking the time to read and carefully / thoughtfully consider my comments and proposals.

Sincerely,

Teresa Cosman
Sleepy Bear Cabins LLC
907-235-5625
Sleepybear@alaska.net

Wall, Bruce

From: David Driggers <david.driggers@gmail.com>
Sent: Friday, July 13, 2018 8:51 PM
To: Planning Dept.; Wall, Bruce
Cc: Pierce, Charlie; Representative.Paul.Seaton@akleg.gov
Subject: Beachcomber LLC Gravel Pit Anchor Point

Dear Mr. Wall,

I am writing to provide public comment on the proposed material site permit on parcel 169-010-67. As the owner of property adjacent to the proposed material site, I was disappointed that I did not receive a mailed notice from the borough. I did however attend a locally organized public meeting at the VFW at which there was nearly universal opposition to proposed material site.

My primary concerns for the permit are based around safety along Anchor Point Road. As you know, the proposed material site is in the middle of the Anchor River State Recreation Area which is heavily used during the summer months. The community has already met with Representative Seaton, Assemblyman Dunne, Mayor Pierce, and various representatives from the State of Alaska to address the safety issues along Anchor Point Road. We have heavy pedestrian and vehicle traffic on the shoulder-less Anchor Point Road during the summer months, and adding heavy traffic to the road in the form of dump trucks will just exacerbate an already dangerous situation. I have had to move off the road very quickly to avoid being hit multiple times already this year. Adding even more heavy traffic with drivers who are motivated to make quick runs is a recipe for disaster.

This is especially concerning as we've already met with representatives at all levels of the government, and explained our concerns. We have made this concern public via meetings and the press:

http://www.homertribune.com/article/1728anchor_point_petitions_for_state_help

I also thought that it was a bit ironic that as I was driving to the community meeting about the material site, I was tailgated on Anchor Point Road by a 14 yard dump truck. I would ask the planning commission to please solve the access issue (or at least investigate options) prior to issuing a material site permit.

Kind Regards,

David Driggers

Wall, Bruce

From: David Gregory <davidgregory0754@gmail.com>
Sent: Friday, July 13, 2018 12:53 PM
To: Wall, Bruce
Subject: Gravel pit application by Beachcomber llc. on Denver St.

Planning Commission Chairman

Mr Chairman,

I am David Gregory. I live on Seaward Ave where my wife and I own our home, and within 1/2 mile of the proposed sand gravel and peat operation proposed by Beachcomer LLC.

The first and foremost reason I oppose the permit for this operation is the possibility for it to alter the well water activity of wells in the area. This operation would be in the lowest possible point in the area and could cause a lowering of water level in nearby wells.

Secondly is the noise and dust created by machinery and equipment necessary to operate the operation.. Noise travels upward very well. A 6 ft berm is totally insufficient to control that noise. Nor will it control the dust created. Dust is a health hazard to many people and will travel a great distance with the prevailing winds, which quite often blow very strong in that area.

The increase of heavy truck traffic will only increase the undesirable noise and dust. It will also be destructive to the road surfaces.

David Gregory
P O Box 904
Anchor Point, AK 99556
907 399 2510

Hartley, Patricia

From: Planning Dept,
Sent: Friday, July 13, 2018 10:03 AM
To: Wall, Bruce
Cc: Hartley, Patricia
Subject: FW: BeachcomberLLC Permit request

-----Original Message-----

From: Marie Herdegen [mailto:marieherdegen@icloud.com]
Sent: Friday, July 13, 2018 10:01 AM
To: Planning Dept,
Subject: BeachcomberLLC Permit request

Dear Planning Commission Chairman,
I would like to voice my opposition to Beachcomber LLC, tract number 169-010-67, 74185 Anchor Point Rd, Anchor Point, Ak 99556 request for conditional land use permit extraction. I believe this is an inappropriate use of residential property.

Marie Herdegen
69195 Karen Circle
Anchor Point, Ak 99556

Sent from my iPad



July 13, 2018

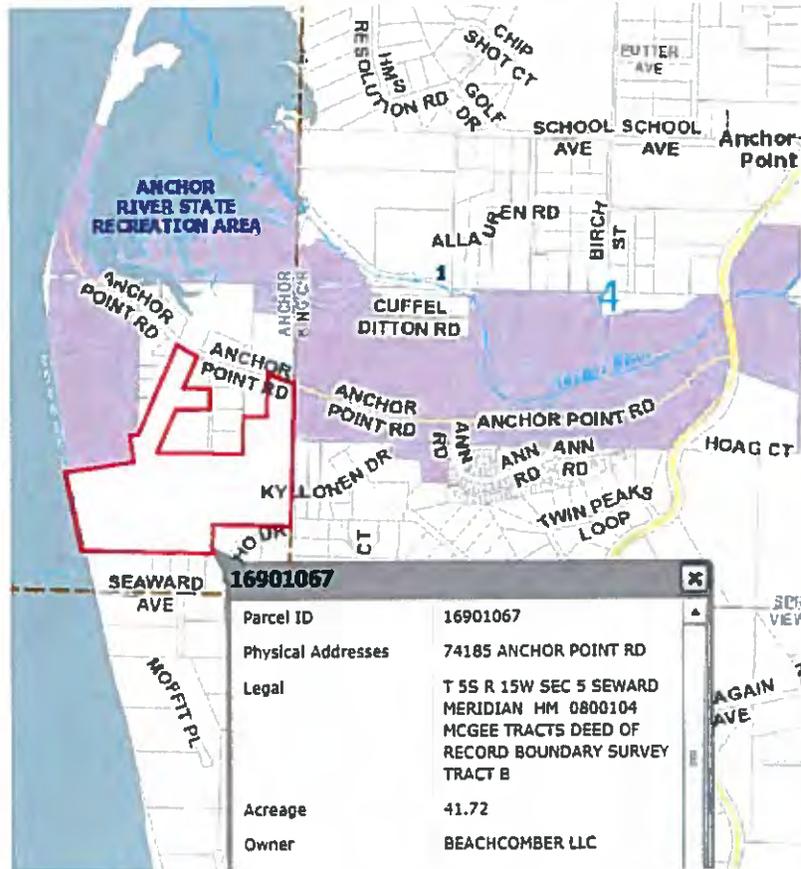
Dear Borough Planning Commission members

At its monthly meeting on July 11, the Homer Soil and Water Conservation District was asked to comment on the Notice of Public Hearing for a Conditional Land Use Permit for a material site. The site is located on parcel number 16901067 and is outlined in red in the map below. Homer Soil and Water supports responsible development of peninsula resources.

We note that the landowner who made this request was given less than a week to submit comments from the date they received the notification in the mail.

Homer Soil and Water Conservation District Board of Supervisors identified a number of questions, issues, and concerns related to the Land Use Permit application. Although the board took no further action at its meeting, it emphasizes that this location for a gravel pit is unique on the peninsula, as outlined below, and that proper vetting of this project is essential.

The LUP site presents unique challenges because of its proximity to the Cook Inlet coast and to coastal processes, including saltwater intrusion, storm surges, and tsunamis. The site is also unique because of its proximity to the mouth of the Anchor River. Finally, the site is adjacent to the Anchor River State Recreation Area (see above). Two campgrounds are very near the parcel.

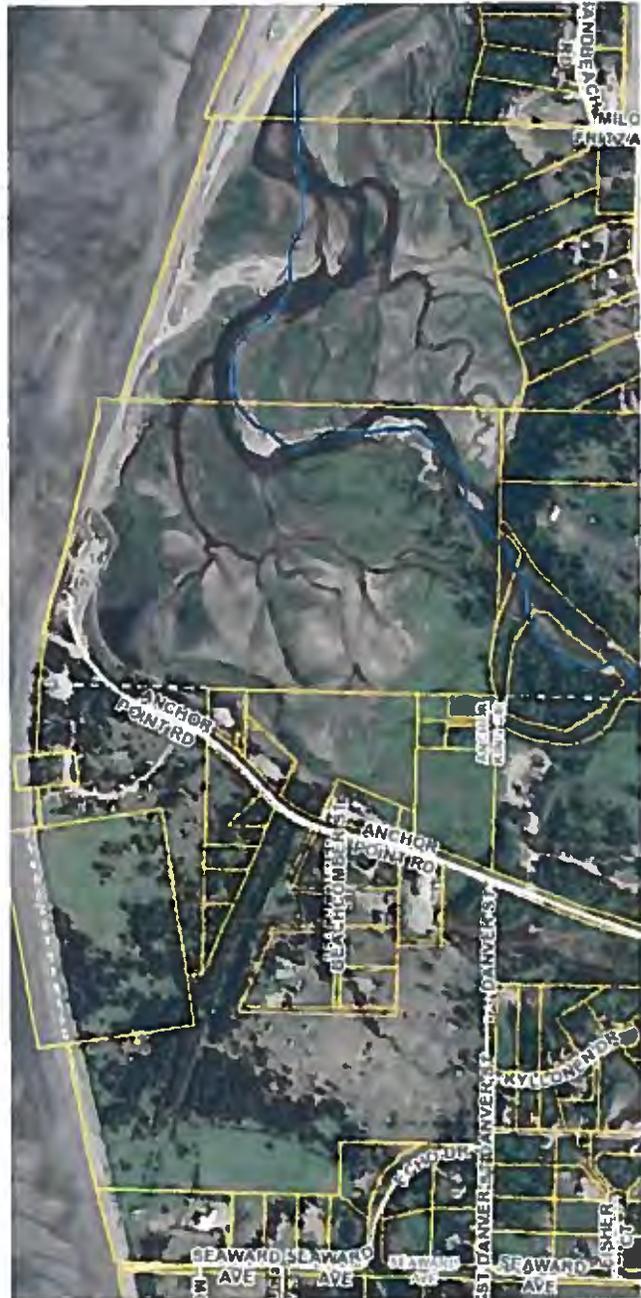


The Board recommends that the Borough Planning Commission take the extra time it needs to properly consider the unique features of this site before making a final decision on the LUP application. The commission may want to seek information from entities such as the Anchor Point Chamber of Commerce, Alaska Division of Parks and Outdoor Recreation, Alaska Department of Fish and Game, and Alaska Department of Environmental Conservation (because of possible saltwater intrusion impacts to water quality in wells close to the gravel pit). Homer Soil and Water would also urge the Borough Planning Commission to take such comments into full and careful consideration during its decision making.

"To provide education and leadership in the conservation and sustainable use of soil- and water-related resources through cooperative programs that protect, restore and improve our environment."

Thank you for this opportunity to comment, and below is the list of questions, issues, and concerns identified during our board meeting.

- What impacts to the gravel pit are likely given its vulnerability to winter storms and storm surges?
- Specifically, what design features of the proposed coastal berm have been included to prevent storm surges from eroding the berm and causing its collapse?
- Has the applicant identified increased traffic volumes and weight likely on Anchor Point Road as a result of material site operations? How will road impacts be addressed?
- What information has been gathered to determine the likelihood of saltwater intrusion into gravel pit subsoils as a result of reductions in hydraulic pressure caused by removal of gravel?
- Is the gravel pit site within the historic Anchor River floodplain and, if so, what impacts to the river system might occur if the mainstem channel migrated into the gravel pit, for example, during 100-year or larger storm events?
- What information about local rates and impacts of sea level rise have been considered during project planning?
- Is there a long-term goal to establish a harbor at this site? If so, what comprehensive, integrated planning process is now underway to evaluate the long-term use of the area?
- What data have been collected about local noise levels from proposed gravel operations, including gravel trucks, and the effects of noise on campers and residents? Will noise-generating activities be restricted to certain hours?
- Are site-specific reclamation plans available for public and agency review?
- Have the potential economic impacts to tourism been evaluated by the applicant or any other entity?
- As shown in the maps and elevation profile below, much of the site is between 30 and 40 ft above sea level. What will be the greatest depth of material excavation above sea level? What impacts will removal of this overburden have on groundwater levels and nearby water quality?



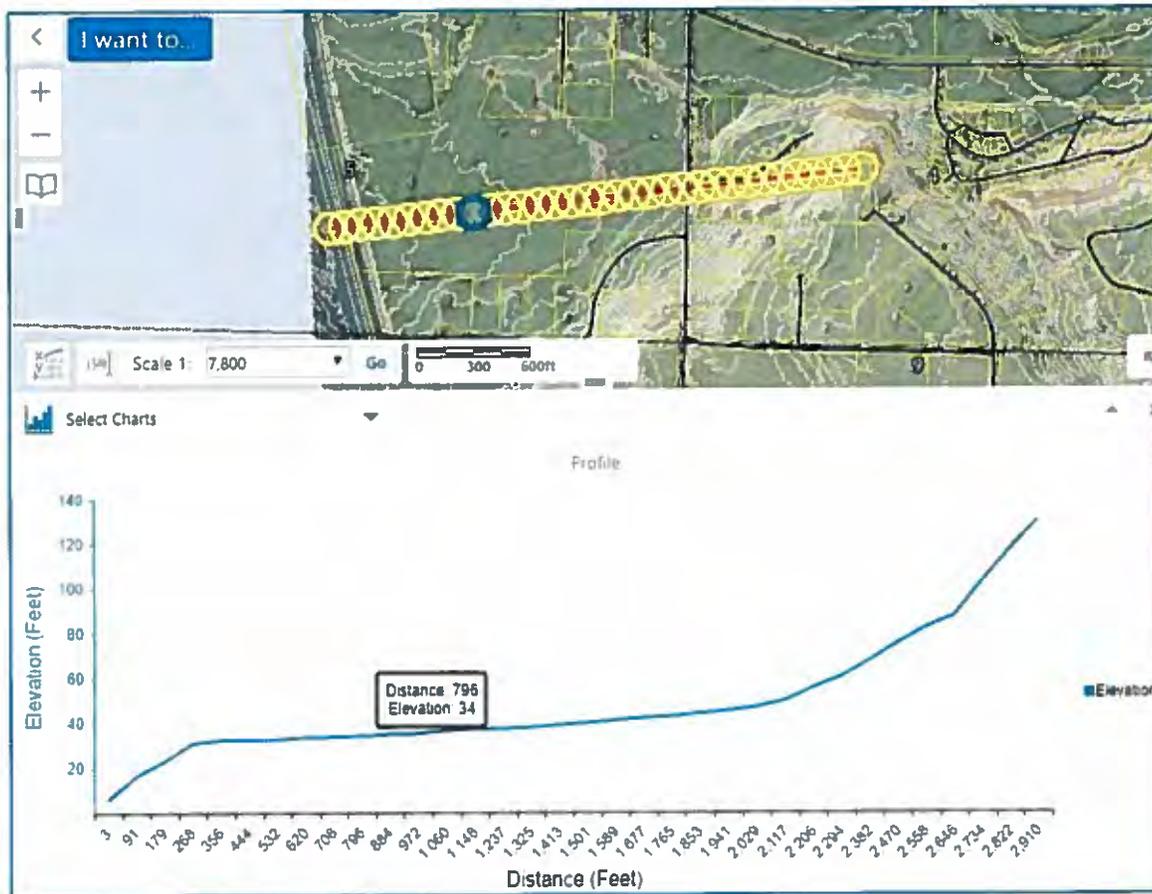
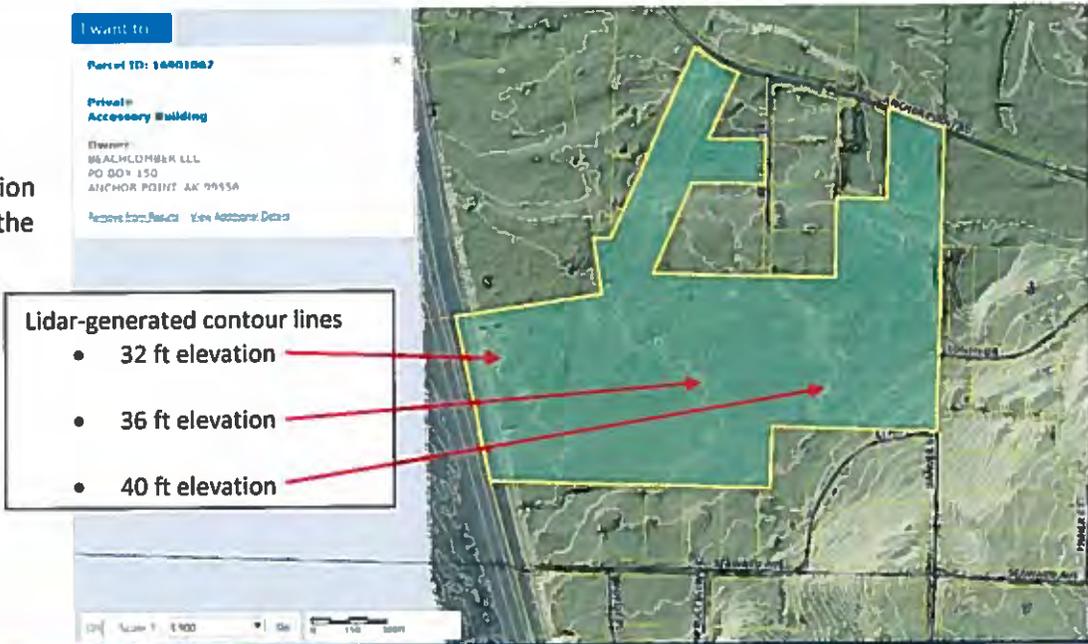
Finally, the borough maintains outstanding geographic information resources readily accessible to the public. Two of these were used to develop the maps included here: the kpb parcel viewer at <http://mapserver.borough.kenai.ak.us/kpbmapviewer/> and the terrain viewer at

<https://gis.kpb.us/map/index.html?viewer=terrain>. Other outstanding kpb gis sites include the anadromous habitat viewer at https://maps.kpb.us/gc/Html5Viewer/Index.html?viewer=P_KRCViewer (which shows recently mapped anadromous stream channel locations in blue, as on the Anchor River above) and the wetlands viewer at <http://maps.kpb.us/wetlands/>.

Providing links to these resources in public notifications, or even better, including such information in notification packets, would enable the public to provide much more informed comments.

Thank you again for this opportunity to comment.

Chris Rainwater, Chair



Wall, Bruce

From: L Rick Oliver <roliverb747@me.com>
Sent: Friday, July 13, 2018 9:30 AM
To: Wall, Bruce
Cc: Hans Bilben
Subject: Gravel mining of Beacomber LLC Tract B McGee Tracts Plat (80-104)
Attachments: Gravel Pit Pictures.zip

To the Planning Commission Chairman,

My name is Lawrence (Rick) Oliver and a longtime resident of Anchor Point. My property is directly adjacent to, and above, the proposed mining sight. Enclosed are pictures of the sight as it is today, as taken from my front deck, and additional pictures of the smaller parcel (adjacent to the proposed plat) from which the applicant has already removed significant material. It is my understanding that the applicant must adhere to certain standards for the removal of material from the proposed sights.

#1 of said standards addresses the lowering of water sources serving other properties. The existence of the substantial lake just below my property indicates that a major mining operation can't help but affect the water source of my property. I'm told there is significant additional information regarding this standard to be presented.

#3 addresses the "minimization of dust to off-site areas". Due to the proposed placement of the processing equipment, ANY on shore breeze will bring that dust to my home, directly across the street.

#4 addresses the noise disturbance to other properties. According to the radii shown on the application, the processing equipment is to be set much less than 300' from my front door. How can the noise and vibration from this equipment be, in any way, "minimized" in my home ?

#5 addresses (again) the "minimization" of visual impact. I'll let the pictures tell that story.

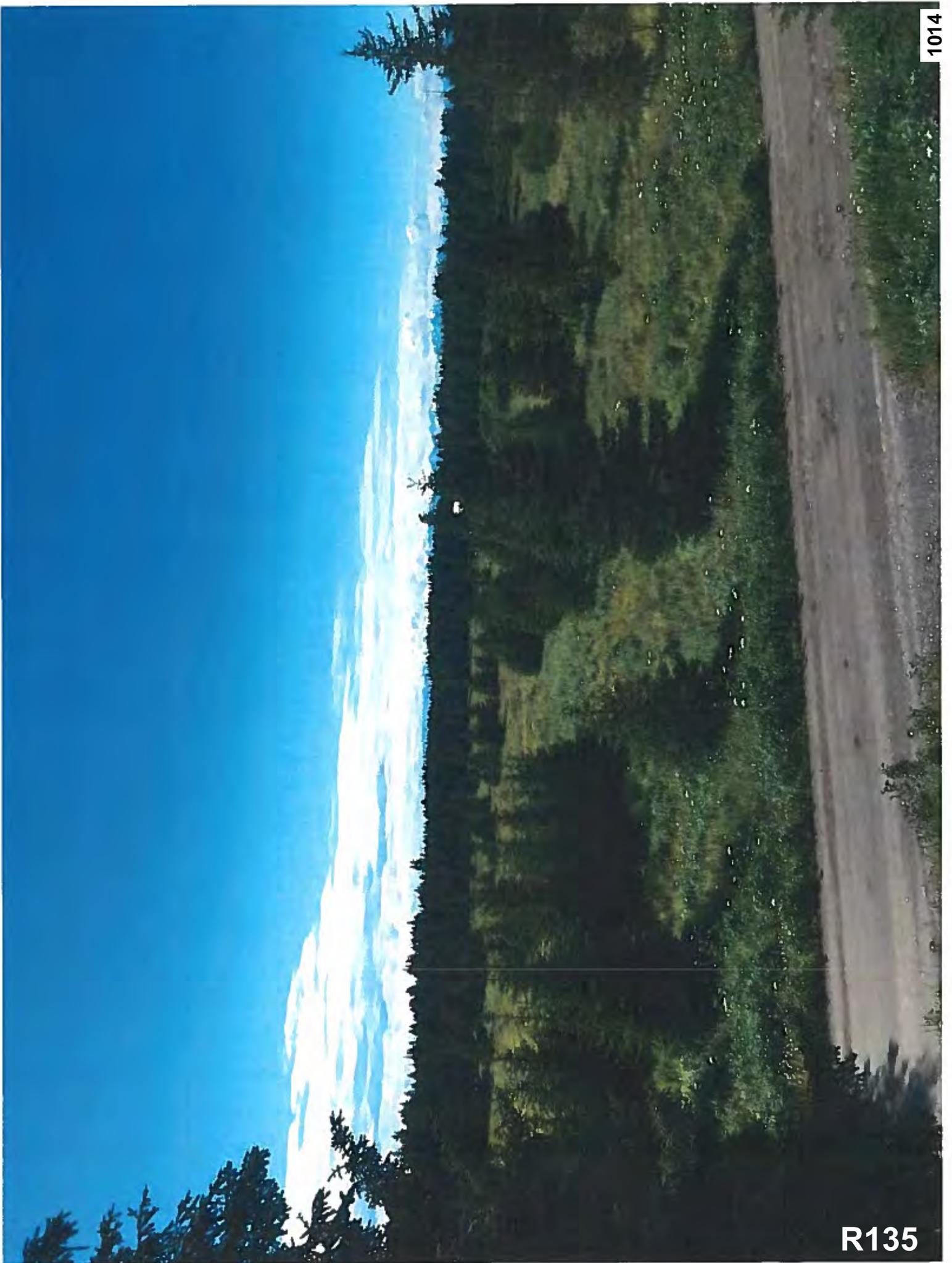
For the record, let it be known that my family and I (along with the other several hundred other people residing in this area vehemently oppose the granting of this permit.

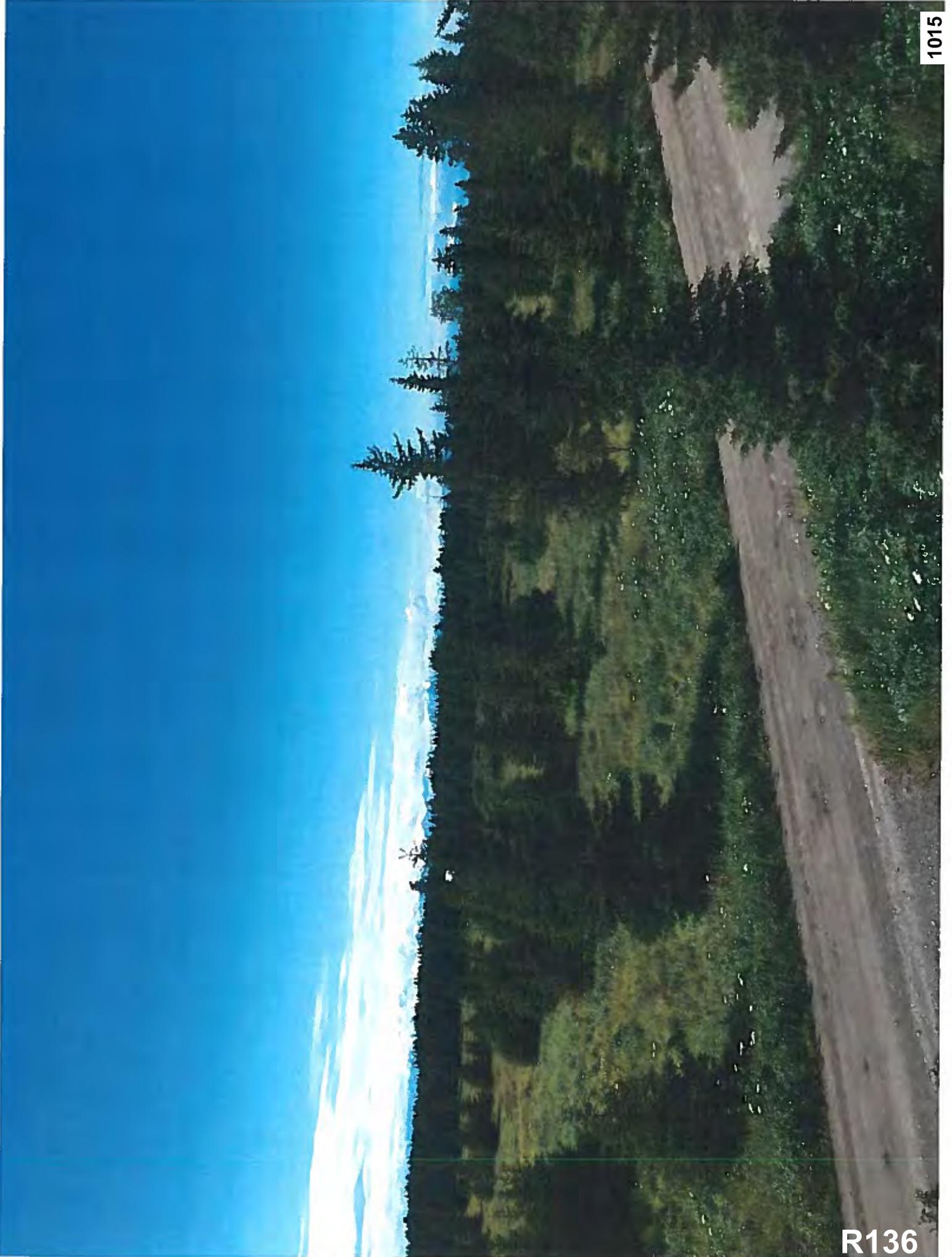
Sincerely,

Lawrence R. Oliver









OPPOSITION TO THE PROPOSED MATERIAL EXTRACTION ON TRACT B MCGEE TRACTS

APPLICANT: BEACHCOMER LLC



We, the undersigned adamantly oppose the proposed permit for material extraction in the McGee Tracts / Anchor Point area.

The community of Anchor Point is heavily dependent on recreational use for its annual revenue. There are 5 state campgrounds providing 136 campsites and 31 day use parking and a private RV park providing 58 spaces. During the season there are approximately 40 boats launched each day. The main access to these campgrounds and the boat launch is the Anchor River Beach Road.

Sharing the road with the estimated additional truck traffic will negatively impact the fragile structure of the Anchor Point Beach Road. The proposed seasonal removal of approximately 50,000 cubic yards of material equates to 5,000 truck loads, each weighing 52,000 lbs. The road surface is not such that could withstand this heavy use.

In addition the pedestrian traffic safety would be in jeopardy. The road does not have the standard 2 foot shoulder.

Printed Name	Signature	Address	Date	Comments
Goeny Cull	[Signature]	1 Sea Perry Ct	7/9/18	
Larry Kelsoy	[Signature]	1 Twin Peaks	7-9-18	NOTE NEW
John Ferrell	[Signature]	1 Shoreland Lane	7-9-18	
Matt Foreman	[Signature]	1 Shoreland Lane	7-9-18	
Reese Yount	[Signature]	12199 S. Bristol St.	7-9-18	rediculous
Todd Barman	[Signature]	1 73300 old steeling ^{high}	7-9-18	
Bill Swatt	[Signature]	1 28299 Steepway	7/9/18	
Charles L. Gilliam	[Signature]	PO Box 3240 KENAI, AK 99611	7/9/18	ND
Van H...	[Signature]	14575/44 Volland	7-9-18	
Steve Mastre	[Signature]	PO Box 309 A.P.	7/12/18	Road can't handle it!
Teresa Cosman	[Signature]	PO Box 563 AP	7-12-18	road infrastructure issues environmental issues, busmesses/econom impact to economy & noise
Delcena Cosman	[Signature]	PO Box 563 AP	7-12-18	environment/economic issues
Walter W...	[Signature]	11503 Tanager Way Kenai AK	7-12-18	

OPPOSITION TO THE PROPOSED MATERIAL EXTRACTION ON TRACK B
MCGEE TRACTS

APPLICANT: BEACHCOMER LLC

Mik Caputo	[Signature]	P.O. Box 2227	7/11/19
Dale GRINER	[Signature]	Box 101 A.P.	
Brianna Hahn	[Signature]	4625 Kenner	17-19-18
Ryan JOHNSON	[Signature]	P.O. Box 798 Anchor point, AK	7-12-19

IF APPROVED THAN THIS
WHOLE PROCESS IS A JOKE

To: Kenai Peninsula Borough Planning Commission

From: James and Susan Reid

73820 Seward Ave.

Anchor Point, AK 99556

Phone: 299-226-3418

Subject: Beachcomber LLC proposed surface mining permit

We object to the issuance of the permit: for the following reasons:

1. Have Mary and Emmet Trimbull submitted their reclamation plan to DNR as of 7/6/2018?
2. Regarding the hours of 6: AM to 10:00 PM for the use of the machinery, we consider that time period being excessive because this is a residential area. For example Dibble Creek's hours of operation are 9:00 AM to 4:00 PM.
3. In regard to the P code 21.29.040, what is the plan to protect the water aquifer and road damage. One test hole does not seem adequate. Also the current river road is falling apart. How will that be addressed?
4. What is the seasonal high water table level? How was it determined?
5. We are concerned about this highly congested residential and recreational area in the summer. There are literally thousand of people that live and visit this area.
6. In regard to the water filtration, removal of gravel and topsoil will effect filtration properties of the surface water as is exhibited in "Danver Lake". Will it possibly contribute pollutants to the Anchor River?
7. What is the definition of waiver in regard to the North property line? Staff does not recommend approval of the processing distance waver request. Why?

Wall, Bruce

From: Bill Scott <naturesventures@gmail.com>
Sent: Friday, July 13, 2018 10:33 AM
To: Wall, Bruce
Subject: Anchor Point Road gravel pit

Dear Mr. Wall,

I am writing today to oppose the gravel pit permits being requested on Anchor Point Rd. I strongly disagree to the possibility of having a gravel pit right by the Anchor River. I believe that area should be under some kind of protection from any kind of ground disturbances.

The people of Anchor Point rely on the tourism and fisheries of this this river and gravel pits and drilling rigs put the area at risk.

A great way to kill a town is to make it ugly and kill the river.

People invest in this Anchor Point because of the fishery and it's peaceful.

I am fed up with our state and borough passing out permits that impact people's livelihoods and investments to line the pockets of the few.

Concerned AP citizens

Leah and Bill Scott
28279 Sterling Hwy
PO Box 1193
Anchor Point, AK 99556
218-380-0623
907-399-0623

Sent from my iPhone

Wall, Bruce

From: Carla Milburn <cjm2@me.com>
Sent: Saturday, July 14, 2018 3:00 AM
To: Wall, Bruce
Subject: Anchor Point Gravel Pit

I just got word that about the prospect of a gravel pit somewhere in the vicinity of Danver street in Anchor Point. I strongly object to this project due to its location in a residential and recreational area. Please carefully consider other options elsewhere for this activity!

Thank you,
Carla J. Milburn
66090 Moosewood Ct
Anchor Pt, Alaska 99556
907-235-4192

July 10, 2018



Dear planning commission,

I am writing this letter to express grave concerns and objection to the proposed Gravel Pit permit that is pending for Beachcomber LLC. here in Anchor Point. I have listened to many folks speak of the noise and the lost view that will impact their homes, but my concern goes beyond a personal level.

This gravel pit has no business being allowed with the Anchor River flowing within 200 yards of the Northside of the property. The fisheries are a resource that many enjoy and the potential for damages to our water is real and likely. The roadway that follows the anchor river is a rural, narrow, road and is in need of repair. The State and the Borough, both do not have the funding to fix this recreational road, let alone, allow heavy equipment and trucks to run the road daily.

There are many gravel pits in the Anchor Point area, several are taken good care of, but there are others that are an absolute mess and eye sore. I read the regulations and they state that ADEC and others enforce the rules. I find that interesting since the North Fork road has open, unsightly pits at this very minute. Who will tell Beachcombers LLC, to fix the roads and waterways when they violate these rules, how can we be sure that we don't end up with one of those less maintained areas?

The coastal water runs on the edge of this property, and the area is wet normally, the chances of hitting ground water and mixing the surface and ground water is huge. Surely, you do not think that this group will self-report that they have violated the water rules before it becomes a massive expensive cleanup?

I find this permit request surreal. The level of greed that this landowner demonstrates is of no benefit to the community. The fact that the borough could allow one person to effect so many taxpayers and landowners in one area, is shocking. I have heard the tale that this landowner could not sale the land and that is why he is requesting to have this permit. I did my homework and he was offered money for that land several times and each time he quoted an unreasonable amount , this information alone indicates that this individual had another plan and a one sided plan it is!

Gravel pits are not meant to be dug in river bottom areas especially along a fishery such as the Anchor River. This is a disastrous plan and will effect generations of citizens if allowed to move forward. Please consider the ramifications and reject this permit.

Respectfully

Mark and Lee Yale

74140 Seaward Ave.

Anchor Point

AK 99556

R142

Wall, Bruce

From: L Rick Oliver <roliverb747@me.com>
Sent: Sunday, July 15, 2018 5:29 PM
To: Wall, Bruce
Cc: Hans Bilben
Subject: Denver St. Gravel mining application

Hey Bruce,

Here's a picture of me at 6' (almost) holding a board 10' tall. I'm sure you can see my concern with "minimizing" visual impact from my house with a 6' berm. I'm standing 50' inside the newly designated property line. Hope this will help.

Sincerely,

Rick Oliver



Hartley, Patricia

Subject: FW: KPB CLUP Material site App AKA Beachcomber LLC GRAVEL PIT

From: Planning Dept,
Sent: Monday, July 16, 2018 1:57 PM
To: Hartley, Patricia
Cc: Wall, Bruce
Subject: FW: KPB CLUP Material site App AKA Beachcomber LLC GRAVEL PIT

From: shirley gruber [<mailto:shirleytdx@yahoo.com>]
Sent: Monday, July 16, 2018 1:51 PM
To: Planning Dept,
Subject: KPB CLUP Material site App AKA Beachcomber LLC GRAVEL PIT

This message is for Syverine Bentz, and perhaps any other commissioner with an interest regarding the above referenced item.

Good Afternoon, Syverine

My name is Shirley Gruber, and through contact with W. Dunne, he has suggested that I reach out to you with regards to the subject gravel permit request.

Currently at this point, I am sending my comments that were already submitted, but did not see them included in the meeting packet. I guess I just want to make sure they are available and perhaps considered in the decision process. Yes, they were submitted in time...

Please note that I am not really in support of a gravel pit, but then who is, but an alternative product removal route would really ease some of the stress myself and the community are experiencing. I understand, progress brings compromise.

I wish to thank you in advance for any consideration you can give to address my concerns.

Regards

Shirley Gruber
 73510 Twin Peaks Loop
 Anchor Point

----- Forwarded Message -----

From: shirley gruber <shirleytdx@yahoo.com>
To: bwall@kpb.us <bwall@kpb.us>
Sent: Thursday, July 12, 2018, 5:26:14 PM AKDT
Subject: KPB CLUP Material site App AKA Beachcomber LLC GRAVEL PIT

Dear Mr. Bruce Wall

Bruce ,

Thank you for fielding and organizing all the public comments in the permitting process, for Beachcomber LLC gravel pit request. It is not an easy job, in my mind.

Therefore, I too appreciate the chance to submit my (our) concerns with regards to the material extraction...IE: Gravel pit. I see staff recommendation is to approve this permit, it appears to be a boiler plate request, but I ask you to reconsider that assessment for the following reasons.

I am aware of section 21.29.040 and .050 list regulations meant to protect the surrounding areas.

So Resolution 2018-23 Section 1 of Finding the Facts

Paragraph 10 item D states water is below 20 Ft, with intention to dig to only 18'

- Permit requester advocates he can dig down 40' for all the gravel he wants. The borough never checks. Thus my concern is to have water holes for swimming, or teenage hang outs bringing increased crime to the area.

Paragraph 10 item E, does not allow the removal of said water.

- Thus in a round about way the Borough has approved these potential water pits. Yes pumping it would bring habitat issues that would allow contaminated water to end up directly into the neighboring property and the Anchor River itself. Thus I also disagree with Nancy Carver that there is no habitat concerns, the loss of gravel will no longer cleanse the ground water that runs to and into the Anchor River, thus this brings us to damages.

Paragraph 11, Other property damage.

- Damage comes in two ways, physical and financial, it has been noted that the connecting property values will decline, while that gravel pit's value will have increased.
 - Will the loss of tax revenue from the existing home/property owners be offset by the increase tax revenue from this pit? In this case it is likely that even the Borough will have some damages (monetary) if approving this permit.
 - There is a complete buffer now in one section next to Beachcomber street and a new camp ground. To tear down those trees only to replace it with a berm for visual buffer, will cause revenue damage since a treed back drop is one reason campers stay there.

Paragraph 12, Dust control:

- As noted in the permit, Denver Road is the haul out road, Denver road is gravel road so calcium chlorides or water would be sufficient, HOWEVER this borough road is not the only haul out road to be used. Denver Road is a dead

end road. In order to reach the Sterling Highway, trucks must travel the Anchor Point Beach access road. This is a paved 2 lane no shoulder road. Calcium Chloride does not work on pavement and to continually wet this road would only create a muddy and slippery surface for the other road users. And this does not address the Anchor River Bridge, which cannot support the load.

Paragraph 13 and 14 Minimizing noise and visual impacts

- Other Road users will be extremely impacted with both noise, sights and added dangers from the haul trucks. The Anchor Point Road (beach access road) is a road that is loved to death. It is a highly used road, kids, bikes boats, pets, tourists, 4th of July parades, but not eligible for much financial or DOT support. Heavy commercial use on this already loved to death road will meet its end or someone on it will.
- It is the only way in and out for the families from their home and for beach goers that utilize the boat launch plus there are 5 Camp grounds on this road. And if anything bad happens, no evacuation could occur and no emergency vehicles could get in. There needs to be an alternate route to take out the gravel.
- The vegetation berms, are good, but only if you live at the flat ground level, any one who has a home that looks to the ocean also will have to watch equipment, rock crusher, gravel shaker, the full blown commercial operation.

For these reasons I don't think it passes the grade of the Code,-but each has there own interpretation, do I think it could pass, yes with a bit of fine tuning, versus a standard boiler plate permit version, as it appears now.

Lastly, yes everyone is of the nature that "not in my back yard", so it is easy to protest and complain, but hard to have a solution. Progress comes with a price, and heck who does not have a gravel drive, or pad on their lot, **I simply ask** that the commission post pone the approval until an alternate route can be established. And some of the concerns listed be fined tuned to allow the permitting, Currently there is another gravel pit on the docket, so getting gravel should not be a hardship, and if the Borough needed a reason to finish Danver Road to the south, well that time is now.

Respectfully

Shirley Gruber

73510 Twin Peaks Loop

Anchor Point.

Wall, Bruce

From: Hans Bilben <catchalaska@alaska.net>
Sent: Monday, July 16, 2018 2:19 PM
To: Wall, Bruce
Subject: Fwd: Anchor Point Gravel Point
Attachments: humanremainshandout.pdf; contractorlistcurrent.pdf

Hi Bruce,

Here is more info on the proposed site in Anchor Point—I hope you'll pass it along to the Planning Commission,

See you tonight,

Hans Bilben

Begin forwarded message:

From: "Johnson, McKenzie S (DNR)" <mckenzie.johnson@alaska.gov>
Subject: RE: Anchor Point Gravel Point
Date: July 16, 2018 at 1:05:55 PM AKDT
To: Hans <catchalaska@alaska.net>

File No.: 3130-4R Private-Jeanne Bilben
 2018-00873

Ms. Bilben,

The Alaska State Historic Preservation Office (AK SHPO) received your request for information regarding known historical sites in the area of a proposed gravel mine. Upon review of the Alaska Heritage Resources Survey (AHRs) database there are two reported cultural resource sites in the area of the proposed mining.

- SEL-00280, prehistoric site, reported to consist of two house pits. Location is represented as a large polygon, exact location of features is unknown but current projected boundaries are within the proposed mining area.
- SEL-00281, historic graves and possible cache pits, reported to consist of 5 graves that at one time had grave markers, depressions tentatively described as cache pits were reported north of the graves. Location is represented as a large polygon, exact location of features is unknown but current projected boundaries are within the proposed mining area.

In Alaska there are two historic preservation laws that *may* apply unless the project is entirely private in nature:

- Alaska Historic Preservation Act (AHPA): State law requires all public construction or improvement activities conducted by, or requiring licensing or permitting from, the State of Alaska to comply with the Alaska Historic Preservation Act (AS 41.35.070). This also

includes required reporting of historic and archaeological sites on lands covered under contract with or licensed by the State or governmental agency of the State. This would include any material sources used under contract with the State.

- **National Historic Preservation Act (NHPA):** If there is Federal involvement (financial assistance, permit, license or approval) with the project it is the statutory obligation of the lead Federal agency to comply with Section 106 (36 CFR § 800) of the National Historic Preservation Act, which requires the Federal agency to take into account the effects that their undertaking may have on historic properties.

Were either of those laws to apply, our office would be likely to request that an archaeological survey is conducted to verify the site locations and assess the potential effects of the project pursuant to the applicable historic preservation law. In addition, there are State laws regarding the discovery and/or intentional disturbance of human remains, this pertains to ALL lands in Alaska, including private. I have attached our handout regarding human remains.

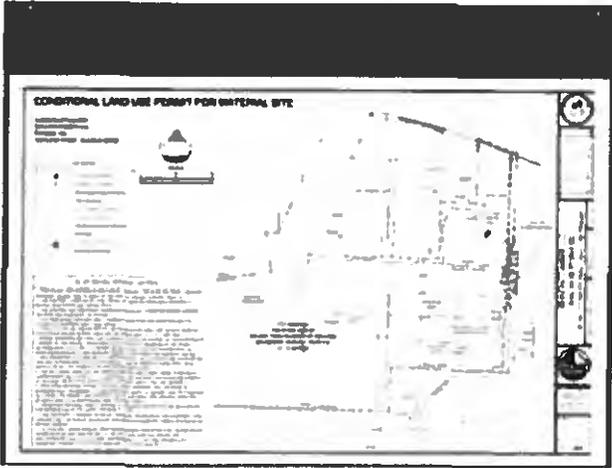
Due to the lack of clear information regarding the site locations our office strongly encourages the use of a qualified cultural resource professional to verify the site locations/boundaries, and offer recommendations to avoid adverse impacts to cultural resource sites by the proposed gravel mine. I have attached a list of cultural resource professionals for your reference if a survey is chosen to be conducted.

Thank you for contacting our office, if we can be of further assistance please let me know. Our website may also provide useful reference at <http://dnr.alaska.gov/parks/oha/index> .

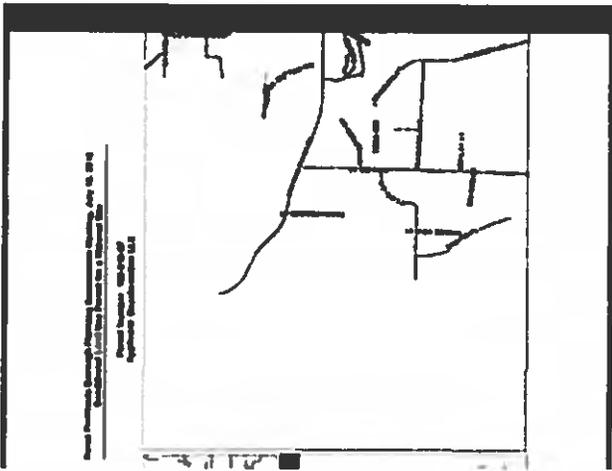
Mckenzie S. Johnson
Archaeologist I
Alaska State Historic Preservation Office/Office of History and Archaeology
550 W. 7th Ave, Suite 1310
Anchorage, AK 99501
Phone: 907-269-8726
E-mail: mckenzie.johnson@alaska.gov

From: Hans [<mailto:catchalaska@alaska.net>]
Sent: Monday, July 16, 2018 10:44 AM
To: Johnson, McKenzie S (DNR) <mckenzie.johnson@alaska.gov>
Subject: Anchor Point Gravel Point

Hi, please send any info you might have concerning the historical importance of this potential gravel mine location. These are the maps of the proposed area. Thanks, Jeanne Bilben. (399-6156)



Sent from my iPad



GUIDELINES

Laws and Protocols Pertaining to the Discovery of Human Remains in Alaska

The treatment of human remains following inadvertent discovery is governed by state and federal laws, land status, postmortem interval (time since death), and biological/cultural affiliation. First and foremost, the site of discovered remains should be regarded a potential “crime scene” until a person with appropriate expertise and authority determines otherwise.

State Laws:

Several State laws are applicable to the discovery of human remains in Alaska. The State Medical Examiner (SME) has jurisdiction over all human remains in the state (with rare exceptions, such as military aircraft deaths), regardless of age.

AS 12.65.5 requires immediate notification of a peace officer of the state (police, Village Public Safety Officer, or Alaska State Trooper [AST]) and the State Medical Examiner when death has “been caused by unknown or criminal means, during the commission of a crime, or by suicide, accident, or poisoning.”

In this regard, contact the Alaska State Troopers in the applicable region first. (See list of contacts on following page.) The AST has interpreted notification procedures as applicable to all remains, including ancient remains.

AS 11.46.482(a)(3), which applies to all lands in Alaska, makes the “intentional and unauthorized destruction or removal of any human remains or the intentional disturbance of a grave” a class C felony.

AS 41.35.200, which applies only to State lands, makes the disturbance of “historic, prehistoric and archeological resources” (including graves, per definition) a class A misdemeanor.

AS 18.50.250, which applies to all lands in Alaska, requires permits for the disinterment, transport, and reinterment of human remains. Guidance and permits are available from Health Analytics & Vital Records (see attached list of contacts).

Federal Laws:

On Federal lands and Federal trust lands, the unauthorized destruction or removal of archaeological human remains (i.e., more than 100 years old) is a violation of 16 USC 470ee (Archeological Resources Protection Act). If human remains on federal or federal trust lands are determined to be Native American, their treatment and disposition are also governed by the Native American Graves and Repatriation Act (NAGPRA) of 1990 (PL 101-601; 25 USC 3001-30013; 104 Stat. 3048-3058; 43 CFR 10). NAGPRA also applies to Native American human remains from any lands if the remains are curated in any institution that receives federal funds.

General Guidance:

Your first contacts should be the regional Alaska State Troopers, the Alaska State Medical Examiner’s Office, local law enforcement, AST/Missing Persons Clearinghouse, the Alaska Office of History and Archaeology, and the landowner.

In many instances, the field archaeologist must make a judgement call regarding the age of the remains, his/her level of confidence in the evaluation, and whether further investigation by a specialist is warranted. While notification under State Law is required, peace officers and the SME generally regard archaeologists competent to make these type determinations and welcome input that may assist with the investigation. With regard to ancient remains (> 100 years old), the SME and AST will generally defer to the opinion of the field archaeologist and require no further criminal investigation. However, the remains and a surrounding buffer area should not be disturbed until appropriate reporting and consultation have occurred.

**CONTACT INFORMATION FOR STATE OFFICIALS INVOLVED WITH HUMAN
REMAINS ISSUES IN ALASKA**

**Denotes suggested contact person in list below.*

1.) Alaska State Troopers, Missing Persons Clearinghouse:

Phone: (907) 269-5038

Fax: (907) 337-2059

Lt. Paul Fussey

Phone: (907) 269-5682

E-mail: paul.fussey@alaska.gov

*Malia Miller

Phone: (907) 269-5038

E-mail: malia.miller@alaska.gov

*After contact by phone, send e-mail with relevant information and photos to Lt. Fussey and Malia Miller.

2.) Alaska State Medical Examiner's Office:

* Reporting Hotline (Death Hotline) to speak with on-duty investigator.

Phone: (907) 334-2356

1-888-332-3273 (Outside Anchorage)

Stephen Hoage, Operations Administration

Phone: (907) 334-2202

Fax: (907) 334-2216

e-mail: stephen.hoage@alaska.gov

Dr. Gary Zientek, Chief Medical Examiner

Phone: (907) 334-2200

Fax: (907) 334-2216

e-mail: gary.zientek@alaska.gov

3.) Alaska Office of History and Archaeology (State Historic Preservation Office):

Office Phone: (907) 269-8700

*State Archaeologist

Fax: (907) 269-8908

Email: oha.permits@alaska.gov

4.) Health Analytics & Vital Records

For burial transit permits and disinterment/transit/reinterment questions:

* Registration Help Line

Phone: (907) 465-5423

Contractor's List The consultants listed are not certified in any way by this office. It is up to the individual to make sure the consultant is qualified to do the work for which they were hired.

Following is a list of persons who have indicated that they would be included in the Alaska State Historic Preservation Office's Cultural Inventory. They are listed in the order in which they were contacted. We do not intend to publish this information in any way. The information is being published here as a public service. If you have any information regarding the accuracy of this information, please contact the Alaska State Historic Preservation Office at (907) 266-6666.

Last Name	First Name	Company	Address	City	State	Zip	Phone	Fax	Email	Web	Archaeological	Historic Preservation	HABS/HAER Photographers	Cultural Anthropological	AHRS Research/ Lit Review	Other
Alexandrowicz	John Stephen	Archaeological Consulting Services - ACS	P.O. Box 39, 13626 Pollard Drive	Lytle Creek	CA	92736	909-887-0795	909-887-0795	alexarcheo@aol.com		x	x	x	x	x	
Allen	Bonnie	JAH Architects, LLC	942 South Alaska Street, #100A	Palmer	AK	99645	907-746-7571	907-746-0081	jahco@mtsonline.net	www.jaharchitects.com	x					
Anders	Jake	Stephen R. Braund & Associates (SRB&A)	P.O. Box 10-1480	Anchorage	AK	99510-1480	907-786-8418	907-278-6117	jake.anders@arbak.com	www.arbak.com	x		x	x	TK, Subsistence, NEPA	
Argo	Lindsay	Northern Land Use Research Alaska, LLC (NLR Alaska) Anchorage Office	725 Christensen Dr. Suite 4	Anchorage	AK	99518	907-346-2457	907-339-2457	lj@northernlanduse.com	www.northernlanduse.com	x		x	x		
Bernier	Jobe	Invision Architecture	1231 Gambell Street, Suite 400	Anchorage	AK	99501	907-891-3577	907-349-1325	jobe@invisionarch.com	www.invisionarch.com	x		x	x		Board of Directors, Alaska Association for Historic Preservation, Historic Preservation Plan Inventory Assessments and Updates
Boyd, AIA	Sean M.	NorthWind Architects, LLC	120 Seward Street	Juneau	AK	99801	907-588-6150 ext 201	907-596-6181	sean@northwindarch.com	www.northwindarch.com	x		x			
Boyle, AIA	Susan	BOLA Architecture and Planning	159 Western Ave W Ste 486	Seattle	WA	98119	206-447-4749	206-447-6462	sboyle@bolarch.com	www.bolarch.com	x		x			Historic documentation, landmark nominations, HABS/HAER, EIS,
Braund	Stephen R.	Stephen R. Braund & Associates (SRB&A)	P.O. Box 10-1480	Anchorage	AK	99510-1480	907-278-8222	907-278-6117	sr@arbak.com	www.arbak.com	x		x	x	x	TK, Subsistence, NEPA
Browne	Patricia	Browne Research	446 East 23rd Avenue	Anchorage	AK	99503	907-278-0280		paty98503@yahoo.com							
Burns, RPA	Jason	Southeastern Archeological Research, Inc.	700 N. 8th Avenue,	Pensacola	FL	32501	850-607-2846 phone, 850-281-1029 cell	850-436-5048	jason@searchinc.com	www.searchinc.com	x					x-Maritime Archeology
Carveron	Roger	Appraisal Express	1228 Spring Creek Road	Dandridge	TN	37725	865-387-2480	865-387-7590	ERCameron@aol.com				x			x-Historic Property Appraisal
Cassell, PhD	Mark S.	Territory Heritage Resources Consulting	200 West 34th Avenue, #8	Anchorage	AK	99503	907-388-2868 cell, 907-277-6687 land		mark@territoryheritage.com	www.territoryheritage.com	x		x	x		
Combs, AIA, NCARB, Architect	Sam	Combs and Combs, AIA	7480 Upper O'Malley Road	Anchorage	AK	99507	907-346-3990	907-346-3990	scombs@gcd.net							

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Lastname	First name	Company	Address	City	State	Zip	Phone	Fax	Email	Web	Archaeological	Historic Preservation	HABS/HAER Photographers	Cultural Anthropological	AHRS Research LR Review	Other
Conlon	Royce	PDC Engineers	1028 Aurora Drive	Fairbanks	AK	99712	907-452-1414	907-456-2707	royceconlon@pdceng.us	www.pdc-engineers.com				X		
Conwin	Don	West Wind Woodworking	P.O. Box 2095	Kodiak	AK	99815	907-973-2021		dharmsdon@hotmail.com							mitwork as well as rehabilitation work
Costello	John	North Wind Inc.	235 East 8th Avenue, Suite 210	Anchorage	AK	99501	907-277-5488	907-277-5422	joostello@northwind-inc.com	www.northwind-inc.com	X	X				
Dunst	Charisse W.	Hardiness Design Company	4008 Indiana Avenue	Columbus	OH	43214	614-784-8733	614-784-8336	cdunst@hardinessdesign.com	www.hardinessdesign.com		X				
Erdale	Jule	Alaska Heritage Preservation	2170 Tribulation Trail	Fairbanks	AK	99709	907-378-9034		juleserdale@gmail.com							
Fath, MS	Rogan	Historic Wekiva	1957 Hillcrest Drive	Anchorage	AK	99517	907-274-0202	907-274-0204	hwekiva@gmail.net			X				
Falk, PhD	Mervyn W.		665 Gold Pan Road	Fairbanks	AK	99712	907-474-3916		mwfalk@alaska.edu							
Floiland, AIA	Richard	Flossard Studio Ltd.	1841 First Avenue South, Suite 2E	Seattle	WA	98134	206-834-0136		richard@flossardstudio.com	www.flossardstudio.com						historic documentation, landmark nominations, historic restoration, EIS
Greenhagen	Paul	Westwood Professional Services	7099 Anagram Drive	Eden Prairie	MIN	55344	952-937-5150	952-937-5822	paul.greenhagen@westwoodps.com	www.westwoodps.com	X	X				
Gresser	T. Weber	Historical Research Associates, Inc.	125 Bank Street, Fifth Floor	Missoula	MT	59802	406-721-1958, 907-498-0510, call 907-214-2483	406-721-1964	tweber@hraisoc.com		X	X				
Grover	Margan	Bald Peak Archeological Services	P.O. Box 670562	Chugiak	AK	99567	call 907-214-9188		bobpeak@gmail.com			X				
Harbury	Mary Ruffin	Harbury Preservation Consulting	P.O. Box 6049	Raleigh	NC	27628	919-828-1905	919-828-7151	maryruffin@harburypreservation.com	www.harburypreservation.com	X	X				e-Heritage Tourism, Preservation Planning
Harritt	Dr. Roger	RK Herritt and Associates, LLC	P.O. Box 244346	Anchorage	AK	99514-4346	907-272-7500	907-272-7500	rtherritt@rkaassociates@yahoo.com		X	X				
Hicki, MA, RPA	Brent	Historic Research Associates, Inc	1804 Third Ave., Suite 240	Seattle	WA	98101	206-343-0226, ext 17		bhicki@hraisoc.com	www.hraisoc.com	X	X				

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Lastname	First name	Company	Address	City	State	Zip	Phone	Fax	Email	Web	Archaeological	Historic Preservation	HABS/HAER Photographers	Cultural Anthropological	AHRS Research/ Lit Review	Other
Higgs, MA, RPA	Andrew	Higgs Research & Consulting	1120 Huffman Rd., Suite 24-782	Anchorage	AK	99515	907-310-8917		andy@higgsr.com		X					
Holmes	Charles M	Holmes Cultural Resource Consulting	15140 Meas Place	Anchorage	AK	99516	907-250-0805	907-345-1964	bmammott@gmail.com		X					
Huntar	Andreas	Hunter Environmental Associates, Inc.	3570 Swan Street	Fairbanks	AK	99709	907-451-5563	907-451-5593	helinc@ecscakala.net							
Jentien	Anna M.	UIC Science LLC	P.O. Box 638	Barrow	AK	99723	907-852-7397	907-852-5783	anna.jentien@uicscience.com		X					
Krauthoelter	Tracee	Convus Culture	2506-B Fairbanks St	Anchorage	AK	99503	907-230-2394		tracee@convus-culture.com	www.convus-culture.com	X					
Lane	Donna	Donna Lane Associates	P.O. Box 2644	Valdez	AK	99686	907-405-2780		dl@convnet.net		X					
Lawrence, AJA	Rhoda	BOLA Architecture and Planning	159 Western Ave W Ste 408	Seward	AK	99118	208-447-4749	208-447-9462	rhodenc@bolarch.com	www.bolarch.com	X					Historic documentation, landmark nominations, HABS/HAER, ES.
Lewis	Maria	MLP & Associates	446 Bliss Street	Anchorage	AK	99508	907-301-9066	907-925-2383	maria_protoc.lewis@gmail.com							
Lyon	Bob	Lyon Photographics	9301 Brookridge Drive	Anchorage	AK	99504	303-514-0079		bobbyon01@yahoo.com							
Marrin	Richard	Yukon Tribal Council	P.O. Box 871585 - 1744 N. Prospect Drive, Palmer, AK	Wasilla	AK	99667	907-373-7891	907-373-2178	rmarrin@yukontribe.org		X					Section 108 Review, Field Surveys, Commission: Anchorage Historic Preservation Commission
Mason	Owen K.	Geosarch Alaska	229 W Sky Dr	Boise	ID	83702	907-441-5596	907-336-0093	geosarch@geosarch.com		X					
Matheson, AJA	Janet	Janet Matheson Architect	P.O. Box 80587	Fairbanks	AK	99708	907-474-2800	907-374-2875	jimm1@accalaska.net		X					
Mckelhan	J. David	McKellan Consulting	10218 Meadowbrook Rd	Ashland City	TN	37015	907-230-8980		ugrua@hotmail.com		X					
Mierhardt	Robert	True North Sustainable Develop Solutions, LLC	P.O. Box 874135	Wasilla	AK	99617-4135	907-841-4090		robert_mierhardt@truenorthsolutions.com		X					

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Last Name	First Name	Company	Address	City	State	Zip	Phone	Fax	Email	Web	Archaeological	Historic Preservation	Historic Photographers	Cultural Anthropological	AHNS Research Lit Review	Other
Merrill	Bruce		3301 Madison Way	Anchorage	AK	99508-4422	907-277-0019		merrillb@icloud.com						X	
Miller	Robyn	ASRC Energy Services Alaska	3900 C Street, Suite 700	Anchorage	AK	99503	907-334-1567	907-335-5475	robyn.miller@asrcenergy.com	http://www.asrcenergy.com	X					
Mobley	Charles M	Charles M. Mobley & Associates	200 West 34th Avenue, #534	Anchorage	AK	99503	907-853-1937		charles@mobley.com	http://www.charlesmobley.com		X				
Mobley	Ottar	Heritage Consulting Services	200 W. 34th Ave. #705	Anchorage	AK	99503	703-678-8737		ottar.mobley@gmail.com			X				
Morehouse	Jana	Beyond Environmental Services Technology, LLC.	1118 Northwest Drive	Rapid City	SD	57701	605-366-1902		jana@beyondservices.com	www.beyondservices.com		X				NEPA, history, GIS services
Morris	Holly	Michael L. Foster & Associates, Inc.	13135 Old Glenn Highway, Suite 200	Eagle River	AK	99577	907-698-6200	907-698-6202	hlm@mllfassociates.com	http://www.mllfassociates.com					X	
Morrison	Aubrey	Cultural Resource Consultants LLC - CRC	5804 East 67th Avenue	Anchorage	AK	99507	907-348-3443, mobile 205-408-5987	480-772-4185	alm@crcalaska.com	http://www.crcalaska.com/		X				
Odeh	Molly	Alutiq Museum	215 Mission Rd, First Floor	Kodiak	AK	99815	844-425-8644	866-335-7767	molly@alutiqmuseum.org	alutiqmuseum.org		X			X	preparing collections for curation
Painter	Diana J.	Painter Preservation	3618 N. C Street	Spokane	WA	99205	717-783-6500		diana@painterpreservation.com	www.painterpreservation.com		X				
Perry	Elizabeth	SWCA, Inc.	1130 West 8th Avenue, Suite 110	Anchorage	AK	99501	907-278-7922	907-278-7944	eperry@swca.com			X	X			
Pierson, RPA	Larry J.	Brian F. Smith and Associates	14010 Poverty Road, Suite A	Poverty	CA	92084	858-484-0915	858-579-9888	lpierson@bfsa-ca.com	www.bfsa-ca.com		X				
Pipkin	Mark	Walking Dog Archaeology	P.O. Box 244752	Anchorage	AK	99524-4762	907-227-4413	907-278-9725	walkdog@alaskan.com			X				
Prozorak	Michael A.	iqb architects	425 G Street, Suite 800	Anchorage	AK	99501	907-274-7443	907-274-7407	mprozorak@iqbarchitects.com	www.iqbarchitects.com		X				
Ramsay Ford	Dawn	HDR, Inc	2525 C Street, Suite 500	Anchorage	AK	99503	907-644-2145	907-644-2022	Dawn.Ramsay@hdrinc.com	www.hdrinc.com		X				

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Lastname	First name	Company	Address	City	State	Zip	Phone	Fax	Email	Web	Archaeological	Historic Preservation	KAS/SHAER Photographers	Cultural Anthropological	AHRS Research Ltr Review	Other
Ramirez	Amy	True North Sustainable Develop Solutions, LLC	P.O. Box 874135	Wasilla	AK	99617	907-841-4000		amy.ramirez@yahoo.com		X	X	X	X	X	
Raymond-Yakubian	Julie	Julie M. Raymond-Yakubian	P.O. Box 1828	Nome	AK	99762	907-443-4273		julie@jybakubian.com		X	X	X	X	X	
Reamer, PhD	Richard E.	Reamer & Associates, Inc.	1215 Southwest 170th Street	Seattle	WA	98106	206-242-7817	206-242-7817	reamer@estimo.com		X	X	X	X	X	
Reger	Douglas	Roger Archaeological Consulting	P.O. Box 2867	Soldotna	AK	99606	907-262-9447		dougr@gci.net		X	X	X	X	X	
Rogers	Monty	Cultural Alaska	P.O. Box 200013	Anchorage	AK	99520	907-748-1888		culturalalaska@gmail.com	www.culturalalaska.com	X	X	X	X	X	Section 106 & NEPA services; CR survey, analysis, document prep. Additional services
Rushmore	Paul	Paleo Logics	P.O. Box 2132	Wrangell	AK	99829	907-874-2842	907-874-144	Paul@pcli.net		X	X	X	X	X	
Salkinshall	Patrick	Alutiq Museum	215 Mission Rd, First Floor	Kodiak	AK	99615	844-435-8844	888-335-7767	patrick@alutiqmuseum.org	alutiqmuseum.org	X	X	X	X	X	preparing collections for curation
Swager-Boss	Fren	Krat Tribal Council	P.O. Box 871595 - 1744 N. Prospect Drive, Palmer, AK	Wasilla	AK	99687	907-375-7829	907-375-2178	fswagerboss@tribecouncil.org		X	X	X	X	X	Section 106 research and nominations for listing in the National Register of Historic Places, 106 Reviews, Field Surveys, Field Investigations/Excavations
Slaughter	Dale	Dale C. Slaughter Archaeologist	808 W 56 Avenue	Anchorage	AK	99518	907-562-1907	907-677-6016	archdale@ak.net		X	X	X	X	X	preparing collections for curation
Steffan, RPA	Amy	Alutiq Museum	215 Mission Rd, First Floor	Kodiak	AK	99615	844-435-8844	888-335-7767	amy@alutiqmuseum.org	alutiqmuseum.org	X	X	X	X	X	
Sterr, PhD	Richard O.	Alaska Cultural Resources Consultants	P.O. Box 190592	Anchorage	AK	99519-0592	907-242-1647	907-243-0054	Rob@alutiq107@aol.com		X	X	X	X	X	
Stone	Denise E.	Cultural Resource Evaluators	P.O. Box 111414	Anchorage	AK	99511	907-345-5783		AUCargo@aol.com		X	X	X	X	X	
Strine	Coily	Spanish Research	5678 Old Ridge Trail	Fairbanks	AK	99709	907-452-3828		coilystrine@gmail.com	www.spishresearch.com	X	X	X	X	X	
Teeter	Sean	HDR, Inc.	2625 C Street, Suite 500	Anchorage	AK	99503	907-644-2150	907-644-2022	Sean.Teeter@hdrinc.com	www.hdrinc.com	X	X	X	X	X	

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Last Name	First Name	Company	Address	City	State	Zip	Phone	Fax	Email	Web	Archaeological	Historic Preservation	HABS/HAER Photographers	Cultural Anthropological	AHRS Research LR Review	Other
Tobey	Jennifer	ASRC Energy Services Alaska	3900 C Street, Suite 700	Anchorage	AK	99503	907-339-5481	907-339-5475	jennifer.tobey@asrcenergy.com	http://www.asrcenergy.com	X	X	X	X	X	Ethnohistory, NEPA
Vetre	Douglas W.	DWV Consulting	1319 G Street	Anchorage	AK	99501	907-277-1735	907-277-1736	vetre@gci.net		X					
Welsh AIA	Amanda	Welsh Whiskey Architects, LLC	327 Berenden Street	Ketchikan	AK	99901	907-225-2412	907-225-2422	amanda@welshwhiskey.com	www.welshwhiskey.com	X	X				Historic Architect, HABS/HAER Drawings
Whitehead	John S.	John S. Whitehead	4211 Misty Morning Way, Apt. 2502	Gainesville	GA	30606	770-534-0900		j.white@bellsouth.net		X					
Whiskey, AA	Timothy	Welsh Whiskey Architects, LLC	327 Berenden Street	Ketchikan	AK	99901	907-225-2412	907-225-2422	tw@welshwhiskey.com	www.welshwhiskey.com	X	X				Historic Architect, HABS/HAER Drawings
Whitney	James	Circa 69	1750 Barn Swallow Way	Fairbanks	AK	99709	907-590-1720		edwhitney@gmail.com		X					Preparing Collections for Curation
Wilson	David	Goldier Associates, Inc.	2247 Fox Heights Lane, Suite A	Green Bay	WI	54304	820-481-2500		dwilson@goldier.com		X					Section 106 & NEPA services; CR survey, analysis, document preparation, historic documentation
Wiley	Anastasia	ERIS Corp	P.O. Box 1718	Haines	AK	99827	907-786-3513	907-786-3523	wileycorp@eris.com	www.eris.com	X	X	X	X	X	
Wills	Susan	Bettsworth North Architects and Planner Inc.	212 Front Street	Fairbanks	AK	99701	907-456-5780	907-451-6522	info@bettsworthnorth.com	www.bettsworthnorth.com	X	X				
Yarborough	Linda Elm	Cultural Resource Consultants LLC - CRC	3504 East 67th Avenue	Anchorage	AK	99507	907-349-3445, mobile 801-230-5835	480-772-4185	ly@crcaleska.com	http://www.crcalleska.com/	X	X	X	X	X	
Yarborough	Michael	Cultural Resource Consultants LLC - CRC	3504 East 67th Avenue	Anchorage	AK	99507	907-349-3445, mobile 907-309-6065	480-772-4185	mry@crcaleska.com	http://www.crcalleska.com/	X	X	X	X	X	
Yeener	David R.	David R. Yeener, Archaeological Consultant	21741 Woodliff Drive	Chugiak	AK	99507	907-688-0864	907-786-6850	dryeener@alaska.edu, merrindr@comcast.net	www.alaska.edu/archaeological/	X					
CrQuinn	Lucy Flynn	DOWL HQM	4041 B Street	Anchorage	AK	99503	907-563-2000	907-563-3953	lquinn@dowl.com	www.dowlhq.com	X	X	X	X	X	

From: [Wall, Bruce](#)
To: [Hartley, Patricia](#)
Subject: FW: Denver Gravel Pit
Date: Monday, July 16, 2018 4:17:36 PM

From: Paul Roderick [mailto:pauls.services1970@gmail.com]
Sent: Monday, July 16, 2018 3:17 PM
To: Wall, Bruce <bwall@kpb.us>
Subject: Denver Gravel Pit

Dear Mr Wall,

It has come my attention that I must address the land valuation issue concerning a gravel pit owned by Emmitt Trimble on Denver Street in Anchor Point. A neighbor mentioned they were just sold a piece of land (of high value) and was never informed by the realtor, Coastal Realty, Mr Trimble, that he owned a gravel pit nearby. A terrible breach of ethics concerning our new community members! This is not the only neighbor expressing concern.

As any prospective land owner would have considered for this neighborhood on Denver Street, I would not have chosen to buy land at the value I purchased it at had I known it would be devalued by the installation of a gravel pit in this vicinity.

There is an older gravel pit owned by Buzz Kyllonen that has caused much controversy in the area. The care for it has been problematic and dangerous. The pond there has high sides with little slope and no attempt to warn or protect the public of the whereabouts or dangers contained therein. Furthermore, the Beach Rd is considered a lower category highway, too narrow for heavy traffic.

It is my observation that many of the land owners with \$.25million or more homes in this area would be displeased at the prospect of a gravel crusher in their front yard. The Kenai Peninsula Borough may find themselves looking at potential lawsuits concerning this matter.

Respectfully Yours,
Paul Roderick



Kachemak Bay Conservation Society

3734 Ben Walters Ln, Homer, AK 99603

907 235.8214

kbayconservation@gmail.com

Filed Electronically

June 16, 2018

: bwall@kpb.us.

Kenai Peninsula Planning Department
144 N. Binkley St.
Soldotna AK. 99669

Dear Planning Commission,

Kachemak Bay Conservation Society (KBCS) is a nonprofit grassroots organization with over 80 members who live and work in the area of Kachemak Bay at the southern end of the Kenai Peninsula. For over 35 years KBCS has come together to work for protection of the environment of the Kachemak Bay region and encourage sustainable use and stewardship of local natural resources through advocacy, education, information, and collaboration. Please accept the following comments on behalf of the members of KBCS.

The proposed Resolutions 2018-22 & 2018 13, before you this evening have major ramifications to the health of the Anchor River Drainage and fishing industry that depends on the Anchor River. The fact that the proposed Resolution 2018- 22 spans the North Fork of the Anchor is appalling. The question of water quality ramifications has certainly not been answered nor has a ground water flow been considered. The effects of these two developments is not understood nor considered at this point.

Fort the above reasons it is prudent, and paramount that these Resolutions, 2018-23 & 2018-22 be rejected or postponed.

With the Borough looking at new Gravel Pit Extraction Regulations in the near future it would be prudent to put off any decision until such time as this is accomplished and a better understanding of the effects these pits could have on the surrounding ecosystem is understood.

The Kachemak Bay Conservation Society (KBCS) which represents all it's members on this issue strongly states that more thought has to go into these two resolutions and hopes that NO Action will be taken to move these forward at tonights meeting.

Sincerely,
Roberta Highland
President, Kachemak Bay Conservation Society

Hartley, Patricia

From: Christy Cupp <christycupp5@hotmail.com>
Sent: Monday, July 16, 2018 4:33 PM
To: Hartley, Patricia
Subject: Comments for tonight's meeting
Attachments: Comments for tonights meeting.docx

Good afternoon,

Please give these comments to tonight's meeting on Beachcomber LLC's proposed gravel pit. Comments are attached.

Thank you,
Christy Elmaleh

Dear Kenai Peninsula Borough Planning Committee,

I am unable to make it to tonight's meeting because of my work schedule, but I wanted to submit my comments on Beachcomber, LLC's proposed gravel pit.

I am opposed to this gravel pit.

My husband, two young children, and I own a property on Seabury. I take my dog, infant, and six year old walking past that property on a regular basis. Sadly, if this proposed gravel pit is approved, the increase in traffic will prohibit me from being able to safely take my children on a walk down that road.

I am also opposed to this gravel pit because it will lower the property values in our neighborhood.

Another reason I am opposed to this gravel pit is that it is right across the road from a state recreation campsite. Revenues that the state gathers from this campsite will be lowered, as many people prefer not to camp across for an industrialized area.

My family bought our house specifically because of the proximity to the state recreation area. We want our children to grow up in a natural, peaceful, and safe part of town.

Please join me in opposing Beachcomber LLC's request for a gravel pit. Thank you for your consideration.

Sincerely,

Christina Elmaleh

Cook Inletkeeper
3734 Ben Walters Lane
Homer, Alaska 99603



p. 907.235.4068
f. 907.235.4069
www.inletkeeper.org

VIA EMAIL ONLY
(mbest@kpb.us)

July 16, 2018

Max Best, Planning Director
Kenai Peninsula Borough Planning Department
144 North Binkley Street
Soldotna, Alaska 99669

Re: Resolution 2018-23; Beachcomber LLC Proposed Gravel Pit & Milling Operation at the Mouth of the Anchor River (KPB Parcel No. 16901067)

Dear Mr. Best & Planning Commission Members:

Please accept these comments on the above-referenced gravel pit and milling operation proposed at the mouth of the Anchor River.

Cook Inletkeeper is a community-based nonprofit group formed by concerned Alaskans in 1995 to protect the Cook Inlet watershed and the life it sustains. Inletkeeper is intimately familiar with gravel pits and their potential impacts: over the past twenty-plus years, Inletkeeper has reviewed many dozens of gravel pit proposals, and responded to many groundwater, surface water, habitat and other concerns regarding gravel pits.

Gravel pits provide an invaluable service to our community; we all use gravel and it's literally and figuratively a foundation for our local communities. At the same time, gravel pits highlight some of the thorniest conflicts between allowable uses, because in the alluvial systems found on the Kenai Peninsula, extractable gravel resources often lie in close proximity to the lakes, streams and wetlands that support our wild salmon. And wild salmon drive our local economies, and in many ways, define what it means to be Alaskan.

The current KPB Material Sites Ordinance is woefully inadequate to protect the water and wetlands resources that support our salmon, and other local, state and federal laws and rules fall far short too. That said, the current application fails to meet even current KPB gravel pit standards.

The Material Site Ordinance is “intended to protect against aquifer disturbance...to protect[] against the lowering of water resources serving other properties.” KPB Ordinance 21.29.040(A)(1). For all Conditional Land Use Permits (CLUPS), the applicant must maintain a two-foot vertical separation from the “*seasonal high water table*.” KPB Ordinance 21.29.050(A)(4)(c) (emphasis added). Yet the application merely states groundwater depth was determined by “[t]esthole on parcel and exposed surface water to the north.” The application does not indicate the timing of the test hole, and whether it accurately reflects the “seasonal high water table.” As a result, the application is incomplete and should be rejected because it fails to provide the information needed to “protect against aquifer disturbance” as required by KPB Ordinance.

The complexity of our salmon systems cannot be overstated, and the interplay between surface water and groundwater near the mouth of the Anchor River is vitally important for the health of our wild salmon. The comments from the National Estuarine Research Reserve highlight the connectivity between the proposed gravel pit site and the Anchor River estuary, and reveal the importance of the estuary to salmon at various life stages. These issues take on additional importance because the application states a desire to mine into the water table at some point in the future.

While many believe the Planning Commission has its “hands tied” by the KPB Material Site Ordinance, the fact is that the Planning Commission has broad delegated authorities to investigate and make recommendations to the Assembly:

Investigation and recommendation authority. The planning commission may consider and investigate subject matter tending to the development and betterment of the borough and make recommendations as it considers advisable to any department of the borough government and to the assembly. The commission may make or have made surveys, maps or plans.

KPB Ordinance 2.40.050.

Accordingly, the Planning Commission has considerable discretion here, and due to the considerable public controversy surrounding this application, and in light of its close proximity to the mouth of one of the most recognized salmon streams on the Kenai Peninsula, we recommend the Planning Commission undertake additional investigations to answer the following questions:

- What is the seasonal high water level?
- What is the rate and direction of groundwater flow?
- What effects will flow from the removal of peat and other vegetation with regard to surface runoff?
- How much dust and dirt will enter the Anchor River through airborne deposition from gravel extraction, milling and hauling activities under prevailing conditions?

These are but a sampling of questions which need to be answered if we hope to maintain the ecological integrity of the Anchor River. As we all know, the Anchor River is under incredible stress, and piecemeal development, warming stream temperatures, overharvest and habitat impacts are playing out the "death by a thousand cuts" problem that has plagued wild salmon systems elsewhere.

Therefore, in addition to the request to reject this application – or at least defer it for future consideration until the application is complete - we call on the Kenai Borough Assembly and the Planning Commission to put a moratorium on all gravel pit authorizations until the Material Sites Task Force has completed its work and adopted enforceable standards that will protect our public land, water and fish resources.

Thank you for your attention to this important issue, and please do not hesitate to contact me with any questions at 907.299.3277 or bob@inletkeeper.org

Yours for Cook Inlet,

A handwritten signature in black ink, appearing to read "Bob Shavelson". The signature is fluid and cursive, with a prominent initial "B" and "S".

Bob Shavelson
Inletkeeper

MISCELLANEOUS

&

ADDITIONAL INFORMATION

Petition to Reject Proposed Sand, Gravel, and Peat Extraction near Danver St., Anchor Point, Alaska

We, the citizens of the town of Anchor Point, petition the Kenai Borough to reject the proposed sand, gravel, and peat extraction permit application submitted by Mary and Emmitt Trimble of Beachcomber LLC.

The negative impact to the surrounding residential properties renders the proposed operation intolerable with regard to noise, dust/dirt, damage to roadways, decrease in property values, and devastation of the natural beauty of the view we currently enjoy.

We respectfully demand that the Kenai Peninsula Planning Commission reject the proposed permit. We hope that the Trimbles will find a more suitable location for their excavation business.

Name	Address	Phone #	Signature
Ann Cline	34926 Danver St.	(425) 449-3540	<i>Ann Cline</i>
Richard Cline	34926 Danver St.	(907) 715-7237	<i>RL Cline</i>
Joseph Sparkman	73884 Seaward Ave	907-321-4404	<i>Joe Sparkman</i>
Chris Spelman	73884 Seaward Ave	(907) 321-4406	<i>Chris Spelman</i>
Richard Both	73572 Seaward Danver	507-437-6130	<i>Richard Both</i>
Pete Kinneen	34969 Danver	787-3323	<i>Pete Kinneen</i>
Mauri Both	73572 Seaward	907-437-7304	<i>Mauri Both</i>
Mike Patrick	34897 Fisher Ct.	907-299-2165	<i>Mike Patrick</i>
Lynda Patrick	34897 Fisher Ct.	907-299-2619	<i>Lynda Patrick</i>
Janice Krutel	73884 Seaward Ave	970 3008940	<i>Jan Krutel</i>
Teresa J. Buss	73850 Seaward	907-399-0063	<i>Teresa Buss</i>
David D. Gregory	73850 Seaward	907-399-2510	<i>David Gregory</i>

SUSAN REID	73820 SEAWARD AVE	907-226-3418	Susan J. Reid
J.D. REID	73820 SEAWARD AVE	907-226-3418	J.D. Reid
WAYNE TOURANGENA	28940 SEABURY CR	907-295-4345	Wayne Tourangena
CHRYL RATES	" "	907-295-8387	Cheryl Rates
Josh Etnuhl	34885 Seaburyport	377-8675	Josh Etnuhl
Eileen Skanda	34860 Seaburyport	10235-5542	Eileen D. Skanda
GARY L. Skreidon	34860 Seaburyport	907-235-5542	Gary L. Skreidon
Chawn Allen	13931 Seaburyport Ave		Chawn Allen

From: **Johnson, McKenzie S (DNR)** mckenzie.johnson@alaska.gov
 Subject: RE: Anchor Point Gravel Point
 Date: July 16, 2018 at 1:06 PM
 To: Hans catchalaska@alaska.net

File No.: 3130-4R Private-Jeanne Bilben
 2018-00873

Ms. Bilben,

The Alaska State Historic Preservation Office (AK SHPO) received your request for information regarding known historical sites in the area of a proposed gravel mine. Upon review of the Alaska Heritage Resources Survey (AHRIS) database there are two reported cultural resource sites in the area of the proposed mining.

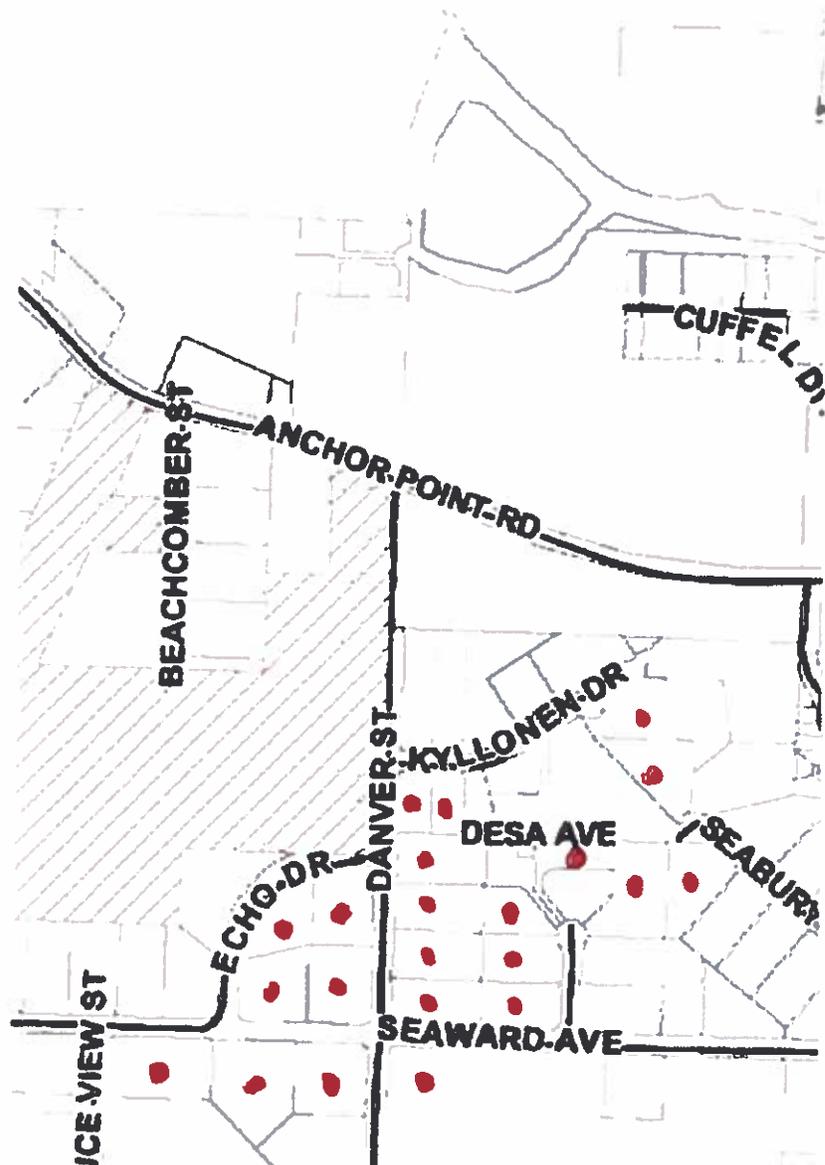
- ✓ ● SEL-00280, prehistoric site, reported to consist of two house pits. Location is represented as a large polygon, exact location of features is unknown but current projected boundaries are within the proposed mining area.
- ✓ ● SEL-00281, historic graves and possible cache pits, reported to consist of 5 graves that at one time had grave markers, depressions tentatively described as cache pits were reported north of the graves. Location is represented as a large polygon, exact location of features is unknown but current projected boundaries are within the proposed mining area.

In Alaska there are two historic preservation laws that *may* apply unless the project is entirely private in nature:

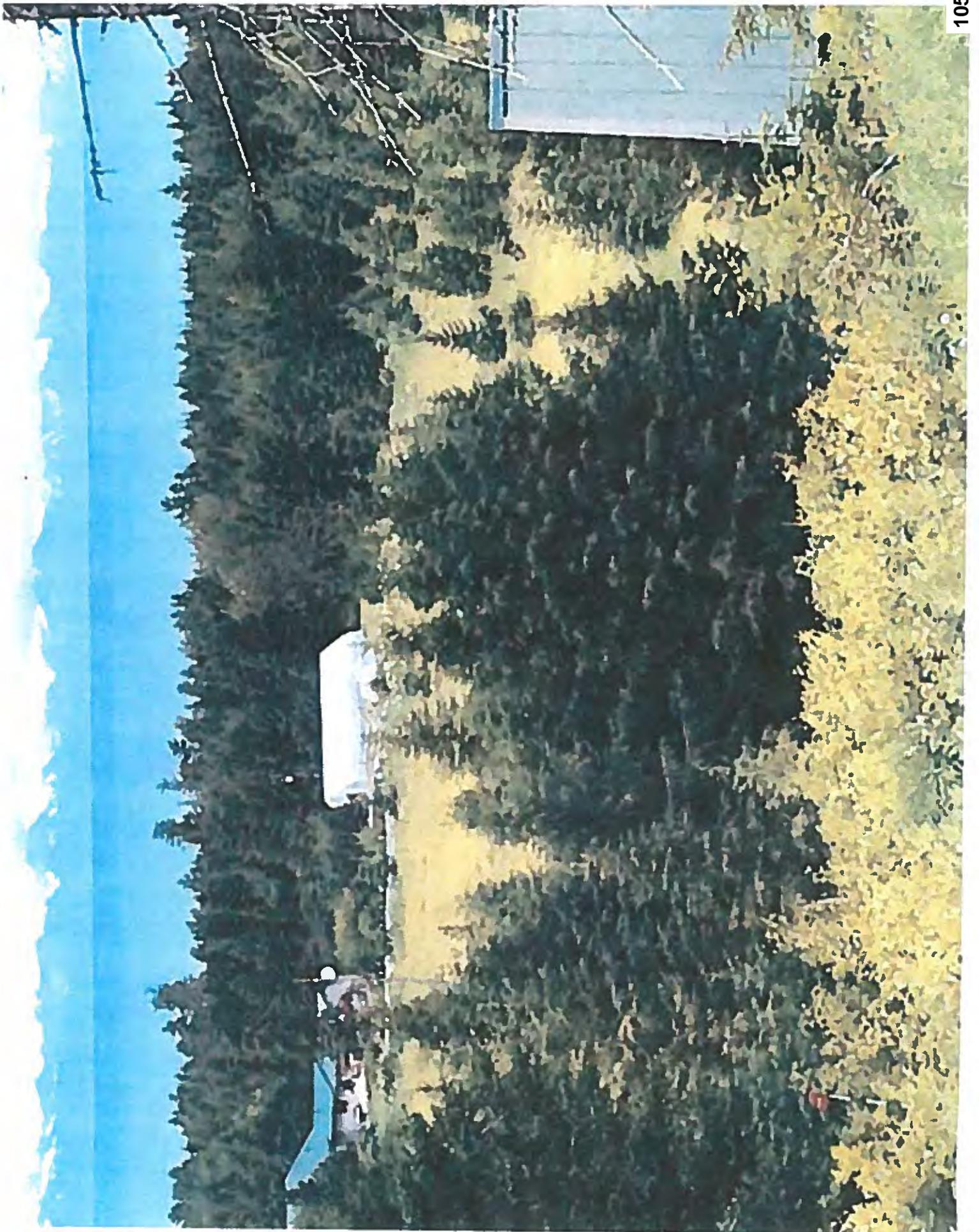
- Alaska Historic Preservation Act (AHPA): State law requires all public construction or improvement activities conducted by, or requiring licensing or permitting from, the State of Alaska to comply with the Alaska Historic Preservation Act (AS 41.35.070). This also includes required reporting of historic and archaeological sites on lands covered under contract with or licensed by the State or governmental agency of the State. This would include any material sources used under contract with the State.
- National Historic Preservation Act (NHPA): If there is Federal involvement (financial assistance, permit, license or approval) with the project it is the statutory obligation of the lead Federal agency to comply with Section 106 (36 CFR § 800) of the National Historic Preservation Act, which requires the Federal agency to take into account the effects that their undertaking may have on historic properties.

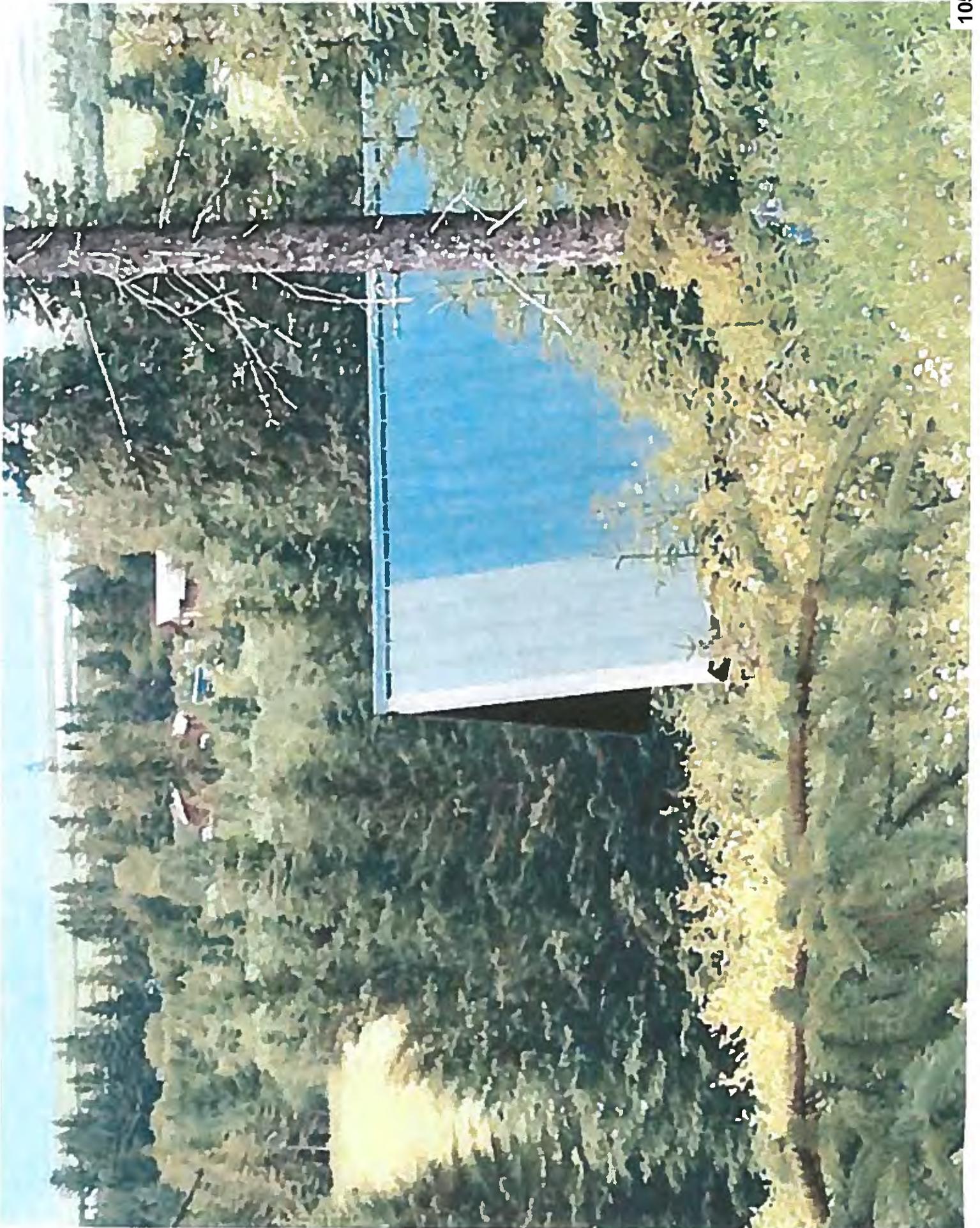
Were either of those laws to apply, our office would be likely to request that an archaeological survey is conducted to verify the site locations and assess the potential effects of the project pursuant to the applicable historic preservation law. In addition, there are State laws regarding the discovery and/or intentional disturbance of human remains, this pertains to ALL lands in Alaska, including private. I have attached our handout regarding human remains.

Due to the lack of clear information regarding the site locations our office strongly encourages the use of a qualified cultural resource professional to verify the site



• RED DOT INDICATES PROPERTIES AT ELEVATIONS THAT CANNOT BE PROTECTED FROM NOISE OR VISUAL IMPACT BY BERMS OR BUFFERS. MORE NORTH OF PROJECT

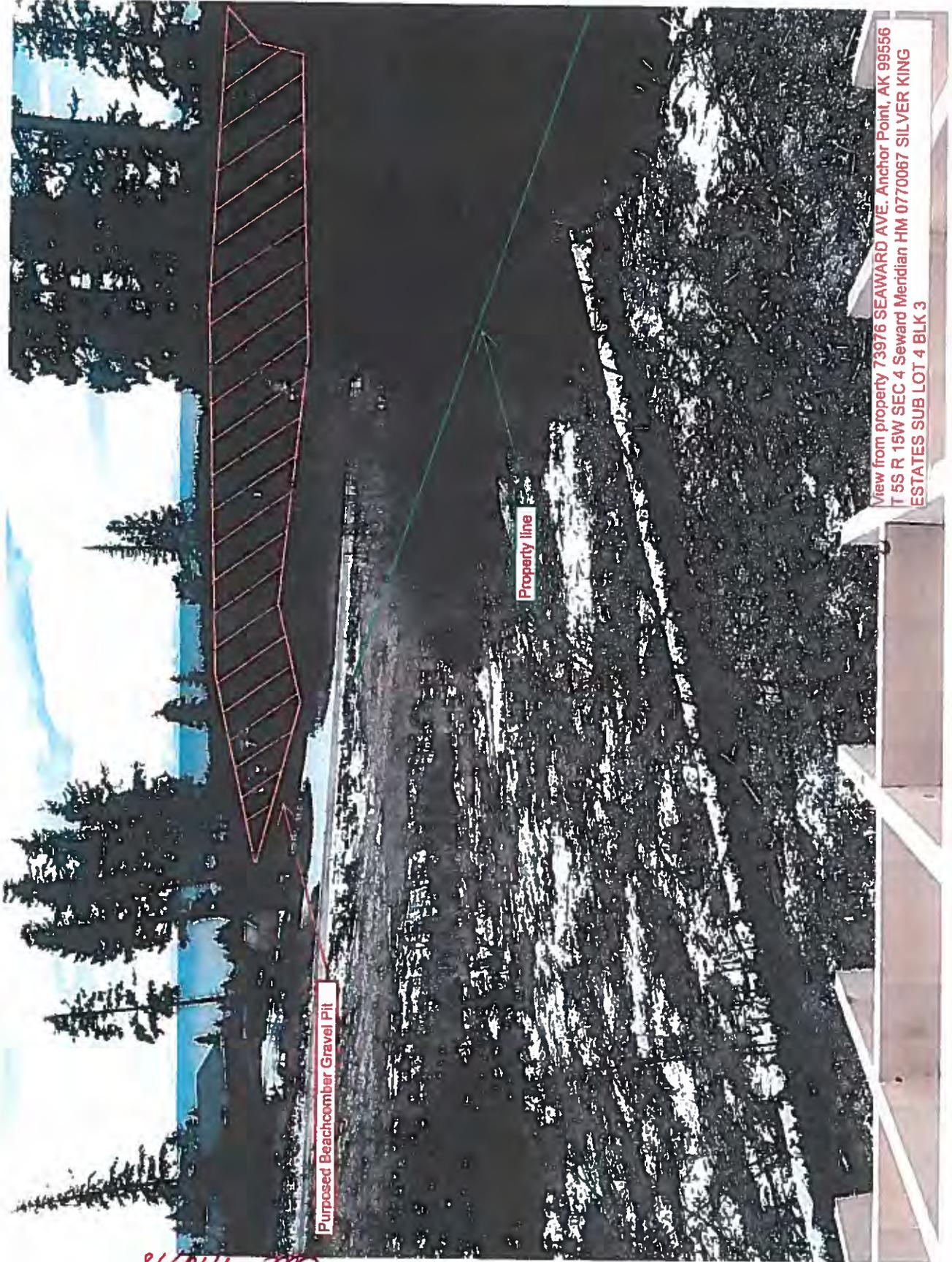






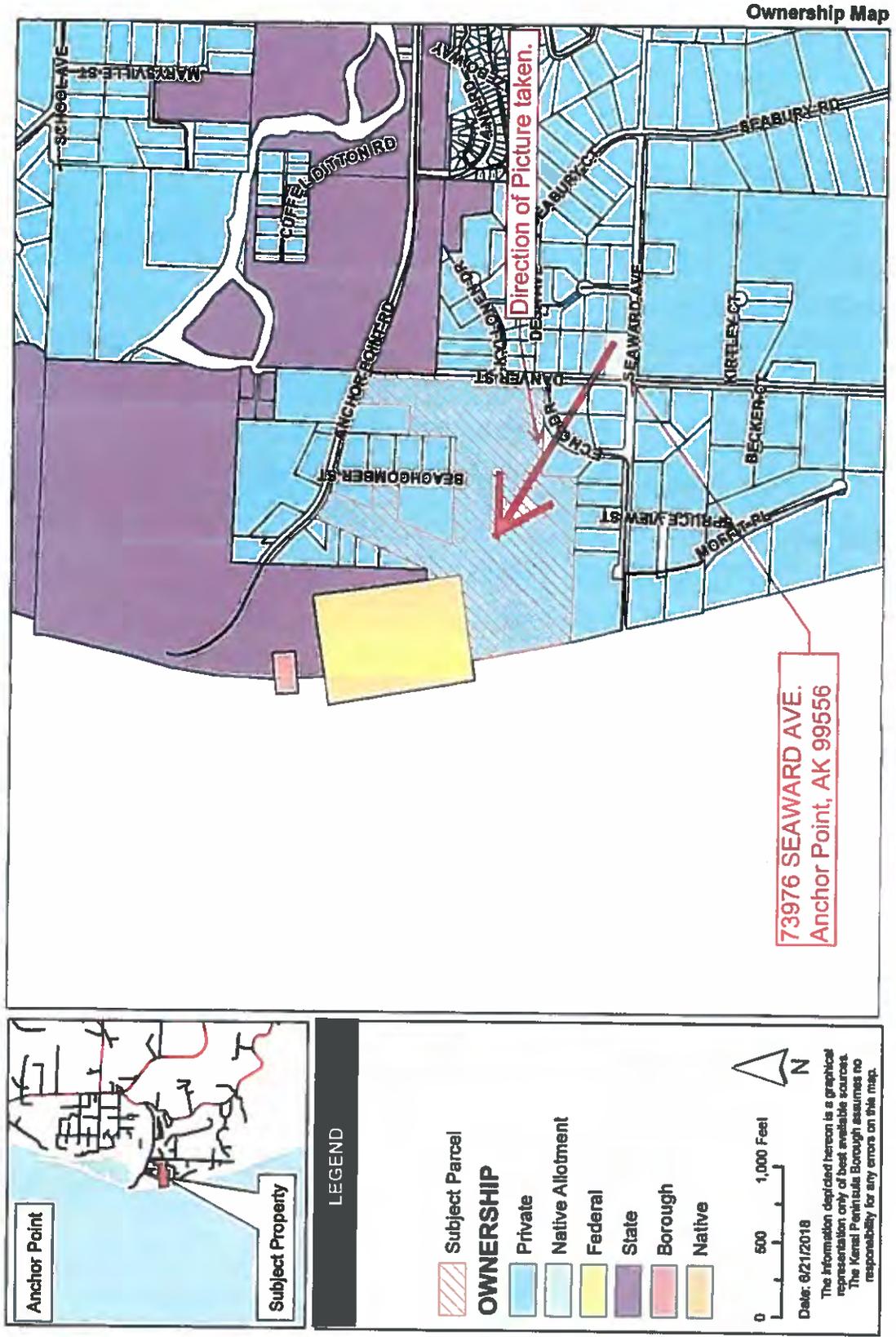
R172

*Handout at meeting
Beachcomber material
Site 7/14/18*



**Kenai Peninsula Borough Planning Commission Meeting, July 16, 2018
 Conditional Land Use Permit for a Material Site**

**Parcel Number: 169-010-67
 Applicant: Beachcomber LLC**









Wall, Bruce

From: Emmitt Trimble <emmitttrimble@gmail.com>
Sent: Monday, July 16, 2018 11:11 AM
To: Wall, Bruce
Subject: FW: Video
Attachments: IMG_0843.MOV; Untitled attachment 00596.txt

Hi Bruce,

This was done yesterday in 3 hours, and can be reproduced each time I would expand to the south, where at most 5 homes have a very limited view of the area now.

Emmitt











Planning Department

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

Charlie Pierce
Borough Mayor

«OWNER»
«ATTENTION»
«ADDRESS»
«CITYSTATEZIP»

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

Public notice is hereby given that a conditional land use permit application has been received for material extraction on a parcel in the **Anchor Point** area. This notice is being sent to landowners located within ½ mile of the subject properties. All members of the public are invited to comment. The projects under consideration are described as follows:

- Applicant:** Beachcomber LLC
- Landowner:** Beachcomber LLC
- Parcel Number:** 169-010-67
- Legal Description:** Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.
- Location:** 74185 Anchor Point Road
- Proposed Land Use:** The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

KPB Code: Conditional land use permit applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.29. Copies of these ordinances are available from the Planning Department or at: kpb.us

Public Hearing: A hearing will be held by the Kenai Peninsula Borough Planning Commission to consider the application on **Monday, July 16, 2018**, commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting will be held in the assembly chambers of the borough administration building located at 144 N Binkley St, Soldotna.

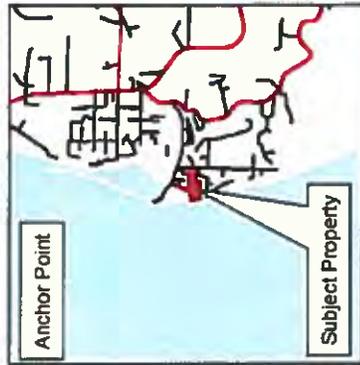
Public Comment: Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to: Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99669. A statement addressed to the chairman may also be emailed to: bwall@kpb.us. Please provide written statements by Friday July 13, 2018. Aggrieved persons, who participate in the public hearing, either by written or oral statement, may appeal the Planning Commission’s decision within 15 days of the date of notice of the decision.

The application and staff report will be available on the Planning Commission website a week prior to the meeting. For additional information or to obtain a copy of the application materials earlier, please call the planning department at (907) 714-2206, or 1-800-478-4441 (toll free within the Borough).

Bruce Wall, AICP
Planner

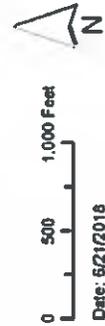
**Kenai Peninsula Borough Planning Commission Meeting, July 16, 2018
 Conditional Land Use Permit for a Material Site**

**Parcel Number: 169-010-67
 Applicant: Beachcomber LLC**

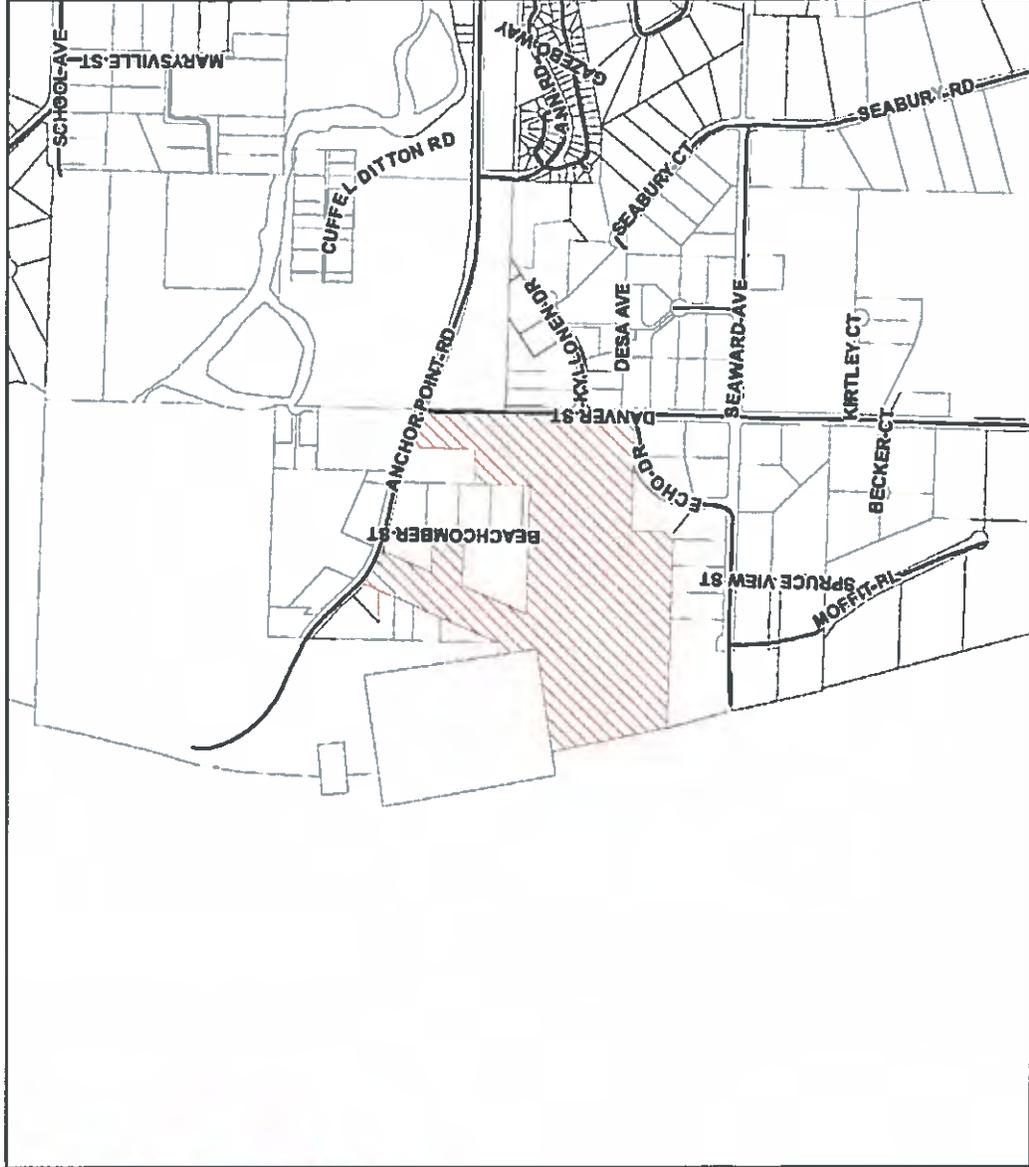


LEGEND

 Subject Parcel



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



ABBREVIATED STAFF REPORT

PC MEETING: July 16, 2018

Applicant: Beachcomber LLC
Landowner: Beachcomber LLC
Parcel Number: 169-010-67
Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.
Location: 74185 Anchor Point Road

BACKGROUND INFORMATION: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

The submitted site plan indicates that the material site haul route will be Danver Street, which is a Borough maintained road. The site plan and application proposes the following buffers:

North: 6-foot high berm except along the east 400 feet where a 50-foot vegetated buffer is proposed.
South: 6-foot high berm.
East: 6-foot high berm.
West: Greater than 50-foot vegetated buffer.

The application indicates that the depth to groundwater is 18 feet and that the depth of the proposed excavation is 10 feet. The groundwater depth was determined by a test hole on the property and exposed surface water to the north. The site plan indicates that the processing area is 300 feet from the south and east property lines. It is greater than 300 feet from the west property line. A waiver is being requested from the north property line. The site plan indicates that the proposed processing area is located 200 feet south of Parcel 169-022-08, which is undeveloped. Parcel 169-022-04 is developed and located within 300 feet of the proposed processing area; this parcel is owned by the applicant's daughter. The site plan indicates that there are several wells located within 300 feet of the parcel boundaries but none within 100 feet of the proposed excavation area.

The application states that reclamation will be completed annually before the growing season ends (September) and that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust. The applicant estimates a life span of 15 years for the site with an approximate annual quantity of less than 50,000 cubic yards.

STAFF RECOMMENDATION

It is anticipated that staff will recommend that additional buffers be required in the southern portion of the site where a 6-foot berm may not be sufficient to provide visual and noise screening of the proposed use. It is anticipated, that with the additional buffer requirement, that the six standards contained in KPB 21.29.040 will be met and that staff will recommend that the Planning Commission approve the conditional land use permit with the conditions listed in the full staff report.

ADDITIONAL INFORMATION

The application and complete staff report, including staff recommended findings and conditions, will be available on the Planning Commission website a week prior to the meeting. For additional information or to obtain a copy of the application materials earlier, please call the planning department at (907) 714-2206, or 1-800-478-4441 (toll free within the Borough).

CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT
 BEACHCOMBER LLC
 PO BOX 193
 ANCHOR POINT, ALASKA 99556



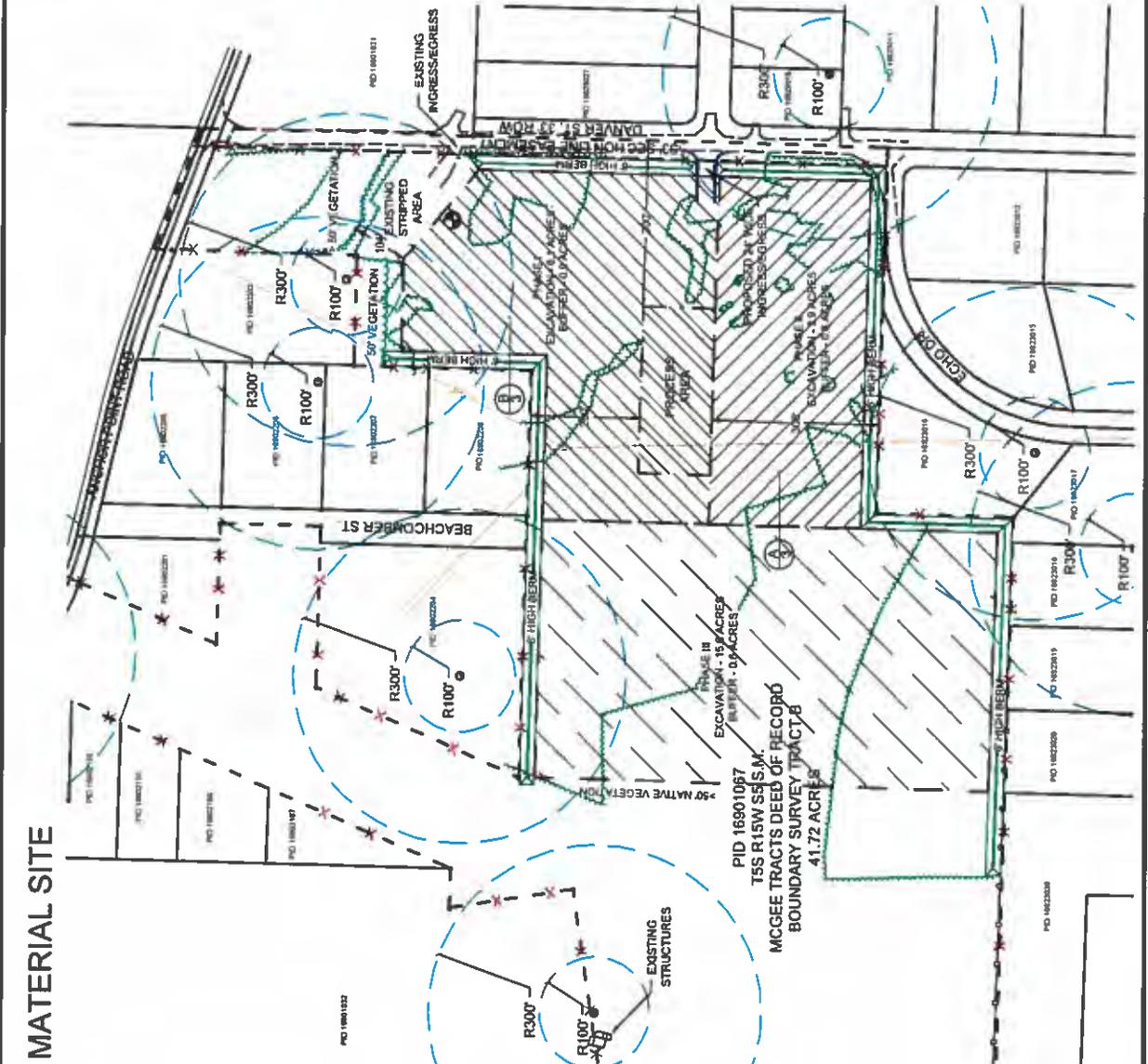
LEGEND	
	RECORD MONUMENT
	PROPERTY CORNERS
	PROPOSED INGRESS/EGRESS
	WELL SETBACK
	INTERVISIBLE FLAGGING
	EXISTING TREELINE
	PROPOSED BUFFER TREELINE
	WETLAND
	APPROX. TESTHOLE LOCATION
	EXISTING FENCELINE

BEACHCOMBER LLC
 ANCHOR POINT RD
 ROAD CONDITIONAL LAND USE PERMIT

ENGINEERING, TESTING
 SURVEYING & MAPPING
 P.O. Box 449
 1000 W. 11th Ave
 ANCHORAGE, ALASKA 99501
 WWW.MLANE.COM

DESIGNED BY: [Name]
 CHECKED BY: [Name]
 DATE: [Date]
 HORIZ. SCALE: 1" = 50'
 VERT. SCALE: 1" = 25'

SHEET: P1

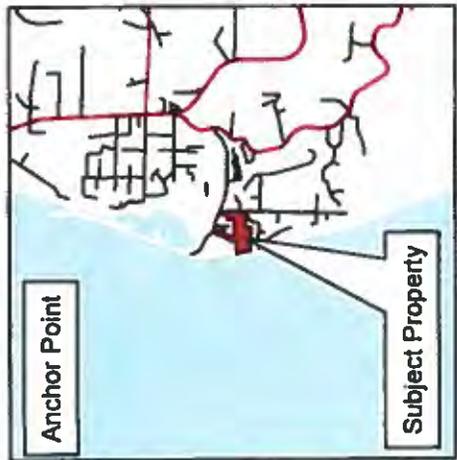
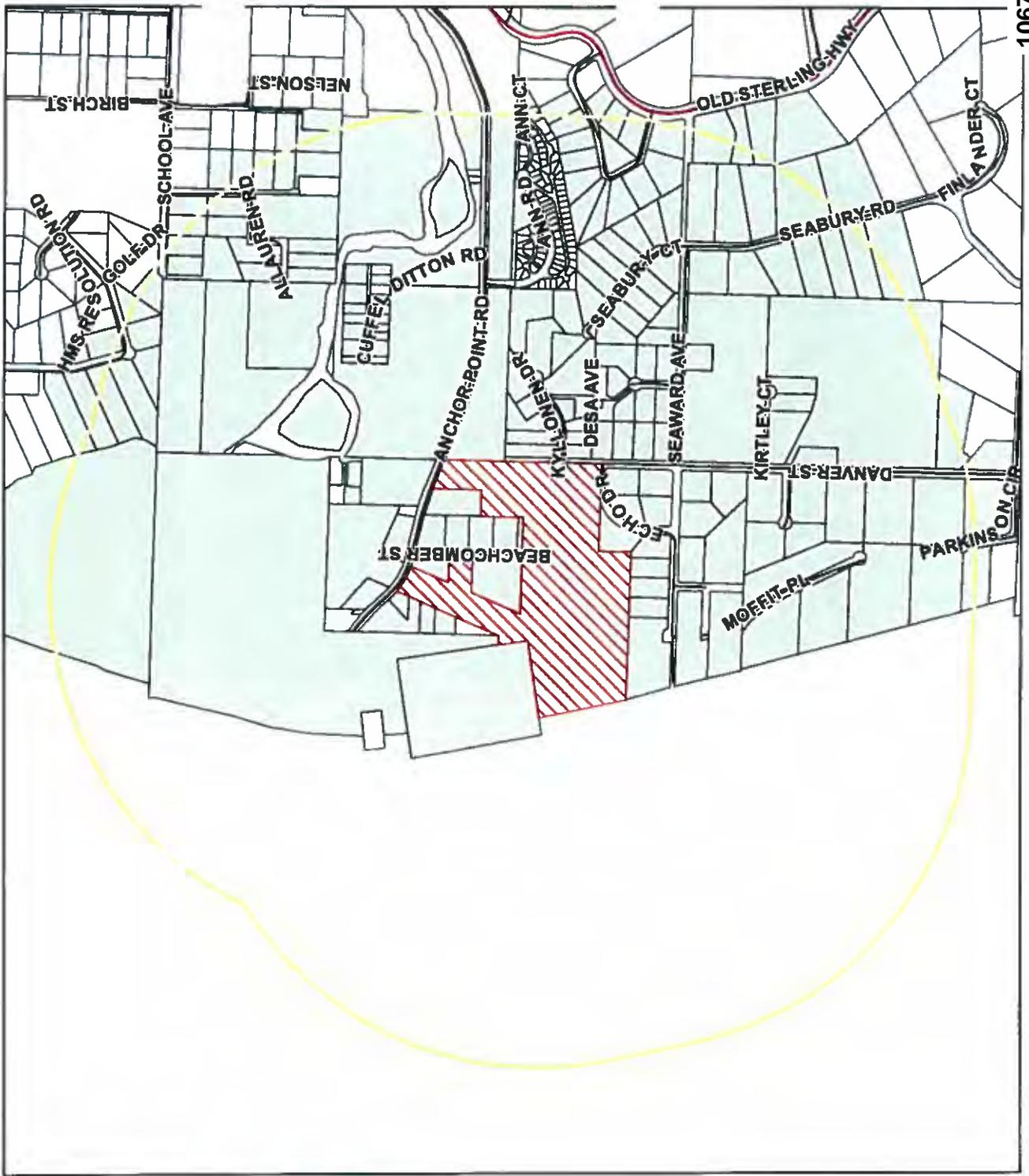


CLUP DEVELOPMENT NOTES

- THIS PERMIT APPLICATION IS FOR PARCEL 16601067 T5S R15W SECTION 5 SEWARD MERIDIAN, MCGEE TRACTS DEED OF RECORD BOUNDARY SURVEY TRACT B
- THE EASTERLY PORTION OF THIS PARCEL IS UNDEVELOPED AND COVERED IN NATIVE VEGETATION AND GRASS FIELD.
- THE EXISTING AND PROPOSED INGRESS/EGRESS IS TO DANVER STREET AND/OR SECTION LINE EASEMENT AS SHOWN.
- THE PREFERRED BUFFERS ARE A COMBINATION OF 50' (OR GREATER) NATIVE VEGETATION BUFFERS AND 6' HIGH BERM.
- WELLS WITHIN 100' AND/OR 300' OF THE EXCAVATION AREA ARE SHOWN HEREON. EXCAVATION BELOW WATER TABLE MAY BE PROPOSED AT A FUTURE TIME.
- THERE IS MAPPED WETLAND AND SURFACE WATER, AS SHOWN, IN THE NORTHEAST CORNER OF THE PARCEL. PROPOSED EXCAVATION IS A MINIMUM OF 100' FROM WATERBODIES. THIS SURFACE WATER SETBACK WILL PROVIDE PROTECTION VIA PHYTOREMEDIATION OF ANY RUN-OFF PRIOR TO ENTERING THE SURFACE WATER. GROUNDWATER IS ESTIMATED AT APPROXIMATELY 20' (AVERAGE) BELOW EXISTING GROUND IN PROPOSED EXCAVATION AREAS. THIS ESTIMATE IS FROM TEST HOLE EXCAVATED BY THE OWNER OR OTHER REPRESENTATIVES.
- THE RECLAIMED AREA WILL BE GRADED AND RECONTOURED USING STRIPPINGS, OVERBURDEN AND TOPSOIL TO A CONDITION THAT ALLOWS FOR RE-ESTABLISHMENT OF NATURAL VEGETATION AND SLOPES STEEPER THAN 2:1 WILL BE SEEDED.
- PROPOSED MATERIAL EXTRACTION INCLUDING STRIPPING WILL BE DONE IN INCREMENTALLY BEGINNING AT THE NORTHERN LIMITS, AS SHOWN, AND PROCEEDING SOUTHERLY AS MARKET FOR MATERIAL AND STAGING AREA.
- PROPOSED PROCESS AREA IS SHOWN. A PROCESS WAIVER WILL BE REQUESTED FOR SEPARATION TO THE NORTH PROPERTY LINE.
- THE PROPERTY CORNERS, WITNESS CORNERS, OR SECTION LINE EASEMENT WAS LOCATED AND THE PARCEL BOUNDARY HAS BEEN FLAGGED AT VISIBLE INTERVALS AS SHOWN HEREON.
- ALASKA DEC USER'S MANUAL, BEST MANAGEMENT PRACTICES FOR GRAVEL/ROCK AGGREGATE EXTRACTION PROJECTS PROTECTING SURFACE WATER AND GROUNDWATER QUALITY IN ALASKA, SEPTEMBER 2012 WILL BE UTILIZED AS A GUIDELINE TO REDUCE POTENTIAL IMPACTS TO WATER QUALITY

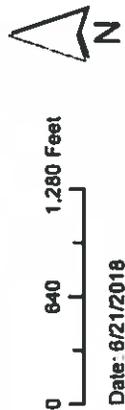
Kenai Peninsula Borough Planning Commission Meeting, July 16, 2018
 Conditional Land Use Permit for a Material Site

Parcel Number: 169-010-67
 Applicant: Beachcomber LLC



LEGEND

-  Notification Area
-  Subject Parcel
-  Parcels selection 2



Date: 6/21/2018
 The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

Wall, Bruce

From: Wall, Bruce
Sent: Tuesday, July 10, 2018 2:26 PM
To: 'susan@reevesamodio.com'
Subject: Beachcomber - Wetlands map
Attachments: 169-010-67_2018-07-09_Wetland_Map.pdf

Susan,

I am not aware of a wetlands delineation being done on this property. In my visits to the property I did not observe any additional areas that would be considered wetlands by casual observation.

Thanks,

Bruce Wall, AICP
Planner
208-369-0089

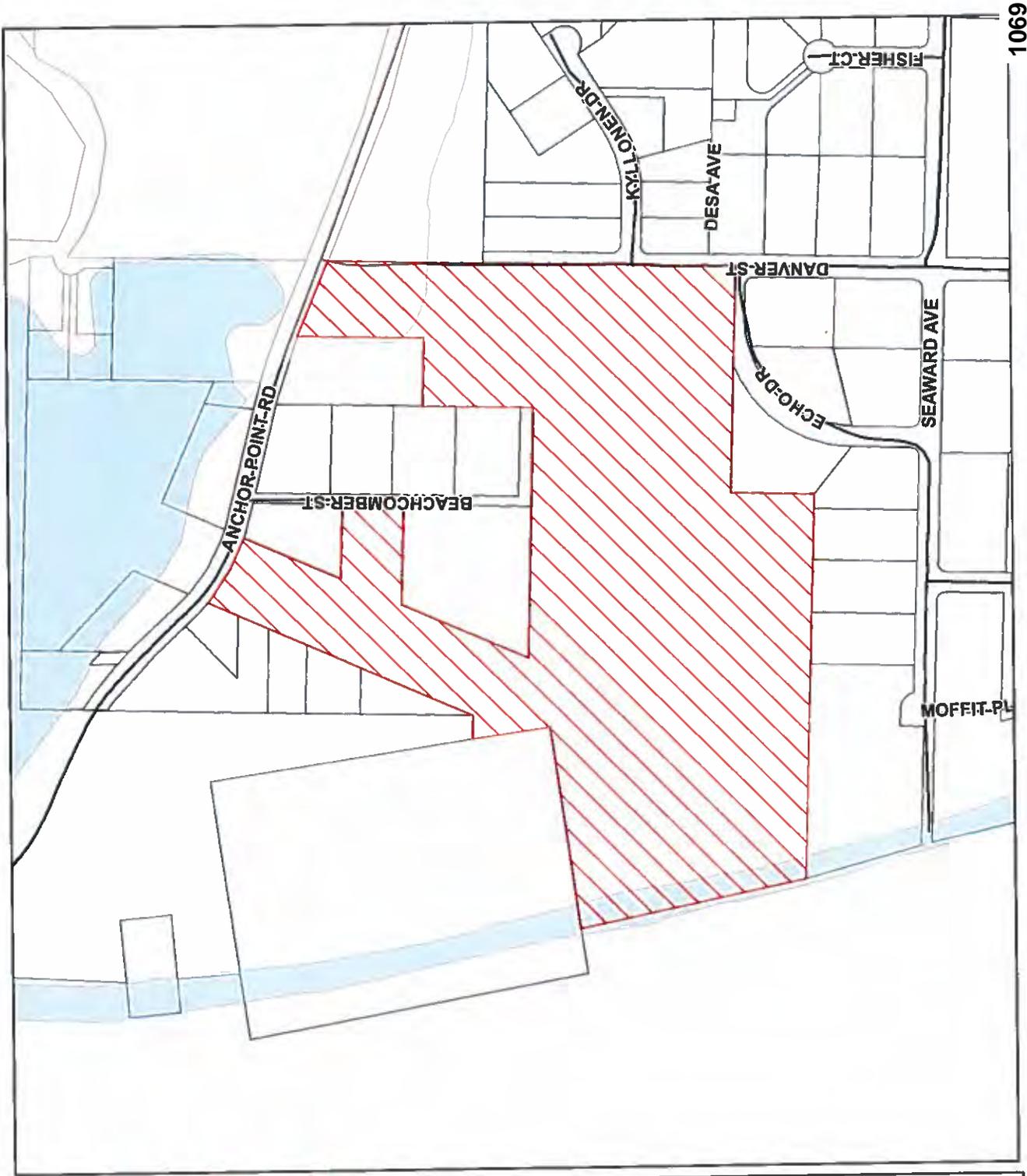
KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

Kenai Peninsula Borough Planning Commission Meeting, July 16, 2018
 Conditional Land Use Permit for a Material Site

Parcel Number: 169-010-67
 Applicant: Beachcomber, LLC



LEGEND

-  Subject Parcel

ECOSYSTEM

-  Riverine
-  Tidal

Date: 7/10/2018

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

0 250 500 Feet



Wall, Bruce

From: Wall, Bruce
Sent: Monday, July 9, 2018 9:11 AM
To: 'R. O. Baker II'
Subject: RE: Beachcomber staff report and related documents
Attachments: 169-010-67_2018-06-19_Notification_List.pdf

Bob,

An email notification was sent to the following:

Niniilchik Traditional Council

Alaska DEC
 Alaska DNR
 Alaska Mental Trust
 Alaska Fish and Game
 Alaska DOT&PF

US Fish & Wildlife
 US Army Corp of Engineers
 US Dept. of Labor

Kenai Peninsula School District
 KPB Anadromous Waters Protections District
 KPB Floodplain Manager
 KPB Coastal Zone Management
 KPB Roads
 KPB Code Compliance
 Other KPB Legal & Planning staff

CIRCAC AND CIRI were not notified. If they would like to be notified of future material site application in the Borough please have them get in touch with me.

If there are additional people at ADEC that would like to be notified of future material site application in the Borough please have them get in touch with me.

Thanks,
 Bruce

From: R. O. Baker II [mailto:bobkleen@acsalaska.net]
Sent: Monday, July 9, 2018 7:27 AM
To: Wall, Bruce <bwall@kpb.us>
Cc: mariedrinkhouse@yahoo.com
Subject: RE: Beachcomber staff report and related documents

Hi Bruce,

Firstly, I hope that you had a pleasant holiday week!

Secondly, I have forwarded your email below onto counsel.

Thirdly, as the week unfolds you will continue to hear from me. A request, please. Would you furnish a list of all of those individuals and entities to whom you had your office send the Notice of Public Hearing. For example, several residents did not receive same and, entities such as CIRCAC, ADEC, and CIRI are unaware of the notice.

I look forward to hearing from you

Yours,

Bob

Sent from [Mail](#) for Windows 10

From: [Wall, Bruce](#)

Sent: Friday, July 6, 2018 5:27 PM

Subject: FW: Beachcomber staff report and related documents

From: Wall, Bruce

Sent: Friday, July 6, 2018 4:22 PM

To: 'eldon.overson12@gmail.com' <eldon.overson12@gmail.com>; 'twoshar@acsalaska.net' <twoshar@acsalaska.net>; 'bobkleen@acsalask.net' <bobkleen@acsalask.net>; 'anndotcalm@gmail.com' <anndotcalm@gmail.com>

Subject: Beachcomber staff report and related documents

Bruce Wall, AICP

Planner

208-369-0089

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



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Wall, Bruce

From: Wall, Bruce
Sent: Wednesday, June 27, 2018 1:51 PM
To: 'Hans'
Subject: RE: Question about a conditional land use permit??

Hans,

Thank you for your email. I became aware that he was extracting material from his property a year or two ago. Somebody else contacted me a couple of months ago concerned about the extraction on this property. I visited the site both times and have determined that he is not in violation of the Borough code. The Borough code exempts extraction that disturbs less than an acre from the requirements to obtain a permit. I spoke to Emmitt Trimble about this in the past and I will continue to keep an eye on the property before and after he obtains a permit.

Thanks,

Bruce Wall, AICP
 Planner
 208-369-0089

KENAI PENINSULA BOROUGH
 144 North Binkley Street
 Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

From: Hans [mailto:catchalaska@gci.net]
Sent: Wednesday, June 27, 2018 12:41 PM
To: Wall, Bruce <bwall@kpb.us>
Subject: Question about a conditional land use permit??

Hi Bruce,

My name is Hans Bilben and I live at 35039 Denver Street in Anchor Point. I want to find out if Emmit Trimble (Beachcomber LLC) is in violation of Borough Code by selling gravel and transporting it from the parcel he owns on Denver Street. I believe he is! Emmit has applied for a CLUP on this parcel and the hearing will be held on July 16th. I would certainly hope that his blatant disregard of the rules (which has always been his standard operating procedure) will be taken into consideration when reviewing his application. The pictures I have attached were taken today, July 27. You can see that he has hauled several hundred yards of material from the site, and has been doing so for several months, as recently as yesterday. I would appreciate hearing back from you on this matter. Thanks, Hans

Done ☰

Photo (43 of 43)



R193



Wall, Bruce

From: Gina Debardelaben <ginadebar@mclanecg.com>
Sent: Thursday, June 21, 2018 10:08 AM
To: Wall, Bruce; 'emmitttrimble@gmail.com'
Subject: RE: Beachcomber LLC

Bruce,

You can expect revised submittal today to address the surface water protection.

Other items:

1. North boundary – you already sorted.
2. The Borough mapping is not correct. I knew you would ask, so we went through the plats/easements/re-tracing before submittal.
3. Process waiver. Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant's daughter & 169-02-208 is not developed.
4. South buffer. It seems like a berm is the best option due to the limited vegetation at the south boundary. We could propose a higher berm but I'm not sure that makes sense either.

Revisions to follow....if my phone quits ringing. (I start this email 2 hours ago)

Thanks

Gina

Gina M. DeBardelaben, PE
 Principle
 McLane Consulting, Inc.
 P.O. Box 468; Soldotna, Alaska 99669
 907-283-4218 office
 907-398-8143 cell

From: Wall, Bruce [mailto:bwall@kpb.us]
Sent: Thursday, June 21, 2018 8:58 AM
To: Gina Debardelaben <ginadebar@mclanecg.com>
Subject: FW: Beachcomber LLC

Disregard this paragraph. Now that I looked at the plat ... it all makes sense to me.

I was unable to determine the north boundary along Anchor Point Road near Danver Street during my site visit. There were no stakes along Anchor Point Road except one on the south side of the road near the NW corner of that portion of the property, but it was marked as property line rather than property corner. There was also a stake on the north side of the road near the NE corner of the property but it did not appear to line up with the stakes along Danver Street and it was not labeled at all. I suspect that the Borough's mapping is incorrect in this case. Can you help me better understand the staking?

From: Wall, Bruce
Sent: Wednesday, June 20, 2018 3:23 PM
To: Gina Debardelaben; 'emmitttrimble@gmail.com'
Subject: Beachcomber LLC

Gina,

KPB 21.29.030(A)(8)(i) states that the site plan must include the following:

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;

I don't see this on the site plan. Am I overlooking something?

Parcel 169-022-08 is shown as abutting the subject parcel. The Borough's GIS shows it being separated by a portion of Parcel 169-022-04. Is the Borough mapping incorrect?

I was unable to determine the north boundary along Anchor Point Road near Danver Street during my site visit. There were no stakes along Anchor Point Road except one on the south side of the road near the NW corner of that portion of the property, but it was marked as *property line* rather than *property corner*. There was also a stake on the north side of the road near the NE corner of the property but it did not appear to line up with the stakes along Danver Street and it was not labeled at all. I suspect that the Borough's mapping is incorrect in this case. Can you help me better understand the staking?

The application is requesting a waiver of the 300-foot processing distance requirement. Because of recent feedback from the planning commission I am undecided about how I will handle the request in my staff report.

The site plan and application proposes a 6-foot high berm along the south property line. However, some of the houses south of the property sit several feet higher than the subject property. It does not appear that the 6-foot high berms will provide sufficient visual and noise screening in some of these areas.

Thanks,

Bruce Wall, AICP
Planner
907-714-2206

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

PUBLISHER'S AFFIDAVIT

UNITED STATES OF AMERICA, }
STATE OF ALASKA } SS:

Elizabeth A. Ulricksen being first duly sworn,
on oath deposes and says:

That I am and was at all times here in this
affidavit mentions, Supervisor of Legals of the
Sound Publishing/Homer News, a newspaper of
general circulation and published at Homer,
Alaska, that the advertisement, a printed copy of
which is hereto annexed was published in said
paper on the dates listed below:

PHN: Beachcomber
July 5, 2018

X *Elizabeth A. Ulricksen*

SUBSCRIBED AND SWORN to me before
this 11 day of July, 2018.

J. Hamlin

NOTARY PUBLIC in favor for the State of
Alaska.

My commission expires May 6, 2019

Notary Public
J. HAMLIN
State of Alaska
My Commission Expires May 6, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION
NOTICE OF PUBLIC HEARING
Monday, July 16, 2018

Public notice is hereby given that a conditional land use permit application has been received for material extraction on a parcel in the Anchor Point area. The project under consideration are described as follows:
 Applicant / Landowner: Beachcomber LLC, Parcel #: 168-010-67, Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District. Location: 74185 Anchor Point Road.
 Proposed Land Use: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.
 KPB Code: Conditional land use permit applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.29. Copies of these ordinances are available from the Planning Department or at: www.kpb.us.
 Public Hearing: A hearing will be held by the KPB Planning Commission to consider the application on Monday, July 16, 2018, commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting will be held in the assembly chambers of the borough administration building located at 144 N Binkley St, Soldotna.
 Public Comment: Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to: Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99683. A statement addressed to the chairman may also be emailed to: bwahl@kpb.us. Please provide written statements by Friday July 13, 2018. Aggrieved persons, who participate in the public hearing, either by written or oral statement, may appeal the Planning Commission's decision within 15 days of the date of notice of the decision.
 The application and staff report will be available on the Planning Commission website a week prior to the meeting. For additional information or to obtain a copy of the application materials earlier, please call the planning department at (907) 714-2206, or 1-800-478-4441 (toll free within the Borough).
 Bruce Wahl, AICP
bwahl@kpb.us
 2180344
 Publin Homer News, July 5, 2018

PLNG

1078



HOMER NEWS

Kenai Peninsula Borough
144 North Binkley Street
Soldotna, AK 99689

Invoice: 2160344

07/05/18	Legal - PHN Beachcomber	101.01
	EPntFec	2.50
	Affidavit	10.00
	Total Due	\$113.51

RECEIVED
JUL 19 2018
KPB
FINANCE DEPT ACCOUNTING

R198



Planning Department

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

Charlie Pierce
Borough Mayor

July 9, 2018

Postmaster
33790 Sterling Hwy
Anchor Point, AK 99556-9606

Enclosed is a notice for a public hearing. Kenai Peninsula Borough Ordinance (21.25.060) requires that notice of public hearings for Conditional Land Use Permits be posted in the post office of the impacted community.

Can you post this for me in the Anchor Point Post Office?

Thanks,

Bruce Wall, AICP
Planner
bwall@kpb.us



Planning Department

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

Charlie Pierce
Borough Mayor

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

Public notice is hereby given that a conditional land use permit application has been received for material extraction on a parcel in the **Anchor Point** area. This notice is being sent to landowners located within ½ mile of the subject properties. All members of the public are invited to comment. The projects under consideration are described as follows:

Applicant: Beachcomber LLC

Landowner: Beachcomber LLC

Parcel Number: 169-010-67

Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Location: 74185 Anchor Point Road

Proposed Land Use: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

KPB Code: Conditional land use permit applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.29. Copies of these ordinances are available from the Planning Department or at: kpb.us

Public Hearing: A hearing will be held by the Kenai Peninsula Borough Planning Commission to consider the application on **Monday, July 16, 2018**, commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting will be held in the assembly chambers of the borough administration building located at 144 N Binkley St, Soldotna.

Public Comment: Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to: Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99669. A statement addressed to the chairman may also be emailed to: bwall@kpb.us. Please provide written statements by Friday July 13, 2018. Aggrieved persons, who participate in the public hearing, either by written or oral statement, may appeal the Planning Commission's decision within 15 days of the date of notice of the decision.

The application and staff report will be available on the Planning Commission website a week prior to the meeting. For additional information or to obtain a copy of the application materials earlier, please call the planning department at (907) 714-2206, or 1-800-478-4441 (toll free within the Borough).

Bruce Wall, AICP
Planner

Wall, Bruce

From: Wall, Bruce
Sent: Friday, July 6, 2018 9:34 AM
To: Hartley, Patricia
Subject: FW: KPB CLUP Material Site Application - Parcel 169-010-67
Attachments: 169-010-67_2018-07-06_Notice.pdf; 169-010-67_2018-07-03_Staff_report.pdf; 169-010-67_2018-06-21_Site_Plan.pdf; 169-010-67_2018-06-18_Application.pdf; 169-010-67_2018-06-21_Contour_Map.pdf; 169-010-67_2018-06-21_Land_Use_Map.pdf; 169-010-67_2018-06-21_Ownership_Map.pdf; 169-010-67_2018-06-21_Aerial_Map.pdf; 169-010-67_2018-07-03_Staff_report.doc

From: Wall, Bruce
Sent: Friday, July 6, 2018 9:34 AM
To: Best, Max <MBest@kpb.us>; Carver, Nancy <ncarver@kpb.us>; 'CEPOA-RD-KFO, POA' <CEPOA-RD-Kenai@usace.army.mil>; 'Chandler Long (chandler.long@alaska.gov)' <chandler.long@alaska.gov>; 'Charley Palmer (charley.palmer@alaska.gov)' <charley.palmer@alaska.gov>; 'Christopher Miller (chris.miller@alaska.gov)' <chris.miller@alaska.gov>; 'Clark Cox (clark.cox@alaska.gov)' <clark.cox@alaska.gov>; 'David May (DMay@kpbsd.k12.ak.us)' <DMay@kpbsd.k12.ak.us>; Dearlove, Tom <tdearlove@kpb.us>; 'Dustin Firestine (firestine.dustin@dol.gov)' <firestine.dustin@dol.gov>; Harris, Bryr <bharris@kpb.us>; 'Jeff Green (jeffrey.green@alaska.gov)' <jeffrey.green@alaska.gov>; 'Kyle Graham' <kyle_graham@fws.gov>; 'Malone, Patrick' <PMalone@borough.kenai.ak.us>; 'Mark Fink (mark.fink@alaska.gov)' <mark.fink@alaska.gov>; 'Michael Walton (michael.walton@alaska.gov)' <michael.walton@alaska.gov>; 'Montague, Holly' <HMont@borough.kenai.ak.us>; 'Mueller, Marcus' <MMueller@borough.kenai.ak.us>; 'Ninilchik Tribe (ntc@ninilchiktribe-nsn.gov)' <ntc@ninilchiktribe-nsn.gov>; Noyes, Karyn <KNoyes@kpb.us>; Shears, Jennifer <jshears@kpb.us>; 'Simpson, Danika L (DOT)' <danika.simpson@alaska.gov>
Cc: Gina Debardeleben <ginadebar@mclanecg.com>; 'emmitttrimble@gmail.com' <emmitttrimble@gmail.com>
Subject: KPB CLUP Material Site Application - Parcel 169-010-67

Please see the attached public notice, staff report, application, and associated documents for a conditional land use permit application.

Thanks,

Bruce Wall, AICP
 Planner
 208-369-0089

KENAI PENINSULA BOROUGH
 144 North Binkley Street
 Soldotna, Alaska 99669



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Members:

Best, Max
 Carver, Nancy
 CEPOA-RD-KFO, POA
 Chandler Long (chandler.long@alaska.gov)
 Charley Palmer (charley.palmer@alaska.gov)
 Christopher Miller (chris.miller@alaska.gov)
 Clark Cox (clark.cox@alaska.gov)
 David May (DMay@kpbsd.k12.ak.us)
 Dearlove, Tom
 Dustin Firestine (firestine.dustin@dol.gov)
 Harris, Bryr
 Jeff Green (jeffrey.green@alaska.gov)
 KPB Road Service Area
 Kyle Graham
 Mark Fink (mark.fink@alaska.gov)
 Michael Walton (michael.walton@alaska.gov)
 Montague, Holly
 Mueller, Marcus
 Ninilchik Tribe (ntc@niniichiktribe-nsn.gov)
 Noyes, Karyn
 Shears, Jennifer
 Simpson, Danika L. (DOT)

MBest@kpb.us
 ncarver@borough.kenai.ak.us
 CEPOA-RD-Kenai@usace.army.mil
 chandler.long@alaska.gov
 charley.palmer@alaska.gov
 chris.miller@alaska.gov
 clark.cox@alaska.gov
 DMay@kpbsd.k12.ak.us
 tdearlove@borough.kenai.ak.us
 firestine.dustin@dol.gov
 bharris@kpb.us
 jeffrey.green@alaska.gov
 roads@kpb.us
 kyle_graham@fws.gov
 mark.fink@alaska.gov
 michael.walton@alaska.gov
 HMont@borough.kenai.ak.us
 MMueller@borough.kenai.ak.us
 ntc@niniichiktribe-nsn.gov
 KNoyes@kpb.us
 jshears@kpb.us
 danika.simpson@alaska.gov

Wall, Bruce

Contact Group Name:

Material Site Notice

First Name	Last Name	Company	Job Title	Business Street	Business City
Chandler	Long	Department of Natural Resources	Natural Resource Specialist II	Division of Mining, Land & Water-	Anchorage
Charley	Palmer	Environmental Conservation	Hydrologist III	555 Cordova St	Anchorage
Christopher	Miller	Environmental Conservation	Environ Program Spec IV	555 Cordova St	Anchorage
Clark	Cox	Alaska Dept of Natural Resources	Natural Resource Mgr II	550 W 7th Ave Ste 900c	Anchorage
Danika	Simpson	Alaska Dept of Transportation & PF	Right of Way Agent	PO Box 196900	Anchorage
David	May	Kenai Peninsula Borough School District	Planning and Operations Director		
Dustin	Firestine	U.S. Department of Labor			
Jeff	Green	Alaska Mental Health Trust Land Office	Southcentral Lands Manager	Mine Safety and Health 2600 Cordova Street, Suite 100	Anchorage Anchorage
Kyle	Graham				
Mark	Fink	Fish and Game	Habitat Biologist IV	333 Raspberry Road	Anchorage
Michael	Walton	Alaska Dept of Natural Resources Ninilchik Tribe	Natural Resource Mgr II	550 W 7th Ave Ste 1020 P.O. Box 39070	Anchorage Ninilchik

OWNER	ATTENTION	ADDRESS	CITYSTATEZIP
AARON BRIAN K		PO BOX 5511	CHINIAK, AK 99615
ABBOTT RYAN E		PO BOX 3479	CHAPEL HILL, NC 27515
AKEE BRITTNAY		PO BOX 514	ANCHOR POINT, AK 99556
ALASKA STATE D N R		550 W 7TH AVE STE 650	ANCHORAGE, AK 99501
ALASKA STATE PARKS DIVISION		550 W 7TH AVE STE 1380	ANCHORAGE, AK 99501
ALEXANDER THOMAS		785 CASCADE CT	PALMER, AK 99645
ALLEN DANIEL J		PO BOX 1463	ANCHOR POINT, AK 99556
ALLEN LEE D & CHARLOTTE A		9101 E MILE 6 RD	PALMER, AK 99645
ANCHOR RIVER RV LLC	DAVID DRIGGERS	PO BOX 745	ANCHOR POINT, AK 99556
ANDERSON MELISSA L & JOHN S Jr		PO BOX 1466	ANCHOR POINT, AK 99556
AURORA SMC INC	STEVEN & MICHELLE CROPSEY	1960 E AGUA VIEW RD	MOHAVE VALLEY, AZ 86440
BAIR FRED D		1227 ALDER AVE TRLR 44	LEWISTON, ID 83501
BAKER R O II REVOCABLE TRUST	ROBERT O BAKER II TRUSTEE	PO BOX 870	ANCHOR POINT, AK 99556
BALLAND D THOMAS		66437 OUT THERE AVE	ANCHOR POINT, AK 99556
BANKS JEAN L		PO BOX 127	ANCHOR POINT, AK 99556
BARNETT MARY JO		PO BOX 2782	HOMER, AK 99603
BARTLETT DOUGLAS C		PO BOX 670162	CHUGIAK, AK 99567
BARTLEY INVESTMENTS LLC		PO BOX 147	EUREKA, NV 89316
BEACHCOMBER LLC		PO BOX 150	ANCHOR POINT, AK 99556
BEASLEY ALAN		PO BOX 311	ANCHOR POINT, AK 99556
BELLAMY LEHUA NANI M		3801 JAMES DR	ANCHORAGE, AK 99504
BERKBIGLER WILLIAM J		2313 W TUDOR RD	ANCHORAGE, AK 99517
BILBEN HANS & JEANNE		PO BOX 1176	ANCHOR POINT, AK 99556
BLAIR GERALD A TRUST		PO BOX 978	ANCHOR POINT, AK 99556
BLISS GORDON A & ELIZABETH A		3415 HOLLYWOOD AVE	MEDFORD, OR 97501
BLOCK 16 LLC		395 E SUNSET RD	LAS VEGAS, NV 89119
BODDE BRAD & MARY		25245 CRYSTAL CREEK DR	EAGLE RIVER, AK 99577
BRANTLEY MICHAEL JOHN LIVING TRUST		7764 BOUNDARY AVE	ANCHORAGE, AK 99504
BRATCHER EDITH BERNICE		6214 BIG HOUSE RD	BLACKSHEAR, GA 31516
BREESE DONALD N		35090 OLD STERLING HWY	ANCHOR POINT, AK 99556
BREZINA STEPHEN D		12012 SWEETWATER CIR UNIT B	EAGLE RIVER, AK 99577
BRINCKERHOFF SCOTT & DONNA E		269 PLAINS RD	HADDAM, CT 06438
BRNA PHILIP J		5601 E 98TH AVE	ANCHORAGE, AK 99507
BROOK THOMAS J		PO BOX 39004	NINILCHIK, AK 99639
CANNON JAMES E		PO BOX 886	ANCHOR POINT, AK 99556
CARLSON STANLEY D & BECKY ANN		4002 E SUMAC DR	SPOKANE, WA 99223
CARLTON RICHARD D		722 W 45TH AVE	KENNEWICK, WA 99337
CARTER HAROLD J		3492 LARK RDG	WAYCROSS, GA 31503
CATHEY SHYAN		PO BOX 1066	ANCHOR POINT, AK 99556
CATLIN DEANNA C		PO BOX 34	ANCHOR POINT, AK 99556
CHICARELL DONALD L & EDNA M		211 RHODODENDRON DR	SEQUIM, WA 98382
CLINE ANN G AND RICHARD L LEGACY TRUST		61 TRILLIUM TRL	UNDERWOOD, WA 98651
CNUJDE MATTHEW		10046 W RHETT ST	BOISE, ID 83709
COBURN JAMES		1112 COLONIAL DR	KENAI, AK 99611
COMBS ROGER		2560 FRUITVALE GLENDALE RD	FRUITVALE, ID 83612
COX CHARLES B		905 RICHARDSON VISTA RD APT 37	ANCHORAGE, AK 99501
CULLIP GARY L & SANDRA L		1523 SW 58TH LN	CAPE CORAL, FL 33914
C-VIEW CABINS LLC		38797 FRITZ CREEK VALLEY DR	HOMER, AK 99603
DEAL THOMAS W		1200 W DIMOND BLVD SPC 905	ANCHORAGE, AK 99515
DESTEXHE ELEONORE	22 PLUVIER LANN	1933 STERREBEEK	BELGIUM
DITTON ROBERT L & CHARLENE R		PO BOX 601	HOMER, AK 99603
DRINKHOUSE MARIE L		5949 S HAYFIELD RD	WASILLA, AK 99623
DUKE PHILIP B & TOMOKO		19809 EAGLE RIVER RD	EAGLE RIVER, AK 99577
DUNCAN BRYAN & CAVALIER NICOLE		PO BOX 1436	ANCHOR POINT, AK 99556
DUNCAN CHARLES M LIVING TRUST		911 JAYME CT	ANCHORAGE, AK 99518
DURAN BILLIE F & LANE FRED H		PO BOX 1417	ANCHOR POINT, AK 99556
EDELEN H C		13840 HIGHWAY PP	NEW HARTFORD, MO 63359
EHMEN JARED		1926 MAPLEWOOD DR	CEDAR FALLS, IA 50613
ELLISON JEFFREY S		PO BOX 569	ANCHOR POINT, AK 99556
ELMALEH JOSHUA L		PO BOX 542	ANCHOR POINT, AK 99556
ENGLISHBEE VIRGIL W LIVING TRUST		PO BOX 201	ANCHOR POINT, AK 99556
FAULK SAMANTHA		12641 FOSTER RD	ANCHORAGE, AK 99516
FINNEY PAUL G & SUANNE Y		1588 HILLSIDE PL	HOMER, AK 99603
FIRTH BENJAMIN A		1802 GOLF COURSE RD	LITTLETON, NC 27850

FLEMING LEON R
 FOUSEL SKIP
 FUGITT DEBORAH
 GIRTON JOHN & BARBARA
 GO FOR IT
 GORDON GARY & PAMELA
 GORMAN FAMILY TRUST
 GORMAN MICHAEL LEE
 GREGOR FORREST E & WILMA J
 GREGORY DAVID DEAN
 Gregory Krier
 HABER MCKENZY SAGE
 HALEY KATHLEEN
 HART STEVEN E
 HARTVIGSEN RICHARD M
 HENDERSHOT SANDY
 HENDRIKS JERRY L & RITA D
 HERBST BRIAN
 HERBST GREGORY J
 HERRICK JOHN B & JOAN A COMMUNITY PROPERTY TRUST
 HIBBERT KIM
 HIBBERT KIM O
 HOLMES NATHAN W J
 HORTON DONALD LEE Jr
 HOUGLUM HOWARD & ELIZABETH
 HOUGLUM JOHN
 HOZA ANTHONY J FAMILY TRUST
 ISBELL CAROLYN YORK
 ISENHOUR LAUREN
 JENKINS GINGER N
 JENSEN JAY F
 JERMAIN JANE B
 JOHNSON EDWIN D & DENISE
 JOHNSON JANET R
 JORGENSEN JUDY LOUISE
 JOSLYN SEAN A
 KEEFER DONALD C & VICKI T
 KENAI PENINSULA BOROUGH
 KENAI-TRUST
 KLOBERDANZ THOMAS W
 KOCH DOUGLAS A & VALERIE D
 KYLLONEN H V
 LANZ STEPHEN H
 LARSON ERIC & MONICA
 LAWRENCE KATHY M
 LEIGHTY ROBIN L & JONES MICHAEL A
 LEWIS DARRELL L & CAROLYN FRANCES
 MADSEN MARCY
 MANSER HOWARD TRUST
 MAPSTON DAVID AND LADONNA LIVING TRUST
 MARKS DALE L & CHARLENE L
 MARSH MICHAEL J & LILY A
 MATTER BERNADINE R
 MAXWELL BRIAN MONTGOMERY LIVING TRUST
 MCCURLEY FRANK J Jr
 MCGAW HELEN G
 MCVEE CURTIS V REVOCABLE TRUST DECLARATION
 MEADS ALFRED TRUST
 MIKESSELL JAMES DAVID
 MILLARD DANIEL C
 MILLER ROBERT E
 MISHLER LINDA J
 MORINO PAUL
 MUNSELL GEORGE R III & CYNTHIA J
 MYERS BRANDON

Vickey Hodnik

DIANNE JENNINGS-TRUSTEE

C/O KYLLONEN ENTERPRISES

BRIAN MAXWELL

13943 W KNIGHTS DR
 860 W PLACITA DOS LOMAS
 PO BOX 1454
 PO BOX 869
 33881 STERLING HWY
 PO BOX 876130
 PO BOX 1239
 4 TOOMEY CIR
 PO BOX 169
 PO BOX 904
 PO Box 1836
 PO BOX 2429
 PO BOX 1194
 4008 W LANE AVE
 2339 N 1000 E
 1508 BUMBLEBEE AVE
 PO BOX 709
 959 MILAM HEIGHTS RD
 244 COATES RD
 PO BOX 87
 13020 GALVESTON CIR
 2940 WESTWIND CT
 10 DORMAN RD
 221 ELLEN CIR
 PO BOX 1379
 PO BOX 1336
 PO BOX 1177
 2333 TIMOTHY DR
 PO BOX 317
 3126 W 80TH AVE
 PO BOX 447
 PO BOX 292
 PO BOX 3244
 4915 NE TOLO RD
 PO BOX 1352
 PO BOX 34492
 12231 KINLIEN CIR
 144 N BINKLEY ST
 PO BOX 895
 PO BOX 330
 PO BOX 554
 PO BOX 49
 3531 W 80TH AVE
 2208 LINCOLN AVE
 PO BOX 403
 PO BOX 91865
 18231 SANCTUARY DR
 PO BOX 1104
 PO BOX 1091
 13900 MULLIGAN RD
 PO BOX 875035
 1564 CACHE DR
 140 CARLSON PKWY APT 220
 1001 S ANDERSON ST
 12531 TURKS TURN ST
 PO BOX 1286
 1601 BAYLOR WAY
 170 PETTIS RD
 PO BOX 772
 2266 PANORAMA WAY W
 PO BOX 7088
 PO BOX 2193
 7360 WHITE HAWK DR
 PO BOX 596
 371 OBANNON AVE

WASILLA, AK 99623
 TUCSON, AZ 85704
 ANCHOR POINT, AK 99556
 ANCHOR POINT, AK 99556
 STERLING, AK 99672
 WASILLA, AK 99687
 ANCHOR POINT, AK 99556
 BURLINGTON, MA 01803
 ANCHOR POINT, AK 99556
 ANCHOR POINT, AK 99556
 HOMER, AK 99603
 HOMER, AK 99603
 STERLING, AK 99672
 PHOENIX, AZ 85051
 LEHI, UT 84043
 KENAI, AK 99611
 ANCHOR POINT, AK 99556
 WATERLOO, SC 29384
 INMAN, SC 29349
 ANCHOR POINT, AK 99556
 ANCHORAGE, AK 99516
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 CAMPOBELLO, SC 29322
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 ANCHOR POINT, AK 99556
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 HOMER, AK 99603
 COOKEVILLE, TN 38506
 ANCHOR POINT, AK 99556
 ANCHORAGE, AK 99502
 PAULDEN, AZ 86334
 INDEX, WA 98256
 SEWARD, AK 99664
 BAINBRIDGE ISLAND, WA 98110
 ANCHOR POINT, AK 99556
 JUNEAU, AK 99803
 ANCHORAGE, AK 99516
 SOLDOTNA, AK 99669
 MINDEN, NV 89423-0895
 WAPITI, WY 82450
 ANCHOR POINT, AK 99556
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 ANCHORAGE, AK 99502
 ANCHORAGE, AK 99517
 HEALY, AK 99743
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 EAGLE RIVER, AK 99577
 ANCHOR POINT, AK 99556
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 WASILLA, AK 99687
 ANCHORAGE, AK 99507
 MINNETONKA, MN 55305
 TACOMA, WA 98405
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 HOMER, AK 99603
 ANCHORAGE, AK 99508
 ANCHORAGE, AK 99515
 ANCHOR POINT, AK 99556
 GUNTERSVILLE, AL 35976
 OCEAN VIEW, HI 96737
 HOMER, AK 99603
 ANCHORAGE, AK 99507
 ANCHOR POINT, AK 99556
 NEWARK, OH 43055

NELSON ROBERT W & KERRY E
 NORCROSS JAMES H II
 OLIVER LAWRENCE R
 ORCUTT BETTE L
 ORCUTT STEPHEN
 OSBORNE DONALD G & VIVIAN A
 OVERSON ELDON
 PALAKOVICH JOHN N
 PARKER MICHAEL H
 PARKINSON STANLEY KIRT Jr
 PATRICK WILLIAM M & LINDA M
 PETERSON FRANK R
 PETRIE JOAN A
 POINDEXTER DUSTIN
 POLLOCK JOHN MARK
 PRITCHARD CHARLES E & REBECCA A
 REID JIM & SUSAN
 RELAXING TRUST
 REYES RAMON VICENTE
 RICHARDSON WILLIAM CLAIRE
 RICHTER FRANCIS J
 ROLAND ANGELA
 SCHLOTT ALFRED O Jr
 SCHMIDT KATHERINE A
 SEAWARD DAVID CHULE
 SGLK LIVING TRUST
 SHAFER RONALD A & CHARLOTTE M
 SHERIDAN GARY L & EILEEN D
 SHOWALTER GLEN
 SILVER KING CAMP ASSOCIATION
 SIMONDSER ERIC
 SLATER CAROL A
 SLUSHER TERRY L
 SMITH CHAD
 SMITH FRANK R & KAZUKO
 SPARKMAN JOSEPH J & DENISE
 STAMPS DOUGLAS
 STAREGOWSKI VINCENT F Jr
 STERLING TRUST CO CUSTODIAN FBO MICHAEL J TONER
 STRONG KIMBERLY L & JOHNSON ERIC W
 SWICK KENNETH A Jr
 SWISHER BRIAN
 SYME DANIEL R
 TALLMAN PAUL
 TESAR DAVID J & BONITA G
 THOMPSON KRETA JO
 THOMPSON RUTH E
 THOMPSON STEVEN P
 THOMSON JOHN J & LAURA E
 TIGERT ALLEN
 TOURANGEAU WAYNE
 TRIMBLE EMMITT & MARY JOINT REVOCABLE TRUST
 TRUITT JOHN W
 TUSTIN CLARK PAGE
 UDELHOVEN JAMES
 UNITED STATES BLM
 UYEMA STANLEY K & MARY N
 VANHAUWAERT MARC
 VARNER ALLEN J & UNSOON
 VINCENT MICHAEL T & TAMI D
 VROMAN ROBERT H REVOCABLE TRUST
 WARREN WILLIAM F
 WARTBURG MICHAEL G
 WASLER ANN M & PETERSON ROY S
 WASLER ANN M & STACIE A

22 PLUVIER LANN

PO BOX 205
 PO BOX 3676
 PO BOX 1444
 PO BOX 39243
 PO BOX 39222
 7009 WARFIELD PL
 PO BOX 1318
 622 MAIN ST
 PO BOX 201407
 PO BOX 1446
 PO BOX 335
 29492 RIDGE RD
 11438 UPPER SUNNY CIR
 PO BOX 1163
 535 MOREMEN RD
 10750 COUNTY ROAD 204
 PO BOX 85
 17255 E RELAXING RD
 PO BOX 1418
 PO BOX 1325
 PO BOX 532
 4014 BEN WALTERS LN APT C6
 PO BOX 98
 PO BOX 39273
 912 E 6TH AVE
 13701 ERVIN RD
 24044 ALPENGLOW DR
 PO BOX 661
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 PO BOX 242491
 PO BOX 1186
 1143 BAINBRIDGE BLVD
 40 ANTLER CT
 49 JESSE CT
 2067 CRATAEGUS AVE
 PO BOX 767
 420 SCORPIO CIR
 3705 ARTIC BLVD
 2309 GREEN MEADOWS WAY
 8521 FLAMINGO DR
 PO BOX 112
 PO BOX 24
 PO BOX 1457
 1211 KAUIKOA RD
 PO BOX 871567
 111 PAULA ST
 3742 W 79TH AVE
 PO BOX 310
 1618 W PARK AVE
 1192 GLEN ASPEN DR
 PO BOX 197
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 1430 DAHLIA ST
 PO BOX 1083
 PO BOX 126
 222 W 7TH AVE STOP 13
 1623 KALAU IPO ST
 1933 5TERREBEEK
 12051 FORELANDS CIR
 52901 HOYT LN
 PO BOX 466
 PO BOX 906
 PO BOX 849
 6983 E SHORECREST DR
 6983 E SHORECREST DR

KASILOF, AK 99610
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 ANACONDA, MT 59711
 ANCHORAGE, AK 99520
 ANCHOR POINT, AK 99556
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 SAN JUAN CAPISTRANO, CA 92675
 EAGLE RIVER, AK 99577
 ANCHOR POINT, AK 99556
 BRANDENBURG, KY 40108
 DE BEQUE, CO 81630
 EVERGLADES CITY, FL 34139
 PALMER, AK 99645
 ANCHOR POINT, AK 99556
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 ANCHOR POINT, AK 99556
 HOMER, AK 99603
 SELDOVIA, AK 99663
 NINILCHIK, AK 99639
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 TAYLORS, SC 29687
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 ASHLAND, OR 97520
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 BELLEVUE, ID 83313
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 ANCHOR POINT, AK 99556
 DENVER, CO 80220
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 KASILOF, AK 99610
 ANCHORAGE, AK 99513
 PEARL CITY, HI 96782
 BELGIUM
 ANCHORAGE, AK 99515
 KENAI, AK 99611
 PALMER, AK 99645
 KENAI, AK 99611
 ANCHOR POINT, AK 99556
 ANAHEIM, CA 92807
 ANAHEIM, CA 92807

WEISEL KEVIN
WELSH ALAN
WHITMORE NATHAN LYNN
WIERSUM KIM
WILLIAMS DEBORAH A
WILSON RONALD GARY & THOMAS ROBERT STERLING
YALE MARK M
YOUNG ROBERT D & TRUDY M

785 MOSQUITO LN SW
13020 FOSTER RD
PO BOX 355
2808 244TH AVE SE
3041 RIVERWOOD DR
9902 PACIFIC AVE
74140 SEAWARD AVE
1120 HUFFMAN RD STE 24

ALEXANDRIA, MN 56308
ANCHORAGE, AK 99516
ANCHOR POINT, AK 99556
SAMMAMISH, WA 98075
JUNEAU, AK 99801
ANAHEIM, CA 92804
ANCHOR POINT, AK 99556
ANCHORAGE, AK 99515

Wall, Bruce

From: Wall, Bruce
Sent: Monday, July 30, 2018 10:02 AM
To: 'markyale2001@yahoo.com'
Subject: NOD
Attachments: Yale from 169-010-67_2018-07-24_Merged_Notice_of_Decision.pdf

I have updated your contact information to PO Box 429. The Borough clerk will mail your notice of appeal to the updated address.

Thanks,

Bruce Wall, AICP
Planner
208-369-0089

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

Wall, Bruce

From: Wall, Bruce
Sent: Monday, July 30, 2018 12:59 PM
To: 'homerdental@homernet.net'
Subject: NOD
Attachments: Hodnik 169-010-67_2018-07-24_Merged_Notice_of_Decision.pdf

This mailing was returned. Future correspondence on this matter will be sent to your PO box in Homer.

Bruce Wall, AICP
Planner
208-369-0089

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

Wall, Bruce

From: Wall, Bruce
Sent: Monday, July 30, 2018 1:04 PM
To: 'Biocharalaska@gmail.com'
Subject: NOD address
Attachments: Kinneen 169-010-67_2018-07-24_Merged_Notice_of_Decision-2.pdf

Pete,

Please supply me with your mailing address. This notice was returned as undeliverable.

Thanks,

Bruce Wall, AICP
Planner
208-369-0089

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

Wall, Bruce

From: Wall, Bruce
Sent: Monday, July 30, 2018 1:24 PM
To: 'shirleytdx@yahoo.com'
Subject: NOD
Attachments: Gruber 169-010-67_2018-07-24_Merged_Notice_of_Decision-3.pdf

This was returned to us as undeliverable. Please provide me with your email address for future correspondence on this matter.

Thanks,

Bruce Wall, AICP
Planner
208-369-0089

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.



KENAI PENINSULA BOROUGH
144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99669-7520

July 24, 2018

SPARKMAN JOSEPH J & DENISE
73884 SEAWARD AVE
ANCHOR POINT, AK 99556

99669-7520
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ZIP 99669 \$000.47
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RECEIVED

JUL 30 2018

KENAI PENINSULA BOROUGH
PLANNING DEPARTMENT

NIXIE 995 DE 1 8887/27718

RETURN TO SENDER
NO MAIL RECEIPT
UNABLE TO FORWARD

BC: 99669752044 *1989-06154-25-01



KENAI PENINSULA BOROUGH
144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99669-7520

July 24, 2018

DAN & CATHY MILLARD
35060 DAVNER ST
ANCHOR POINT, AK 99556

99669-7520
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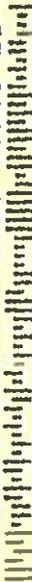
JUL 30 2018

KENAI PENINSULA BOROUGH
PLANNING DEPARTMENT

NIXIE 995 DE 1 8887/27718

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NO MAIL RECEIPT
UNABLE TO FORWARD

BC: 99669752044 *1989-06154-25-01





KENAI PENINSULA BOROUGH
 144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99669-7520

July 24, 2018

TODD BAREMAN
 74294 ANCHOR POINT RD
 ANCHOR POINT, AK 99556

99669-7520
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KENAI PENINSULA BOROUGH
 144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99669-7520

July 24, 2018

SHIRLEY GRUBER
 73510 TWIN PEAKS LP
 ANCHOR POINT, AK 99556

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KENAI PENINSULA BOROUGH
144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99689-7520

July 24, 2018

VICKEY HODNIK
35031 MOFFIT LN
ANCHOR POINT, AK 99556

~~996697520~~
996697520



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PLANNING DEPARTMENT

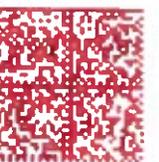
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KENAI PENINSULA BOROUGH
144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99889-7520

22 JUN 2018
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KENAI PENINSULA BOROUGH
PLANNING DEPARTMENT

PO 429

YALE MARK M
74140 SEAWARD AVE
ANCHOR POINT, AK 99556

99669-7520

RETURN TO SENDER
NO MAIL RECEIPT
UNABLE TO FORWARD

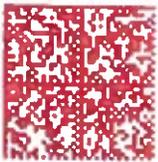
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99669752044



KENAI PENINSULA BOROUGH
144 N. BINKLEY ST. • SOLDOTNA, ALASKA • 99889-7520

22 JUN 2018
PM 1 L

ANCHORAGE
AK 995



U.S. POSTAGE FITNEY BOWES
ZIP 99669 \$000.470
02 1M
0001361487 JUN 22 2018

RECEIVED
JUL - 2 2018
KENAI PENINSULA BOROUGH
PLANNING DEPARTMENT

JORGENSEN JUDY LOUISE
PO BOX 1352
ANCHOR POINT, AK 99556

99669-7520

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 99669752044 *1620-02077-22-39
99669752044

Wall, Bruce

From: Steve Thompson <stevethompson1961@yahoo.com>
Sent: Saturday, July 7, 2018 9:07 PM
To: Wall, Bruce
Subject: Proposed gravel pit , Anchor Point

Dear Mr. Walls , This letter to you is to let you know that I am against the proposed gravel pit , just off Danver street in the Anchor Point area. This gravel pit will ruin what is currently a beautiful view of the inlet and the land leading up to the beach. It is also in close proximity to the river as well as the beach. The noise and dust this pit will create would not be too pleasant. This is primarily a residential area , and I would think that this land would be put to better use as future homesites. I've seen some of the other gravel pits on the peninsula and most of them aren't located right in the middle of residential area's. I am currently out at work and am not scheduled to be off until the 19th. So , unfortunately can't attend the meeting.

sincerely yours: Steve Thompson (resident)@34900 Danver St. Anchor Point , Alaska 99556
Ph#907-306-6690 work#907-754-6016

Omitted from the Planning Commission Packet

PLANNING COMMISSION

MINUTES

JULY 16, 2018

KENAI PENINSULA BOROUGH PLANNING COMMISSION
ASSEMBLY CHAMBERS
GEORGE A. NAVARRE ADMINISTRATION BUILDING
144 NORTH BINKLEY STREET
SOLDOTNA, ALASKA 99669

July 16, 2018 - 7:30 P.M.

UNAPPROVED MINUTES

AGENDA ITEM A. CALL TO ORDER

Chairman Martin called the meeting to order at 7:54 p.m.

AGENDA ITEM B. ROLL CALL

Commissioners Present

Syverine Abrahamson-Bentz, Ninilchik / Anchor Point
Paulette Bokenko-Carluccio, City of Seldovia
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Clam Gulch / Kasilof
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna

With 9 members of a 13-member Commission in attendance, a quorum was present.

Staff Present

Max Best, Planning Director
Patti Hartley, Administrative Assistant
Scott Huff, Platting Manager
Holly Montague, Deputy Borough Attorney
Jordan Reif, Platting Technician
Bruce Wall, Planner

Others Present

Xochitl Lopez-Ayala
Todd Bareman
Hans & Jeanne Bilben
Gerald Blair
Walt Blauvelt, Axtel Enterprises
Michael Brantley
Phil Brna
Tammy Buss
Richard Carlton
Robert Corbisier, Attorney, Reeves Amodio, LLC
Gary Cullip
Gina DeBardelaben, McLane Consulting, Inc.
Josh Elmaleh
Kate Finn
John Girton
James Gorman
David Gregory
Steve Haber
Don Horton (Father)

Don Horton (Son)
 Lauren Isenhour
 Pete Kinneen
 Rick Oliver
 Eldon Overson
 William Michael & Linda Patrick
 Jim & Susan Reid
 Bob Shavelson, Cook Inletkeeper
 Eileen Sheridan
 Emmitt Trimble, Beachcomber, LLC
 Josh Updike, Peninsula Paving, LLC

AGENDA ITEM F. PUBLIC HEARING

4. Conditional Land Use Permit for a Material Site; Anchor Point Area

Staff Report given by Bruce Wall

PC MEETING: July 16, 2018

Applicant: Beachcomber LLC

Landowner: Beachcomber LLC

Parcel Number: 169-010-67

Legal Description: Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Location: 74185 Anchor Point Road

BACKGROUND INFORMATION: The applicant wishes to obtain a permit for sand, gravel, and peat extraction on a portion of the parcel listed above.

The submitted site plan indicates that the material site haul route will be Danver Street, which is a Borough maintained road. The site plan and application proposes the following buffers:

North: 6-foot high berm except along the east 400 feet where a 50-foot vegetated buffer is proposed.
 South: 6-foot high berm.
 East: 6-foot high berm.
 West: Greater than 50-foot vegetated buffer.

The application indicates that the depth to groundwater is 20 feet and that the depth of the proposed excavation is 18 feet. The groundwater depth was determined by a test hole on the property and exposed surface water to the north. The site plan indicates that the processing area is 300 feet from the south and east property lines. It is greater than 300 feet from the west property line. A waiver is being requested from the north property line. The site plan indicates that the proposed processing area is located 200 feet south of Parcel 169-022-08, which is undeveloped. Parcel 169-022-04 is developed and located within 300 feet of the proposed processing area; this parcel is owned by the applicant's daughter. Staff does not recommend approval of the processing distance waiver request.

The site plan indicates that there are several wells located within 300 feet of the parcel boundaries but none within 100 feet of the proposed excavation area. The site plan indicates 100-foot setback from the wetlands area located in the northeast corner of the property and that this setback will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, Best Management Practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska, will be utilized as a guideline to reduce potential impacts to water quality.

The application states that reclamation will be completed annually before the growing season ends (September) and that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust. The applicant estimates a life span of 15 years for the site with an approximate annual quantity of less than 50,000 cubic yards.

Much of the vegetation was removed from this property 20-30 years ago. The neighboring properties adjacent to the southeast corner of the proposed material site are at a higher elevation than the subject property. The proposed 6-foot high berm alone will do little to minimize the visual impact or noise disturbance to other properties. Staff recommends that a 50-foot vegetated buffer be required adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer. Staff also recommends that a 50-foot vegetated buffer be required adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer. Staff recommends that a 12-foot high berm be placed along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm should take place prior to removing the existing vegetation in the western portion of the material site.

With the proposed 6-foot berm, staff was not able to state that the standards in KPB 21.29.040 had been met but with the addition of the 50-foot vegetated buffer in portions of the property staff then was able to draft the findings stating that the standards had been met. This decision concerning buffers is entirely up to the Planning Commission. The code states, *"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."*

PUBLIC NOTICE: Public notice of the application was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their Post Office. Public notice of the application was published in the July 5, 2018 & July 12, 2018 issues of the Homer News.

Numerous letters from adjacent property owners and agencies were received.

KPB AGENCY REVIEW: Application information was provided to pertinent KPB staff and other agencies on July 6, 2018.

ATTACHMENTS

- Conditional Land Use Permit application and associated documents
- Aerial map
- Area land use map
- Ownership map
- Contour map

FINDINGS OF FACT

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On June 4, 2018 the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
5. The proposed disturbed area is approximately 27.7 acres.
6. A public hearing of the Planning Commission was held on July 16, 2018 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.
7. The site plan indicates that the processing area is 300 feet from the south and east property lines and is greater than 300 feet from the west property line. A waiver was requested from the north property line. The site plan shows the proposed processing area being 200 feet south of Parcel 169-022-08, which is undeveloped. Parcel 169-022-04 is developed and located within 300 feet of the

- proposed processing area; this parcel is owned by the applicant's daughter. A 200-foot separation distance to the property boundaries for the processing area is not sufficient to minimize noise disturbance to other properties.
8. The proposed extraction meets material site standard 21.29.040(A1); "Protects against the lowering of water sources serving other properties", as evidenced by:
 - A. Permit condition number 6 requires that the permittee not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
 - B. The submitted site plan shows several wells located within 300 feet of the parcel boundaries but none within 100 feet of the proposed excavation area.
 - C. Permit condition number 7 requires that the permittee maintain a 2-foot vertical separation from the seasonal high water table.
 - D. The application indicates that the depth to groundwater is greater than 20 feet and that the depth of the proposed excavation is 18 feet.
 - E. Permit condition number 8 requires that the permittee not dewater either by pumping, ditching or any other form of draining.
 9. The proposed extraction meets material site standard 21.29.040(A2); "Protects against physical damage to other properties". There is no evidence in the record to indicate that physical damage will occur to any other properties as a result of the operations of a material site at this location.
 10. The proposed extraction meets material site standard 21.29.040(A3); "Minimizes off-site movement of dust", as evidenced by:
 - A. Permit condition number 13 requires that the permittee provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
 11. The proposed extraction meets material site standard 21.29.040(A4); "Minimizes noise disturbance to other properties" as evidenced by:
 - A. Permit condition number 2 requires that the permittee maintain the following buffers that will reduce the noise disturbance to other properties:
 - 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.
 - 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.
 - B. Permit condition number 5 requires that the processing area be located greater than 300 feet from the property boundaries.
 12. The proposed extraction meets material site standard 21.29.040(A5); "Minimizes visual impacts" as evidenced by permit condition number 2 that requires that the permittee maintain the following buffers that will reduce the visual impacts to other properties:
 - 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.

- 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.
13. The proposed extraction meets material site standard 21.29.040(A6); "Provides for alternate post-mining land uses" as evidenced by:
- A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C3) is necessary to meet this material site standard.
 - C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.

STAFF RECOMMENDATION

In reviewing the application staff has determined that the six standards contained in KPB 21.29.040 will be met and recommends that the Planning Commission deny the processing distance waiver request, approve the conditional land use permit with listed conditions, and adopt the findings of fact subject to the following:

1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicant will provide the recording fee for the resolution to the Planning Department.
4. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit.

REVISED STAFF RECOMMENDATIONS

The staff report in the packet recommends approval of the conditional land use permit, however, because of the amount of written materials staff recommends conducting the public hearing and continuing the hearing to the next meeting of August 13 to allow time to read the written comments that have been received.

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - 50-foot vegetated buffer adjacent to the section line easement on the east property line with a 6-foot high berm inside the vegetated buffer.
 - 50-foot vegetated buffer adjacent to the Echo Drive right-of-way and the north and west property line of the adjacent Lot 1, Block 1, Silver King Estates with a 6-foot high berm inside the vegetated buffer.
 - 12-foot high berm along the south property line where a 6-foot high berm is shown on the site plan adjacent to Lots 2 - 6, Block 1, Silver King Estates. The placement of the berm shall take place prior to removing the existing vegetation in the western portion of the material site.
 - Greater than 50-foot vegetated buffer west of the material site as shown on the site plan.
 - 50-foot vegetated buffer in the east 400 feet adjacent to the northern boundary of the material site as shown on the site plan.
 - 6-foot high berm along the northern property as shown on the site plan.
 These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts

- adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
 8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
 9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
 10. The permittee shall ensure that fuel storage 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.
 11. The permittee shall conduct operations 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.
 12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
 13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
 14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
 15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
 17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
 18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
 19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
 20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any party or person aggrieved by the decision where the decision

has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Rob Corbisier, Attorney

Mr. Corbisier is a resident of Anchor Point and was representing Rob Baker of the R.O. Baker Trust who is an adjacent property owner.

Mr. Corbisier gave the following points:

- There was no way that a conditional use permit in this location could adequately protect the environment. Fugitive dust was going to be coming off of the gravel pit into the adjacent wetlands, the Anchor River and the estuary.
- There are going to be drainage and dewatering issues although the applicant has stated at this time that he will be staying above the water table. The application states that sometime in the future, he intends of going into the water table. The well location itself is deceptive in that the gradient of where the test hole was dug is at a high point in the area adjacent to the bluff that drops way off. Naturally there will be a lower water table at the spot. This also violates the ADEC Best Practices Manual which suggests having a four-foot separation.
- There will also be noise that will damage wildlife habitat. This proposal violates the Borough's Coastal Zone Management Plan.
- Also, this will not be able to preserve recreational values. There are two State Park campsites adjacent to the area. Anglers fishing on the Anchor River and camping on the beach and campsites are going to be able to hear the noise. The heavy truck traffic will interfere with recreational traffic going to and from the beach and tractor launch site.
- That road is quite narrow which will be ripe for disaster.
- It was going to impact residential values dramatically. There are 13 classified residential classified parcels that are adjacent to this proposed site. There are approximately 40 within 1,500 feet. A 6-foot berm was not going to be sufficient for either visual separation or auditory separation especially when there are second story houses.
- This is going to create and attract nuisance. There is the Chapman Elementary School which is not far from this location. Children go down and play near the beach all the time.
- In the Borough's working group on the Material Site regulations there was testimony describing that winds in the wintertime turn vacant gravel pits into sand blasting facilities that absolutely knock out someone's house next door. In this location, it is adjacent both to Cook Inlet and the Anchor River flats. There will undoubtedly going to be high winds.
- It will impact property values. He understood the Borough Assessor does not necessarily drop property values based on the existence of a gravel pit, however studies in the lower 48 show a documented drop of around 33 or higher percent when a gravel pit was developed.
- Although staff has recommended a buffer on the east and north side, there is not a buffer that was being recommended on the south side. There will still be residential parcels with nothing other than a 6-foot berm.
- Danver St does not comply with the ADEC Best Management Practices for a dedicated access point.
- This material site is not needed. There are approximately 50 parcels in the greater Anchor Point area either off the Old Sterling Highway, the Sterling Highway or the North Fork Road that either have conditional land use permits or are existing prior use gravel pits.
- The borough should just wait until the new regulations come out. There is no reason for the Planning Commission to improve this application right now. Let the process that has been started by the Assembly finish before the conditional use permit was authorized. If the Planning

Commission felt a need to do something, then the alternative that should be considered would be to only develop the Phase 1 portion of the project and then allow the applicant to come back for the other phases after the new regulations are in place.

His client asked him to make the following additional points at this meeting.

- To his knowledge, the applicant has no experience operating a gravel pit. Beachcomber LLC is a brand new LLC and has no business history.
- There are questions about what the financing was for the extraction, the startup costs, the ability for the applicant to post a requisite bond, what was the insurance going to be like, and what was the LLC solvency in the event that the LLC was to become insolvent. There is a potential of an outside operator to come in and continue to decimate the mouth of the Anchor River.

Mr. Corbisier was available to answer questions.

Chairman Martin asked if there were questions for Mr. Corbisier. Hearing none the public hearing continued.

2. Michael Brantley, 74057 Anchor Point Rd.

Mr. Brantley stated that his property is 300 feet west of Denver Rd which was going to be the access road for this pit. He just retired after 41 years working for the Federal Government of which 31 years of that working history had been working with gravel pits and quarries.

Mr. Brantley has seen and heard a lot of noise. He expressed concern that these gravel pits create carcinogens which is cancer. Imagine someone with their family driving down with their RV or SUV with their windows down and their children breathe in all this air.

Mr. Brantley also expressed the concern of the traffic problem on the beach road. To be exact that road is a disaster and hazard. His opinion is that it's a liability to the Kenai Peninsula Borough that needs to be rectified.

This proposed pit is on the back side of his lot and borders it on the north of the applicant's line. Mr. Brantley stated that he has spent hundreds of thousands of dollars to build his dream, his business which is a fly tying shop and now there was a pit going in next door. He has guests that get up at all hours to fish because they go according to the tide and weather so he felt that if they are going to put a berm up then they should also put up a wall.

Mr. Brantley commented that they will need to have regular ADEC inspections if this was going to happen. He has 12 certificates dealing with hazardous waste working for the Air Force so he has experience in all this.

Mr. Brantley felt that this is not right for the neighborhood. He has spent tens of thousands of dollars to get his ADEC engineer approved water system installed. Four wells have been drilled right next to one that was producing 26 gallons a minute. Mr. Brantley went down a few hundred feet and still couldn't find water. Fortunately for him, the Borough came back and changed the regulations and now his well is classified as private however that well is only 38 feet deep. He stated that ADEC has approved his system.

When Mr. Brantley first bought his property he found out an interesting story about it. His property was previously owned by Albert & Dawn Magee from Oregon. The story was that they had a son that had passed away so he buried his son on the subject property. He has been in contact with the family members to verify this and will inform the Commission with what he finds out.

Chairman Martin asked if there were questions for Mr. Brantley.

Mr. Wall asked if his well was approved as a public water supply system. Mr. Brantley replied yes. Mr. Wall asked when that was approved. Mr. Brantley replied that he received approval a couple of weeks ago.

Mr. Brantley stated that the ancestry of the deceased son that was buried on the property was Cherokee. He hoped the commission would make the right decision on this application. The community can't have this. If this was going to be pushed through then he would like the road to be completely redone from the boat launch all the way to the bridge.

There being no further comments or questions, the public hearing continued.

3. Gary Cullip, Seabury Ct.

Mr. Cullip overlooks this whole proposed gravel pit area. The applicant may meet all of the regulations but thought there was circumstantial evidence that was involved that the Commission really needs to take a hard look at. He thought this needed to be tabled to the August 13 meeting.

Mr. Cullip expressed concerns regarding the condition of the road. He knows the Borough does not have the money to rebuild the road. If that has to happen then there needs to be a condition on the permit to make the permittee liable for it. The number one safety issue is that the road is the main access for people to get from the State Parks down to the beach. There are all kinds of foot traffic on a very, very narrow road. There are up to 40 boats traveling that road to get launched every day. It will be a disaster to include the dump truck traffic in that. This is a very different permit that is being talked about since it is in the middle of a residential area. Lots and lots of people will be affected by it.

Mr. Cullip recommended tabling this at this time, get all the information and then make a wise decision at the next meeting.

Chairman Martin asked if there were questions for Mr. Cullip. Hearing none the public hearing continued.

4. William Michael Patrick, 34897 Fisher Ct, Anchor Point

Mr. Patrick ran away from the Lower 48 in 1990 and came up here and taught in rural Alaska for a long time. He came to Anchor Point because it was a beautiful place. Mr. Patrick picked a lot on a hill. When he looks out his front window he can see Mt. Iliamna, when he looks out his side window he can see Mt. Redoubt and then he goes to his neighbor's house and they can see Mt. Augustine.

Over the past six years he has had the pleasure, the ecstatic pleasure of a lifetime, a quality of life to see three sets of twin calves born in his front yard. In the fall, there are Sand Hill Cranes that fly above the amphitheater bowl that is at the mouth of the Anchor River. They land on the hillside and down in the very area where the pit is going to be. Mr. Patrick stated that he can drive down to the beach and see people walking on the beach and enjoying it. There is much beauty there so this is a very unique area. It is not down some dirt road. He stated that this is the farthest westerly point on the America Highway system is right here.

Mr. Patrick stated that he doesn't begrudge anyone making money or doing business. Below are a few questions that he asked as a Science teacher.

- Is the groundwater subject to pollution when people develop gravel pits and let them fill up with water because it was now in contact with the atmosphere?
- What attractive nuisance is there when they allow them to dig that out and put a pond in there?
- Would the gradient in the pond be too steep if a neighbor kid or a moose falls in there so they couldn't get out of the hole that was covered up with water so that the gravel operator didn't have to reclaim it?
- What types of viruses or bacteria would be there? Would they be helpful or harmful?
- What happens when they are made airborne on dust particles and they blow around.

Mr. Patrick's house sits at a 110-foot elevation which is about 150 yards from the entrance of this pit. The pit was at 44-foot elevation. They would have to put a dome over it to keep him from seeing into it. He also stated that Mt. Iliamna and Mt. Redoubt would disappear which might cause a big stir in the National Geographic Society.

The sea and land breezes cause dust to blow on his property and on the surrounding properties. As someone comes up his private road, he had three more neighbors and these people are closer than 150 yards. There is a rise in elevation of approximately 66 feet.

Mr. Patrick has two wells at his house. When he drilled his first well he ran into an underground stream which was perfect water but it gave out in a couple of years so he had to drill another well which is about 70 feet down. If they go 70 feet down from his house into the aquifer that he is in that puts the ground level estimate to be about 4 feet above the water table. He suggested that the applicant dig more than one hole to determine the validity of the water table in that area. Particularly in that area because it has many underground streams. The gravel filters water and that water runs down toward the Anchor River.

Mr. Patrick stated that he was going to get the noise, dust and visual impacts. He was going to be subjective to safety by pulling out of his road and not getting run over by a dump truck and so are many of other people. He has seen the kids at the elementary school on walking field trips on this road. The bridge that services that Anchor River road is currently condemned.

Chairman Martin asked if there were questions for Mr. Patrick.

Commissioner Bentz asked what the depth of his first well. Mr. Patrick replied that it was 20 feet.

There being no further comments or questions, the public hearing continued.

5. Todd Bareman

Mr. Bareman lives on the Old Sterling Highway in Anchor Point and owns the tractor launch at the beach. He stated that the road needs some addressing. It was in terrible shape, that's not what they were here for but they were here to not make it any worse and cut into the recreational use.

Mr. Bareman stated that if this pit if was permitted then there would be a crusher where five campgrounds, a trailer park and two RV parks that would be able to hear it. He wondered how the recreational people were going to get along with that much less than all the residents that have a problem with it.

Mr. Barman also stated that they are at this meeting because there are not enough regulations. He felt this should be tabled until new regulations are in place. This is not a normal gravel pit and is not in a normal area.

Mr. Barman asked that the commission be a little bit lenient about people testifying since this was very personal because it was their property and their livelihood that are going to be affected.

Chairman Martin asked if there were questions for Mr. Bareman. Hearing none the public hearing continued.

6. Linda Patrick, 34897 Fisher Ct.

Ms. Patrick expressed concern with the noise level that would be created by the gravel pit. There is currently excavating going on at the north corner of the designated area. There is digging already going on and trucks going in and out of there which starts sometimes at 7:00 a.m. and runs all day. They can close their doors and windows but that noise still permeates their house. She questioned where their hearing and safety protection was.

Chairman Martin asked if there were questions for Ms. Patrick. Hearing none the public hearing continued.

7. John Girton, Twin Peaks Loop

Mr. Girton stated that he was about a mile from this proposed gravel site so it wouldn't affect him as much. There are at least two graves in the middle of this site; one is the son of John & Gladys Dandona and the other is a son of the McDonald's.

Mr. Girton moved to Anchor Point 25 years ago for the use of the beach road and launch because he fishes. That road is so bad that someone is going to get killed the way it is now. Three times in the last 25 years, he has had gravel trucks that hit his boat and his tow vehicle. There is not a lot of room to move over to make room for these gravel pit trucks and boats. Also there is no place to go now that the berm was dug out. He stated that there are sometimes up to 125 boats down that road plus there are the campers and motor homes. It is going to be a very serious problem when these trucks start moving as there are a lot of walkers, kids and bicyclers.

Mr. Girton recommended that they put in a restriction that there be no Jake brakes if this gets approved which he hoped would not get approved. Those trucks that go down the hill on the Old Seward Highway use their Jake brakes and it is horrible. There is no enforcement. He had a couple of gravel pit operators tell him that once they get the permit then they can do whatever they want.

Mr. Girton felt that this would be signing a death warrant for Anchor Point if this gets approved. He also felt that if the tractor launch cannot continue to operate because of the road conditions and the lack of boats going down to launch then there will be nothing to do in Anchor Point. It is a very serious thing they were going to do to Anchor Point if they allow this gravel pit to go in. Safety is his whole concern.

Chairman Martin asked if there were questions for Mr. Girton. Hearing none the public hearing continued.

8. Hans Bilben, 35039 Danver St.

Mr. Bilben has resided at his home for the last 15 years. He presented a handout that was distributed to the Planning Commissioners.

Mr. Bilben read the following statement which sums up why they and most of the people reside in Anchor Point: *"The natural beauty, the authenticity of the people, the adventure and the peaceful life come together to make Alaska a place to realize dreams."* The funny thing about that statement is that it was the first paragraph from the Coastal Realty website which is the company that is owned by the same people who want to destroy the lifestyle that they claim to promote. They want to develop a mine in the very heart of Anchor Point.

Mr. Bilben felt there were an unlimited number of well qualified reasons not to have a gravel pit in this location but greed was truly the only driving force for its creation. They realize that the Planning Commission is bound by the borough code of ordinances in their decision making process but unfortunately these codes are severely lacking and vague in some areas. The six standards that the applicant must satisfy are pretty skimpy but that is what the commission has to live by for now. In the case of this application there was no possible way that the applicant can meet those standards due to the topography of the area surrounding this proposed mine. No amount of berming or vegetated buffer will meet the standards pertaining to minimizing noise or visual impact on other properties and other homes as required by the code because of the steep rise in elevation to the north, east and south of the proposed mine. He stated his property is 500 feet south of the proposed area and 75 feet above the existing floor. From their property they have clear view and ear shot of the large percentage of the proposed site.

Mr. Bilben referred to the two photos that were in his handouts which shows what they look at out their window. There are a lot of people that are much more impacted by this pit than they are. Recently he and a friend walked through and talked with neighbors and actually looked at the view from the area. He referred to his handout which had red dots on the parcels in the map. The red dot indicates properties at elevations that cannot be protected from noise or visual impacts by berms or buffers. They counted 22 homes and most of those people will be impacted by visual and noise because no amount of berming could cover that up.

Again, Mr. Bilben referred again to a photo in his handout which shows his friend, Mr. Oliver in the picture. The vegetated buffer is shown in the photo which is the one tree to the left. The road that he is standing on is the access road to the pit which will be to the processing plant. Mr. Oliver walked onto Mr. Trimble's property about 50 feet. He was standing with a 10 foot 2x6 board. The trees

behind him will all be lost because it will be part of the pit. Mr. Bilben noticed that Mr. Oliver's house will be impacted by the visual, noise and dust of the proposed pit.

Mr. Bilben stated that Mr. Trimble handed out a handout with pictures before the meeting which stated that it took only 3 hours to do what he did and that only 5 homes have limited view now. He questioned how many homes do they need to destroy and decimate before they say no to a gravel pit. The truth of the matter is that this doesn't have anything to do with homes but has to do with properties. People who own property there are going to lose value and will be impacted by the visual and noise of the gravel pit. There is no way he can get around it because of the topography of the area.

Mr. Bilben stated that the proposed mine is within the heart of a residential recreational gem which is called Anchor Point. This property could be a very desirable addition to the community if this property is properly developed. It is the function of the elected and appointed officials to represent and hold up these ordinances and not merely to rubber stamp this application. He felt this pit is in the wrong place and has no business getting this far in the process.

Chairman Martin asked if there were questions for Mr. Bilben. Hearing none the public hearing continued.

9. Pete Kinneen, 34969 Danver St.

Mr. Kinneen was at the meeting with a slightly different take. He was an Irishman and was as passionate as anyone else however he was going to put that to the side.

Mr. Kinneen stated that there are reasons that the commission can cite to not approve this application. It does not meet the six standard conditions. There are valid concerns about the safety of the road but that was not within the toolbox that the commission could use to make a decision. He thought that none of the conditions could be met just going on the ordinance and the exact interpretation of the code. If this was not a permit of right, then they must come and ask permission and comply with the conditions. Mr. Kinneen suggested that if this were to pass then there would be no other operation in the Kenai Peninsula Borough because of the uniqueness of the area then they might as well rip up the ordinance and say they can do anything they want. Title 21.29.050A(2)(c) states that "*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.*" He stated that shall is a mandatory word and is not permissive. The commission must do that and they must keep this in mind. The road and the kids getting run over is real but it was not what the commission used to make their decision.

Mr. Kinneen stated that the tall bluffs were the uniqueness of this area with an amphitheater that inundates right there on the subject property which was caused by the outflow of the Anchor River. It is a small flat area surrounded by a bathtub type shape. The noise comes in from the water and the noise cannot be minimized. He felt there can be all the buffers but it will not minimize the noise.

Mr. Kinneen handed out photos of the area that was taken from his living room. They are pictures that look out over the top of the trees. Just beyond the house with the blue roof is the material site property. A 6 foot or 12-foot fence and a buffer of 50 feet or 150 feet will not make a difference with visual and sound. He felt this was a unique situation all the way around.

Mr. Kinneen felt that the stated intent was found in Title 21.29.040(A) which states, "intent". He questioned what the intent was and wondered if the intent was just to shovel out to anyone who comes in and asks for a gravel mine anywhere and at any time. That was not what the intent says. The intent says protect. It is the six conditions that gives protection against dust, noise and visual impact. If there ever was a gravel mine application that should be denied this is it because of the uniqueness of this area. He doesn't understand how a permit could be issued for this under these ordinances.

Mr. Kinneen invited Mr. Wall to come to his home to look at the site. There are a lot of people that will be impacted by this. He could see the entire mine from his house and questioned how they could protect them per the ordinance. There are original, vibrant, green mature spruce trees up to Echol Rd

because of the atmospheric conditions. Past that and coming up the hill doesn't because the ecosystem that comes in behind them was the uplands forest that has been decimated by the beetle kill.

Mr. Kinneen was available for questions. He felt this permit application could be denied because all they need is one condition not being met. As he challenged and asked Mr. Wall how they follow the intent of the code. They are open to ideas but a 50-foot buffer wasn't going to do anything at all.

Chairman Martin asked if there were questions for Mr. Kinneen. Hearing none the public hearing continued.

10. Rick Oliver, 34880 Danver St

Mr. Oliver stated that his home was above and somewhat directly opposite of the proposed site. The activity allowed by this application will totally decimate the property value of their home as well as the quality of life that they now enjoy. They are definitely not alone in this regard. Obviously, the standard set for the sand, gravel and material site are set to protect against aquifer disturbance, road damage, visual damage to adjacent properties dust, noise and visual impacts. He stated unequivocally that the proposed setbacks, berms, vegetation, buffers, etc. will not and cannot protect their homes from these disturbances.

Mr. Oliver made the following statements:

- Number 1 of said standards addresses the lowering of water sources serving other properties. The existence of the substantial lake just below my property indicates that a major mining operation can't help but affect the water source of my property. I'm told there is significant additional information regarding this standard to be presented.
- Number 3 addresses the "minimization of dust to off-site areas". Due to the proposed placement of the processing equipment, ANY on shore breeze will bring that dust to my home, directly across the street.
- Number 4 addresses the noise disturbance to other properties. According to the radii shown on the application, the processing equipment is to be set much less than 300' from my front door. How can the noise and vibration from this equipment be, in any way, "minimized" in my home? He explained the photo of him holding the 10' tall board which shows the concern he has with "minimizing" visual impact from my house with a 6' berm. He was standing 50' inside the newly designated property line.
- Number 5 addresses (again) the "minimization" of visual impact.

Mr. Oliver stated that Mrs. Trimble approached a neighbor of his after the informal meeting last Wednesday and stated that she and her husband had walked the property and said that they could only see six houses. This does not include other properties as addressed by the code that could at some point be developed. He questioned how many homes does the project have to decimate in order to convince this body that it should not happen.

For the record, let it be known that he and his family along with the other several hundred other people residing in this area vehemently oppose the granting of this permit.

Chairman Martin asked if there were questions for Mr. Oliver. Hearing none the public hearing continued.

11. Jeanne Bilben

Ms. Bilben is the wife of Hans Bilben who has already testified. She gave a handout that includes information that they discovered. She stated they love this beautiful recreation area. Some of them have bought and built homes there. They own land there just as the permit owner owns land but they are not digging a gravel pit in his front or back yard.

Ms. Bilben stated that they are not against a gravel pit but they do not want them in their neighborhoods. She thought that they would have just as many rights as a gravel pit since they also pay their taxes.

Ms. Bilben commented that this so called gravel pit will be disturbing the peace of their beautiful area. She understood that once this permit was issued then it goes with the land no matter who owns it making it even more valuable to the owner and making their property values go down.

Ms. Bilben stated that this was not only is a recreational area but it was also a historic area. They have been in contact with the State Historic Preservation Office that there is a highly potential historic archeological site at this location. She asked that they stop this permit and keep this area away from mining and gravel. The State Recreational area in Anchor Point is where people come to see the beauty and history of this part of the world.

Ms. Bilben questioned if they really want a gravel pit in this place for them to see. She requested that the commission keep gravel pits away from their neighborhoods, historical lands and recreational areas.

Chairman Martin asked if there were questions for Mr. Bilben. Hearing none the public hearing continued.

12. Jim Reid, 73820 Seaward Ave.

Mr. Reid was a retired paramedic and fire fighter and stated that his issue had to do with the safety factor. He stated that in the wintertime someone is not stopping when the gravel trucks come down off that hill down Danver because of the iced over road. Everybody in the neighborhood has complained about it.

Mr. Reid expressed that his other concern had to do with the kids. There are five parks in the area where gravel trucks have to pass by three of them with every load. They are not talking about a couple hundred trucks a year but about 5,000 trucks. With the amount of aggregate that the applicant wants to take out of there, there would be 10 yards a truck at 5,000 trucks. This is not a little operation. He stated that no matter what happens he would write a letter on this. This is what he did and he does not like picking up kids.

Mr. Reid stated that one day he believed he saw Mr. Trimble's daughter walking with his grandson as he was coming out with his boat to go to Homer. There was another car coming down the road when he was leaving and he had to stop and he saw the woman push her kid off the side of the road because it was too narrow to walk and have cars go by. He felt this was really a serious problem.

Mr. Reid stated that someone has to turn right and go out 7 or 8 miles to the Sterling Highway since the bridge was condemned. That road is like a snake so staff should have included notice to all those people that live down that road who are going to be looking at those 5,000 trucks. He reiterated that the road is dangerous.

13. Susan Reid, 38720 Seaward Ave.

Ms. Reid stated that they stand there in support of all of their friends and neighbors as well as the community to let the commission know that they are really opposed to this proposed gravel site. She stated they object to the applicant for all the reasons everybody stated from the bridge that will not hold the weight, from the property values of the properties. She assumed that if their property values do go down then the borough would be very happy to lower their taxes. In addition, she assumed that if the commission approves the permit then the road will be widen because right now it was not wide enough for all of this traffic. It will probably cost the borough about 1½ million dollars to fix the road.

Mr. Reid interjected that right now the trucks that are empty go across the bridge. They just lowered the weight to 11 tons, which is 22,000 pounds. Right now they are not abiding by the law with an empty truck weighing about 26,000-28,000 pounds.

Ms. Reid stated that the road is a highly, highly congested residential area. She stated that all of the residents want the commission to know that they are not taking this. They do not want the commission to approve and grant the permit for this application.

Ms. Reid understood that the applicant has a right to make money off his land but years ago, they all bought into this beautiful neck of the woods because it was quiet with not a lot of noise. She has been hearing a beeping backup noise and did not care how much white noise alarms are put on the trucks, they are still going to hear it.

Ms. Reid thanked the commissioners for listening to them.

14. Don Horton, 34910 Echo St

Mr. Horton lives directly across the street from the proposed gravel pit. They bought this property 15 years ago for recreational purposes and maybe someday to build a house on when he retires. A month ago he retired and then gets a letter stating that he was going to be looking at a gravel pit. His only view is the field that will be used for the proposed gravel pit. He looks across this field and looks at Mt. Redoubt. If the applicant builds a 6, 8, or 12-foot berm then he will be looking at a berm, a gravel pit and Mt. Redoubt.

Mr. Horton felt that this proposal would virtually ruin the property. He would now never even consider building on it with what was going on now. Mr. Horton could never even give the property away. He has three sons, a daughter and a grandson that hopefully this property could be theirs someday, Mr. Horton would hate to see the commission ruin his little slice of heaven.

15. Eileen Sheridan, 34860 Seabury Ct., Anchor Point

Ms. Sheridan is a 50-year resident of Alaska. They have lived in Juneau, Sitka, Palmer and now lives in Anchor Point. She stated they are above this proposed gravel site area.

Ms. Sheridan understood the noise issue because they can feel the wind when it blows up and down that river. She felt there was no way berms or vegetation like that will take away that noise. It was so distracting when they had the oil gas people out there in the bay, running their sonograms all summer long so this gravel pit will be distracting too.

Ms. Sheridan stated that they put their retirement into this home and felt their property value will go down if this gravel pit goes in. Even Mr. Trimble said that a gravel pit would make the property values go down. They had hoped that their kids could enjoy this property later in life also. They have worked hard to do what they are doing so she understood him wanting to do something too but not a gravel pit that they have to live with.

Ms. Sheridan expressed concern regarding the dust that will be created by this gravel pit. She had terrible allergies up in the valley so they moved down here because her allergies were better here living right by the ocean instead of by the hay fields. Ms. Sheridan reiterated her concern regarding the noise and dust. They already get dust from their dirt roads. She stated that the trucks speed down that road so there is no other way that they don't get the dust from the roads. They lived next to a gravel pit when they were building their home and was very glad to get up to their peaceful house to look at Mt. Iliamna and Mt. Redoubt.

Ms. Sheridan realized that if the applicant receives the permit then he has the right to sell and maybe even have a bigger gravel pit in there. She noticed that there was only one test hole shown and was wondering if there was any consideration of the loss of vegetation and the lowering of water sources. It appeared that there were some wetlands in the area after she looked at the maps.

Ms. Sheridan said when they go down Danver to the right just across from this property there are ducks and moose have their babies there. She felt that if there is noise from the gravel pit then those moose mothers will get so disturbed that they could be leaving their babies.

Chairman Martin asked if there were questions for Ms. Sheridan. Hearing none the public hearing continued.

16. Gerald Blair, 73600 Twin Peaks Loop

Mr. Blair stated that most of what he was going to say has already been said by prior speakers probably far more eloquently than what he would have.

Mr. Blair stated that there was one issue that has not been covered which is not just the safety of the road but the cost of the road. What he has been able to determine is that the road started as a cat trail that went from the Sterling Highway out to the beach. It was never engineered or properly built so it has no base. It does not even have enough right-of-way to be any wider than it is in spots and that is barely wide enough. He felt that two trucks could lose their mirrors if they are not careful because there was no way to get off the road particularly with a loaded truck. An estimate to fix that road to where it will handle these dump trucks will cost in excess of \$2 million and bring it up to par. There will also be right-of-way work that will need to be done as well as achieving the necessary right-of-way to make the road wide enough.

Mr. Blair also stated that the trucks that he sees going up the North Fork weigh well in excess of 100,000 pounds. There are tractors pulling two side dump trailers that haul 20 yards of rock a piece which is about 60,000 worth of rock per trailer plus the truck and the trailers. Over the lifespan of this pit if the road isn't totally fixed in the beginning then they could spend \$6 million in maintenance maintaining that road for 15 years if the pit stops at 15 years. He doesn't know if the Kenai Borough has that kind of money laying around that they would want to put into that when all they are going to get is minimal separation fees which won't amount to much money.

Mr. Blair felt lucky enough to be far enough away from the pit that the dust and noise will be minimal. The truck noise will be there but by in large the cost to the Borough to maintain that road or to rebuild that road would not be a business that he would go into because it would cost \$2-\$3 million and would get back almost nothing.

Mr. Blair thought the bridge was going to be built anyway and did not know if the gravel pit will have much to do with that.

17. Bob Shavelson, Director of Advocacy for the Cook Inletkeeper

Mr. Shavelson stated he has heard many concerns from the property owners. It brings to mind the whole notion of private property, which is vital to their economic system. One of the central tenants of property rights is that someone can do what they want on their own property but cannot harm folks around them. It includes private and public property, which is the issue he wanted to address at this meeting.

Mr. Shavelson referred to the ground and surface water resources. Finding of Fact 8 states, "*The permittee must maintain a 2-foot vertical separation from the seasonal high water table.*" Again, he was going to come back to the issue that he raised the last time. There was nothing in the application that says that the test hole was drilled and monitored to ascertain the seasonal high water mark so he questioned how the planning commission or the staff could know what that level was. He felt they could not.

Mr. Shavelson felt that the permit could not be approved, if they want to abide by the ordinance. If the permit is approved, then it was just guesswork. They should not be gambling with the resources that they have in the estuary of the Anchor River. He referred to the scientist from the National Estuarine Research Reserve who provided them with the groundwater flow that shows that this parcel, at least partially flows into the Anchor River and that water plays a vital role in the life stage of various salmon. When he first thought about an estuary, he thought salmon goes down, goes through the estuary, and then comes back, and goes through the estuary again but it was a lot more complicated than that. They are just beginning to scratch the surface on this complexity. All the ecology of the salmon systems is kind of like fabric, when the threads are pulled then the fabric will unravel. He stated that they have to be really careful, this is one of the things that really concerns him.

Mr. Shavelson also stated that the ordinance states that it has to comply with other environmental laws and rules. There is something that he calls the myth of rigorous permitting. The myth of rigorous permitting is that there is this whole alphabet soup of Local, State and Federal laws and rules so if all the i's are dotted and all the t's are crossed then there will salmon habitat protection.

He has been doing this for 25 years and he can tell them that this is not the case. There is the 50-foot buffer on the salmon streams in the Kenai Peninsula Borough but he also knows that Mayor Pierce was looking actively to revoke some or all of those protections. There is Title 16 in the State law, which is the Habitat Protection law. It is one law in the State that protects habitat. It was one sentence long and was adopted at Statehood. There is an effort now to revise that in a ballot measure that was causing a lot of controversy but many people feel that there is this whole alphabet soup of laws and rules that don't protect the habitat.

Mr. Shavelson commented that this reminds him of a book entitled, "The King of Fish" by a professor named David Montgomery at the University of Seattle. Mr. Montgomery talks about the demise of salmon from Europe, to New England and to the Pacific Northwest. The thing that is taken from this book was that it was not neglect that led to the loss of salmon runs across the world but knowing the neglect. It was that they knew what they were doing was wrong but did it anyway. That is how he felt about these permits that continue to get rubber-stamped through this process.

Mr. Shavelson thought that many of the commissioners feel like their hands are tied. There is the ordinance that puts them in a strait jacket so they think they cannot do anything. He felt that the commission does have enormous discretion. They have discretion that was given to them by the borough. According to KPB Ordinance 2.40.050, the planning commission has broad discretion to investigate and make recommendations including to the Assembly.

Mr. Shavelson assumed this would be postponed to the August 13 so he encouraged the commission to ask the questions that need to be answered to do this right because the mouth of the Anchor River is a special place. He felt this body needed to represent the public interest. The private interest was always adequately represented and the public interest needs to be represented which he felt was the job of the Planning Commission.

Chairman Martin asked if there were questions for Mr. Shavelson. Hearing none, the public hearing continued.

18. Eldon Overson, 73976 Seaward Ave.

Mr. Overson gave a handout to the commissioners showing the view that he has from his property. He read the following statement into the record.

"I would like to thank you guys for hearing my thoughts on the proposed Beachcomber gravel pit that is being submitted by Emmitt and Mary Trimble in our community. I will thank even more after this meeting, if you reject the proposed land use permit that will decimate my neighbors' and my view for the next 15 to 20 years.

I was at work on the slope when I got the email for this planning meeting and I flew today and drove down from Anchorage, just for today. I have to drive up and fly back up to work tomorrow. I say this to show the importance that this proposed gravel means to me and how much I do not wish it to go forward. I feel that this is a very bad proposal and deserves more of his time and effort.

I bought my lot on the corner of Danver and Seaward about eight years ago and it's the spot that I would eventually build my dream home. I started to build a cabin on the lot to use for summertime camping, this winter. That picture is of me standing on my loft from that cabin. The red area that is marked is where the proposed gravel pit will be. I am approximately 65 feet above the gravel pit so I will be looking directly into it. The view of Iliamna, the ocean and the river was the main reason for me purchasing my property.

As the permit states, that the six-foot-high berm in the plan will offer little to no relief from the visual impact of the gravel pit. This is true for my lot, my neighbors' and many others. I don't feel that they have offered mitigating factors to lowering our value of the surrounding properties to increase his. Noise is also another factor that will keep me from using my property in the future

as I intended. The machinery that it will be working in the daytime hours will make me, basically not want to be there. There is no buffer between me and the gravel pit so I will have to hear the constant droning of the processing of the sand and gravel for the next 15 plus years. This was a very tranquil neighborhood and I enjoyed hanging out there in the summer months.

In closing, I find it very disingenuous and unethical that Emmitt & Mary Trimble have profited from selling many of the lots in our neighborhood and now singlehandedly want to undermine the enjoyment, the view and the property values of the same people that they sold the property to. I find it very disrespectful that they did not consider anybody but themselves and do not wish to accurately describe what they want to use the property for. I have heard from many of the neighbors from the meeting that they attended that they said that they only wanted to down 10 feet. The permit states that they want to go down 18 and then apply further in the future for going down even further.

I would like him to address those and also on the permit it says that this land was not intended for future subdivision which he also claims that's why he was only going down 10 feet to later subdivide the property which will also make all the septic's in that area lower to the water table.

The questions I have are:

- How could the Borough simultaneously tax him for my view while also approving a big eyesore right in the middle of it? In Homer, they have started to assess view on top of property.
- Will there be a waiver granted for all of them who are being impacted by this gravel pit and if so what was the loss revenue to the Borough?

I mention the campgrounds but that has already been addressed, better then he would have. Also, there is some incorrect or wrong statements on the permit concerning that there were no wells within 100 feet of the property boundary. I do believe, though that "We Tie Fly" has a well within 100 feet so that is inaccurate on the permit. I don't know how they can claim there was no wells within 100 feet of the property when there is.

Thank you for your time."

Chairman Martin asked if there were questions for Mr. Overson. Hearing none, the public hearing continued.

Chairman Martin called for a recess at 10:07 p.m. Chairman Martin reconvened the meeting at 10:15 p.m.

19. Phil Brna, 5601 E. 98th Ave, Anchorage

Mr. Brna spent a good number of his springs, summers and falls in Anchor Point for the last 24 years. He owns a cabin on the Anchor River inside the State Park and has a piece of property that is surrounded by the proposed gravel pit.

Mr. Brna stated that in the last 41 years he spent 21 years with the Alaska Department of Fish & Game as a Habitat Biologist and 14 years with the US Fish & Wildlife Service. He has retired from both so he has lots of experience with large development projects like Pebble Mine, Donlin Mine, and Chitina Mine. Mr. Brna was their fish and wildlife service biologist on all those projects. He stated that the science related to groundwater and the other gravel permit was a total joke. He has worked with some of the best groundwater hydrologists in the country and in Canada. It's pretty stunning that they are making decisions based on groundwater with no groundwater data other than one test hole that was dug who knows where. As former Governor Jay Hammond once said about Pebble Mine, "The only worse place for a mine would be in my backyard." This proposed gravel pit was in his backyard. In fact, it surrounds his one-acre property on three sides. Mr. Brna owned the last lot on Beachcomber. He bought the property to build a small house when he fully retired which he did two years ago. This proposal will pretty much destroy his plans to do that and will destroy his property value.

Mr. Brna thought that in 2018, it was ludicrous to think that someone could develop a gravel pit in the middle of a residential area and in one of the most heavily used recreational areas in Alaska. It was really unthinkable.

Mr. Brna expressed concern about the noise. When the property was being cleared and the other little gravel pit across the street was being built he could hear every truck that was backing up, every truck that was going down the road and the tractors. Someone can hear everything in that valley and it was not going to be any better with a gravel pit.

Mr. Brna also stated that there were archeological sites on his property. There were old cache pits and probably one house pits. He walked the gravel pit property a long time ago and there were a lot of house pits and cache pits on that property as well. There was an old wagon road that goes off the end Beachcomber that was built in the 1920's to get to an old homestead. It goes across his property and through the gravel pit.

Mr. Brna submitted written comments and asked the commission to read them. He hoped the Kenai Borough Planning Commission denies the proposal for this project because it was not good for Anchor Point, not good, for the people who live there and it's not good for the people that come there to recreate. There are people from all over the world that come to this area. He was fishing the Anchor River today and probably spoke to 20 people from all over the world. This is not a good thing.

Chairman Martin asked if there were questions for Mr. Brna. Hearing none, the public hearing continued.

21. Lynn Whitmore, 34680 Beachcomber

Mr. Whitmore's lives adjacent to the proposed project, which is literally in his backyard. When the applicant first bought the property, he was told that they were going to subdivide it and put homes on the property. He considered moving since he had a nice piece of the world to himself for a long time with just one neighbor.

Mr. Whitmore stated that when he was told it was going to be a gravel pit then he went to the staff who told him that this pretty much flies through if it meets the six conditions. Everybody he talked to said that the proposal was just going to fly through. It is a frustrating thing to watch all these people speak knowing that it was just going to fly through so he asked why was there a public hearing. He asked what the purpose was and what was being gained out of it, if the applicant meets the conditions. Maybe that would not be the best way to approach this thing to tell everyone that it was going to fly through.

Mr. Whitmore asked the commission that if there was a chance to consider their feelings and what they are going to listen to and what he was going to hear and listen to and they can reduce or stop that that then it would be a great benefit to him.

22. James Gorman, 73608 Twin Peaks Loop, Anchor Point

Mr. Gorman stated he looks right down on the beach road. He sees the things these people say every day. Mr. Gorman was a history major in college and read the following letter.

"The Alaska State Historic Preservation Office (AK SHPO) received your request for information regarding known historical sites in the area of a proposed gravel mine. Upon review of the Alaska Heritage Resources Survey (AHAS) database there are two reported cultural resource sites in the area of the proposed mining.

- *SEL-00280, prehistoric site, reported to consist of two house pits. Location is represented as a large polygon; exact location of features is unknown but current projected boundaries are within the proposed mining area.*
- *SEL-00281, historic graves and possible cache pits, reported to consist of 5 graves that at one time had grave markers, depressions tentatively described as cache pits were*

reported north of the graves. Location is represented as a large polygon; exact location of features is unknown but current projected boundaries are within the proposed mining area.

In Alaska there are two historic preservation laws that may apply unless the project is entirely private in nature:

Alaska Historic Preservation Act (AHPA): State law requires all public construction or improvement activities conducted by, or requiring licensing or permitting from, the State of Alaska to comply with the Alaska Historic Preservation Act (AS 41.35.070). This also includes required reporting of historic and archaeological sites on lands covered under contract with or licensed by the State or governmental agency of the State. This would include any material sources used under contract with the State.

National Historic Preservation Act (NHPA): If there is Federal involvement (financial assistance, permit, license or approval) with the project it is the statutory obligation of the lead Federal agency to comply with Section 106 (36 CFR § 800) of the National Historic Preservation Act, which requires the Federal agency to take into account the effects that their undertaking may have on historic properties.

Were either of those laws to apply, our office would be likely to request that an archaeological survey is conducted to verify the site locations and assess the potential effects of the project pursuant to the applicable historic preservation law. In addition, there are State laws regarding the discovery and/or intentional disturbance of human remains, this pertains to ALL lands in Alaska, including private. I have attached our handout regarding human remains.

Due to the lack of clear information regarding the site locations our office strongly encourages the use of a qualified cultural resource professional to verify the site."

Mr. Gorman was available to answer questions. He stated that the State Park owns both sides of the beach road and will not permit a widening of the road according to the recently retired chief ranger of the park system.

Chairman Martin asked if there were questions for Mr. Gorman. Hearing none, the public hearing continued.

22. Xochitl Lopez-Ayala, 34910 Echo; Corner of Danver & Echo

Ms. Ayala stated that she currently resides in Homer but her family owns the property directly across from the proposed gravel pit. They would be looking up at a berm if they were standing at the edge of their property. She submitted a photo of what their proposed view would look like if this goes through.

Ms. Ayala wanted the commission to see that everyone drove down from Anchor Point, Homer and Anchorage to attend this meeting. She wanted the commission to make that same commitment to them that they are making at this meeting. Since there is a proposal to postpone, Ms. Ayala asked the commission to drive down to Anchor Point and look at this proposed site. That way they would see what the neighborhood is so passionate about.

Ms. Ayala stated that this has been really great for the community since it has brought them all together and she has gotten to know many of the neighbors that she didn't know before. They have all grouped together and found one common thing that they have all loved which is Anchor Point.

Ms. Ayala felt this proposal should be designated as a mine and not a pit. A mine is not good for them and is not good for Anchor Point. She stated there is a lot of passion that is at this meeting and asked that the commissioners recognize that. There are tons of people who want to talk and want the commission to hear their testimony. She asked that they read over the information and understand and do what is right for the public, not necessarily just to a private owner because it is affecting all of them.

Ms. Ayala asked that they realize that it was kind of odd that there are a lot of gravel pits and mine proposals going up now that the new gravel pit ordinance has been pushed back a year. She asked how many more they were going to see which creates a lot of red flags that should be seen to make sure someone isn't trying to skirt around something or get past something. Ms. Ayala asked that they look into why they are trying to do this; are they trying to sell to a corporation up in Anchorage or sell to an out of state investor.

Ms. Ayala asked that they keep what they love which is why they moved here to the Peninsula. She and her husband just relocated here from Juneau and now they are going to get to look at a mine pit and a berm.

Ms. Ayala thanked the commission and for everyone who attended this meeting. She felt this was hard on everyone.

24. Josh Elmaleh, 34885 Seabury Ct.

Mr. Elmaleh stated that he and his wife looked over many properties over the last couple of years. They purchased their place a year ago overlooking several probably half a dozen to a dozen houses that were beautiful houses and beautiful land but they were close to a gravel pit. He expressed opposition to the proposed pit.

Mr. Elmaleh stated that he caught his first king salmon in the Anchor River. He wants that same thing for his four-month old son and for his six-year-old daughter. He wants them to be able to enjoy the things that he got to enjoy. This is a piece of heaven.

Chairman Martin asked if there were questions for Mr. Elmaleh. Hearing none, the public hearing continued.

25. Lauren Isenhour, 34737 Beachcomber St.

Ms. Isenhour is the daughter of Emmitt & Mary Trimble. She lives on three acres that borders this subject property so this project is in her backyard. Ms. Isenhour understood and respects everyone's concerns and opinions. Also she understood the scope of what the permit allows, which is a lot and again reiterated that she certainly understood and respects everyone's concerns.

Ms. Isenhour stated that she and her husband live at their location for all the same reasons that everyone else has chosen to live in Anchor Point. They recreate, walk on that road, go to the beach, do all the things everyone else does, and loves it there. She was born and raised in Anchor Point.

Ms. Isenhour's parents have been in Anchor Point for 40 years and have made a living in real estate by developing and improving land. They have a great reputation of improving land, selling it and caring for the land. They are very meticulous in how they care for things and everyone can see that because they look out at this beautiful property. Her parents have bought the property and invested \$60,000 into improving it by clearing all the stumps, burning the burn piles, mowing it and caring for this property because that is how they care for land. They have done it for a long time.

Ms. Isenhour's parents have other subdivisions that they have developed in Anchor Point that are on solid gravel but they chose not to develop that into a gravel pit. They are land developers and not pit developers. As someone mentioned they do not have equipment and don't have a plan for operating procedures as people have been asking for detail information about that. She understood the scope of the permit and the concerns.

Ms. Isenhour stated that there is obviously a benefit to gravel and everyone in that community has benefited by the road development in that subdivision. All the subdivisions back in there all have used the gravel for their driveways and foundations and the majority of it from a previous pit right off of Danver that has been reclaimed, subdivided, sold and now homes are on the property. There is a balance and a need for gravel in Anchor Point. She stated that gravel is a main cornerstone to the infrastructure of Anchor Point and for the families that are employed by road construction, building residential construction and by the equipment that operates in the area. There are a lot of families that not represented here that are employed by it.

Ms. Isenhour reiterated that she understood and respected everyone's concerns and they do represent a portion of Anchor Point but there is another portion of Anchor Point that is fine with pit development. They understand the balance of it and that is why there are the regulations. They do need gravel. She respects her parents' ability to develop land in such a strategic and thoughtful way. There is a way with the regulations that the borough set to excavate some gravel and reclaim it. There are pit developers like Mr. Walt who use the permit as soon as they get it and start immediately to excavate gravel.

Ms. Isenhour's stated that her parents' primary interest in this property is the property. Other land developers' primary interest would be the resource below the property for financial gain. She understood that they are requesting a permit with a large scope and that it could be a gravel pit.

Ms. Isenhour lives right there too and her parents would like to build a house on the property. It is in their best interest as real estate investors who have fought for a long time to help maintain property and home values in Anchor Point. They have roots in the community and have an invested interest in maintaining a quality of life in Anchor Point. Their first home in the 1970's was on Beach Access Rd when it was a dirt trail where they operated a tackle shop. They have had an invested interest in this area for many decades and they have managed to develop land and provide a living for them and their family in this small area. They have done that with great care for property and for land and is something, they have instilled in her and her sister which is care for the land.

Again, Ms. Isenhour reiterated that she understood the concerns in this room about the scope of the permit and what could potentially be there. This is her area too and she has a lot of respect for her parents and how they care for the land. Some previous speakers, Lynn Whitmore who has been a good friend of her parents for a long time and Phil Brna who has the property next door, neither chose to mention that her parents' voluntary built a 14-foot berm along their property at their own cost; to try to protect them when they were not required to do so. Her parents are the type of people to do those things.

Chairman Martin asked if there were questions for Ms. Isenhour.

Commissioner Carluccio asked if she was saying that her parents don't have any plans to develop this right now, that they just want to get this gravel pit on the books. Ms. Isenhour replied that she could speculate at what she thought their plans were. She understood that their primary plan for the property was to own it and what they want above all else is to own the property in its entirety. They have plans to subdivide it but that doesn't mean they are going to enact that plan. Her opinion is that they would like the permit to potentially do a gravel pit.

Commissioner Fikes understood that she was near the location of the mining and asked what kind of impact would there be on her personal well. She also asked how far her well was from this proposed pit. Ms. Isenhour replied that she wasn't sure.

Hearing no further comments or questions, the public hearing continued.

26. Gina DeBardelaben, McLane Consulting, Inc.

Ms. DeBardelaben was a principle engineer for McLane Consulting and was hired by the property owner to survey and prepare the permit application.

Ms. DeBardelaben pointed out that the Anchor River Road is a State owned and maintained road. DOT enforces the required gross vehicle weight measure on the bridge, speed, proper use of lane, shoulders, the health and use of the road. It doesn't apply to the borough CLUP permitting process.

Ms. DeBardelaben stated that there is a well within 100 feet of the property but not within the proposed extraction area. There are fine points about the permit that always needs to be read that sometimes isn't interpreted well in public meetings. She hoped that the commission would read the fine points and read the notes in the permit application.

Ms. DeBardelaben stated that gravel extraction from a material site is usually based on perspective sales as it is with this site. This site is not being permitted for a DOT or a commercial development project. The amount of material to be utilized is just a perspective, which is why the application states less than 50,000 square cubic yards. That number is usually based on the area and DNR permitting changes with greater than and less than 50,000 yards. The reality of 50,000 cubic yards coming out of this material site in a year is not very realistic. A large gravel sale in a rural area like this would be 10,000 yards or maybe 25,000 yards which would equate (it is still a lot) to less than 1,500 trucks, not 5,000 trucks. If they are going to sell a large amount of material, then they are not going to run it in a 10-yard end dump but would be running a side dump or belly dump.

Ms. DeBardelaben stated that there was one test hole dug at the time of application. There have been additional test holes dug since then. She continues to state that a developer or an operator continue test hole for groundwater and for different materials that meet specification as they enter the pit. All roads have a specification that the material has to meet. They are going to move around, dig test holes and constantly test groundwater if it varies. The whole requirement is that they stay 2 feet above it.

Ms. DeBardelaben stated that the owner would be installing monitor wells. She stated that it is a great benefit to the owner and the borough by putting monitor wells on the property. It gives them some comprehensive data on a quarterly or monthly basis of where the groundwater was. They are proposing that they might do that in the future even though this permit is not to enter the groundwater table.

Ms. DeBardelaben also referred to the other concerns of site buffers that were mentioned. She was available to answer questions.

Chairman Martin asked if there were questions for Ms. DeBardelaben. Hearing none the public hearing continued.

27. Ermitt Trimble

Mr. Trimble was the managing member of the Beachcomber, LLC and the principal applicant. He was available to answer questions as he did, voluntarily, in Anchor Point last Wednesday. There were a number of things that could be clarified but most of them were not pertinent to what the commission will be deliberating on so he was not going to try to counter those things.

Chairman Martin asked if there were questions for Mr. Trimble.

Commissioner Ruffner asked what his thoughts were on staff's recommendation for postponement. Mr. Trimble replied that he had no problem with postponement. Commissioner Ruffner stated that there will be the opportunity to ask further questions since staff was recommending postponement and the applicant had no problem with postponement.

Mr. Trimble stated that he gave some photos to staff that showed the berm that he put up. They were able to install an extensive berm in about three hours, mostly as a demonstration as to what could be done blocking those homes. There were about five homes that he could not see from the top level of excavation area with the berm, which could be replicated moving back. Mr. Trimble stated that he was not in the gravel business but it was part of the asset value of this property and it was incumbent upon him to protect his family and their investment to maximize that possible value. What he would like to do with the property was really his own business. He has a subdivision plan but he has no intention for preliminary approval, it is just that he wants to know that he has done his homework ahead of time. They have taken a few loads of gravel out of the pit for the ramp at the boat launch ramp and for the expansion of the parking area. He does intend to pursue this.

Commissioner Carluccio asked if he had intention of developing this property as a gravel pit. Mr. Trimble replied that they have already started developing this as a small gravel pit that was within the one-acre confines. He wants to go through this procedure, submit himself to the process, live up to the permit if and when he gets it so that he would be able to do whatever the permit will allow him to do. His plan was a small

scale being for local projects. All of those home and people have those properties because Buzz Kyllonen took a small pit, built all those roads and driveways, and provided the gravel for almost all of those people or those properties would not be there now. It was now one of the nicest looking properties in the area.

Commissioner Venuti asked if he heard the concerns from the people regarding the hazards of trucks on the haul road as well as the condition of the bridge that goes over the Anchor River. He presumed that any haul road out of the pit would go over the bridge. Mr. Trimble replied that it is not possible to go over that bridge now. It has been condemned which is why people are having to drive from the North Fork Road all the way to Eight Mile and back down the Old Sterling Highway to bring gravel to the beach. He stated that it was going to be rebuilt within a year or two. Right now, there are gravel trucks going up and down Danver all the time. Mr. Trimble stated that he has no problem with the big boats going up and down that road. He and Mr. Kyllonen got that road paved through a maintenance budget with DOT for \$150,000 because they gave them permission to go through their properties.

Hearing no further comments or questions, the public hearing continued.

28. Don Horton, 34910 Echo

Mr. Horton stated that his father said that the property was directly across the street from the proposed gravel pit. He asked if the permit was attached to the property or attached to the owners of the property if a permit is issued. If the property was sold, does the permit stay with the property.

Chairman Martin replied that the permit is attached to the property.

Mr. Horton stated that the applicant wants to maximize the value of his property while it was at the expense everyone's property around it. He thought that was not right.

29. Richard Carlton, 73500 Seabury Rd.

Mr. Carlton was a retired lineman and fell in love with the Anchor Point River area in 1996 when he started coming up here regularly. He and his wife purchased a piece of ground in 2007. Mr. Carlton stated that this was very emotional thing for him because he fell in love with the place which has a lack of noise. He spent 40 years hearing backup alarms and backhoes.

Mr. Carlton goes to his property and sits on his patio and looks out at Iliamna and drinks his coffee and he is in heaven. It is a wonderful thing. He has wonderful neighbors that care about one another. If they need something, then they help each other. If they are making too much noise, then they say something and they quiet down. It is a great life.

Mr. Carlton doesn't know why it matters who owns the road that goes to the beach. The bridge is condemned. The Old Sterling Highway is a hazard and if they take just a 10 -12-yard dump truck by itself and drive it up and down that road with its Jake brakes, that quiet goes away.

Mr. Carlton stated that there are all these RV Parks. The Buzz Kyllonen RV Park was where they fell in love with the area. They come here year after year and it's right across where one of the entrances is to this Beachcomber road. He would take a rubber boat out and catch a halibut and then drive down to southeast Washington and plan for next year to come back up here. That will all change if a big hole is dug.

Mr. Carlton was kind of like the other people, he doesn't begrudge anyone making a living but this proposal has no place where it's at. People raise concerns about the Pebble Mine but it's a long way away. Maybe it could trash a lot of streams and salmon runs but he doesn't see it so it's not personal to him.

Mr. Carlton stated that if he has to drive to the Post Office and has to come up Danver and hear backup alarms or white noise then he was not going to enjoy the place liked he used to. He thought the commission should be able to have an input on this project regarding the road, safety and all the things expressed even though the borough doesn't have any jurisdiction with the road because it's a State Road. He asked that the commission to the right things.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Carluccio to suspend the rules so that public comment can be extended and to be able to finish the business beyond the normal closing time of 11:00 p.m.

VOTE: The motion passed by unanimous consent.

BENTZ YES	CARLUCCIO YES	ECKLUND YES	ERNST ABSENT	FIKES ABSENT	FOSTER ABSENT	ISHAM ABSENT
MARTIN YES	MORGAN YES	RUFFNER YES	VENUTI YES	WHITNEY YES		9 YES 3 ABSENT

30. Steve Haber

Mr. Haber felt that someone was going to die if this project goes through. He unfortunately had a high school incident with his son's school many years ago. A traffic light couldn't get installed until after three kids were killed. Mr. Haber stated that the commission might be under such tremendous pressure from the way they do this that this will be approved. This won't work with this beach road. Everything that everybody else has said about the views doesn't compare with the bike companies going up and down that road. The boat trailers are going 60 miles per hour who aren't obeying the laws either. He reiterated that somebody was going to die on that road but it could be prevented.

31. David Gregory, 73850 Seaward

Mr. Gregory lives near the proposed gravel excavation site, which is really a mine. He works at a mine and felt there was a place for mines. The mine that he works at is way out in a remote area.

Mr. Gregory expressed concern regarding noise and dust. The noise goes uphill where there are numerous homes. There may be only five homes that could be seen from one particular point but there are dozens up this hill that the noise will carry right up there as well as the dust. The dust can be carried by the wind or if the wind is still, it just hangs in the air.

Seeing and hearing no one else wishing to speak Chairman Martin closed the public comment period and opened discussion among the Commission.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Bentz to postpone action and continue the public hearing until the next meeting of August 13, 2018.

Commissioner Ecklund stated that she would like to take action on this agenda item rather than postponing to the next meeting of August 13, 2018. They have heard the public and have read through the material prior to the meeting.

Commissioner Whitney concurred with Commissioner Ecklund.

There being no further comments or questions, Chairman Martin called for a roll call vote.

VOTE: The motion failed by majority consent.

BENTZ YES	CARLUCCIO NO	ECKLUND NO	ERNST ABSENT	FIKES NO	FOSTER ABSENT	ISHAM ABSENT
MARTIN YES	MORGAN NO	RUFFNER YES	VENUTI YES	WHITNEY NO		4 YES 5 NO 2 ABSENT

MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to approve the conditional land use permit application for a material extraction site on a parcel in Anchor Point.

Commissioner Ecklund believed they have sufficient findings to deny granting this permit based on the public testimony, the borough code as it is written now and the facts that were written in the staff report.

Commissioner Ecklund asked if they could even address this because the applicant requested a waiver for the processing portion of the pit and staff recommends denying the waiver request which would not allow them enough area for a processing plant. She asked if that would require a new submission of their application. Mr. Wall replied that the permit would be for the material extraction but to process the material there would be a narrow area within the material site. The material extraction would be approved but they would not be able to process outside of that narrow area which would be quite narrow if it was narrowed down to the 300 foot from the property lines. Commissioner Ecklund thought it would be 50 feet wide which would be a fairly narrow area.

Commissioner Ecklund stated that the motion was to approve the material site and asked if they had to address the waiver request. Mr. Wall understood the motion to approve as recommended in the staff report, which would include the denial of the waiver.

Commissioner Ruffner had hoped this would have been postponed as he had a couple of legal questions that he wanted to ask. He didn't think they had time to go through a memo that he was going to ask for. Commissioner Ruffner summarized where he believed they stood legally with looking at this and why he had to give this talk a number of times in an uncomfortable way. The Borough Assembly has given them the rules by which they are allowed as Planning Commission members to work under so they have put the sideboards up there that says what they can and cannot approve. The six criteria that staff have laid out which shows in their opinion that it meets those conditions. What he wanted to hear from his fellow commissioners is of those six criteria which ones, if they were going to vote against this, were not being met. That way he can understand where they would be deviating from what was presented in the staff report.

Commissioner Ecklund suggested the following findings.

Findings

1. Ordinance 21.29.040(A)(4), minimizes the noise disturbance to other properties. From the testimony she heard and the documents that have been submitted she felt the berms or the vegetated buffers will do justice to minimize the noise to other properties.
2. Ordinance 21.29.040(A)(5), minimizes visual impacts. She felt that the visual effects will not be reduced sufficiently with buffers and berms as they can't be built high enough.
3. The application was submitted without the seasonal high water determination. This was not sufficiently delineated in the application.
4. They need to determine if that well was within 100 feet of the material site.

Commissioner Ecklund stated that was her case and the vote would determine if they stated it in and if the motion failed to approve then there was follow up procedures that could be taken by the applicant.

Commissioner Ecklund asked what the appeal process would be for the applicant if this were denied. Mr. Wall replied that there is a 15-day appeal period once the notice of decision is issued. That appeal would go through the Clerk's office to a hearing officer. Anyone who testified or submitted written comments would have the ability to appeal. Commissioner Ecklund asked if the hearing officer would receive a transcript of any comments either those who verbally testified or submitted written comments. Mr. Wall replied yes, a transcript would be provided to the hearing officer.

Commissioner Ruffner explained the legal standing that they have at this meeting. They have the broad authority that has been given to the Planning Commission according to Borough Code. It is 240.050 which authorizes the planning commission to consider all the factors in everything they do and make a good determination. Later on, KPB 21.25 lays out the procedures for when they would authorize a conditional land use permit which has several steps. Now there is KPB 21.29 which is the code specifically relating to gravel pits. His understanding of their interpretations of how they have gotten to this point in the past has been that KPB 21.29 really lays out what can be done with buffers and what limitations they could put on a pit operator. Those are handed down to them from the Assembly. Previously, they have heard that the KPB 21.29 is the code that governs their decisions. Looking further up the code where they have broader latitude has not been afforded to them in the past. That has been his understanding and asked if legal counsel could give any clarification or corrections to that.

Ms. Montague replied that was a good summary. One thing that she would add would be that it was not just a matter of the ordinance that was adopted later in time but also the ordinance that was most specific to what they are reviewing which in this case is KPB 21.29. KPB 21.29 very specifically addresses materials sites so that has more weight than a very general purpose clause. For example, the Planning Commission can review the public health, safety and welfare. She stated that the very specific criteria in KPB 21.29 is how the Assembly has chosen to protect the public health, safety and welfare.

Commissioner Carluccio stated that KPB 21.29 says that 50 feet of vegetation and a ten-foot berm was one of the criteria yet the pit was lower than all the surrounding area so the 50 foot does not do anything. She asked if they have some authority to say that this is the letter of the law but was not the intent of the law because the intent of the law was to protect the surrounding landowners. Ms. Montague replied that the intent of the law was to protect the surrounding landowners in the way that the Assembly has laid out in the Borough Code.

Chairman Martin felt it was the unique topography that gets them in this corner right now. It is hard to foresee all the different ramifications of a crater.

Commissioner Carluccio agreed and stated that she would not be able to support the motion in granting approval of the permit.

Commissioner Bentz observed that the staff report states that the proposed extraction meets the material site standards in KPB 21.29, minimizing noise disturbance from other properties but she does not agree with that. She thought that these conditions would not minimize noise disturbance to other properties and will not minimize visual impacts.

Commissioner Morgan agreed as well and did not see how the 50-foot buffer or berms would minimize visual impact or sound impact because of the unique topography.

Commissioner Ruffner thought the commissioners did a good job of laying out the record of why and how they were going to vote. This will most likely be appealed if it is not approved. If it is appealed, then he thought the hearing officer will have a good record from the Planning Commission of why they thought it might not meet those criteria of being able to screen the vegetation.

There being no further comments or questions, Chairman Martin called for a roll call vote.

VOTE: The motion failed by majority consent.

BENTZ NO	CARLUCCIO NO	ECKLUND NO	ERNST ABSENT	FIKES NO	FOSTER ABSENT	ISHAM ABSENT
MARTIN YES	MORGAN NO	RUFFNER YES	VENUTI YES	WHITNEY NO		3 YES 6 NO 3 ABSENT

Chairman Martin thanked everyone for the effort and sacrifice it took to come to this hearing. He encouraged them to stay connected as a community.

AMENDMENT MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to attach the following findings to the denial of the conditional land use permit for the Anchor Point material extraction site.

Findings

1. Borough Code 21.29.040(A)(4), the noise will not be sufficiently reduced with any buffer or berm that could be added.
2. Borough Code 21.29.040(A)(5), the visual impact to the neighboring properties will not be reduced sufficiently.

VOTE: The motion passed by unanimous consent.

BENTZ YES	CARLUCCIO YES	ECKLUND YES	ERNST ABSENT	FIKES YES	FOSTER ABSENT	ISHAM ABSENT
MARTIN YES	MORGAN YES	RUFFNER YES	VENUTI YES	WHITNEY YES		9 YES 3 ABSENT

~~AGENDA ITEM G. ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18) - None~~

~~AGENDA ITEM H. VACATIONS NOT REQUIRING A PUBLIC HEARING – None~~

~~AGENDA ITEM I. SPECIAL CONSIDERATIONS - None~~

~~AGENDA ITEM J. SUBDIVISION PLAT PUBLIC HEARINGS~~

Chairman Carluccio reported that the Plat Committee reviewed and conditionally approved 5 preliminary plats.

~~AGENDA ITEM K. OTHER/NEW BUSINESS - None~~

~~AGENDA ITEM L. ASSEMBLY COMMENTS – None~~

~~AGENDA ITEM M. LEGAL REPRESENTATIVE COMMENTS - None~~

~~AGENDA ITEM N. DIRECTOR'S COMMENTS~~

Mr. Best reported that the Assembly did not have a meeting since the last Planning Commission meeting.

Chairman Martin asked if there were questions for Mr. Best. Hearing none, the meeting continued.

~~AGENDA ITEM O. COMMISSIONER COMMENTS~~

~~AGENDA ITEM P. PENDING ITEMS FOR FUTURE ACTION~~

~~AGENDA ITEM Q. ADJOURNMENT~~

MOTION: Commissioner Carluccio moved to adjourn the meeting at 11:24 p.m. Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

Patti Hartley
Administrative Assistant

VERBATIM TRANSCRIPT

&

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KENAI PENINSULA BOROUGH PLANNING COMMISSION**LOCATION**

**Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669**

**July 16, 2018
7:30 p.m.**

**TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 111, inclusive**

Commissioners Present:

**Syverine Abrahamson-Bentz, Ninilchik/Anchor Point
Paulette Bokenko-Carluccio, City of Seldovia
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Clam Gulch/Kasilof
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna**

Staff Present:

**Max Best, Planning Director
Patti Hartley, Administrative Assistant
Scott Huff, Platting Manager
Holly Montague, Deputy Borough Attorney
Jordan Reif, Platting Technician
Bruce Wall, Planner**

Others Present:

**Xochitl Lopez-Ayala
Todd Bareman
Hans & Jean Bilben
Gerald Blair
Walt Blauvelt, Axtel Enterprises
Michael Brantley
Phil Brna
Tammy Buss
Richard Carlton
Robert Corbisier, Attorney, Reeves Amodio, LLC**

Transcribed by: Sheila Garrant, Notary Public

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1 Others present: (Continued)
 2 Gary Cullip
 3 Gina DeBardelaben, McLane Consulting, Inc.
 4 Josh Elmaleh
 5 Kate Finn
 6 John Girton
 7 James Gorman
 8 David Gregory
 9 Steve Haber
 10 Don Horton (father)
 11 Don Horton (son)
 12 Lauren Isenhour
 13 Pete Kinneen
 14 Rick Oliver
 15 Eldon Overson
 16 William Michael & Linda Patrick
 17 Jim & Susan Reid
 18 Bob Shavelson, Cook Inletkeeper
 19 Eileen Sheridan
 20 Emmitt Trimble, Beachcomber, LLC
 21 Josh Updike, Peninsula Paving, LLC
 22
 23
 24
 25

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1 will do little to minimize the visual impact or noise
 2 disturbance to other properties. Staff recommends that
 3 a 50-foot vegetated buffer be required adjacent to the
 4 section line easement on the east property line; that
 5 would be along Denver Road.
 6 Part of Denver Road is a half dedication.
 7 Part of it is not -- well, let me rephrase that. Part
 8 of it is -- Denver Road is platted, and the portion on
 9 his property is a section line easement. And then also
 10 the northern part, both sides of the roadway is a
 11 section line easement.
 12 So in simple terms, the staff is
 13 proposing that a 50-foot vegetated buffer be required
 14 along Denver Road beginning at the edge of the section
 15 line easement, and then a six-foot berm inside of that.
 16 And then down along Echo Drive and going
 17 to the west, the same buffer is being proposed by
 18 staff: 50-feet of vegetation and then a six-foot berm
 19 on the inside of the vegetated buffer. And then
 20 wrapping around to the south there, that little leg
 21 there adjacent to that parcel, the same buffer.
 22 And then from there to the west, there's
 23 a few subdivision lots down on the south side there and
 24 there's really no vegetation there at all. There staff
 25 recommends a 12-foot high berm to provide the visual

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1 PROCEEDINGS
 2 7:52:35
 3 (This portion not requested)
 4 8:44:01
 5 **CHAIRMAN MARTIN:** We'll move to Item F4,
 6 Resolution 2018-23. Staff report, please.
 7 **MR. WALL:** Thank you, Mr. Chairman.
 8 This is an application for a conditional
 9 land use permit for a material site in the Anchor Point
 10 area. It is located at 74185 Anchor Point Road. The
 11 parcel number is 169-010-67. The applicant is
 12 Beachcomber, LLC. The site plan and application
 13 proposes the following buffers:
 14 On the north, a six-foot high berm,
 15 except along the east 400 feet where a 50-foot
 16 vegetated buffer is proposed; the south and east, a
 17 six-foot high berm; the west, greater than 50 feet of
 18 vegetation.
 19 Much of the vegetation was removed from
 20 this property 20 to 30 years ago. The neighboring
 21 properties adjacent to the southeast corner of the
 22 proposed material site are at a higher elevation than
 23 the subject property. This may be easiest to see on
 24 the contour map on page 119 of your packet.
 25 The proposed six-foot high berm alone

Page 5

1 impacts there.
 2 The west side, he's not excavating in the
 3 far west portion of the property, he's going to leave
 4 that vegetated. And then the berms as he proposed, a
 5 six-foot berm along the other property lines except for
 6 that in the northeast corner there where he's proposing
 7 natural vegetation.
 8 So with the proposed six-foot berm, I was
 9 not able to state in the staff report that the
 10 standards in KPB 21.29.040 had been met, but with the
 11 addition of the 50-foot vegetated buffer in portions of
 12 the property, I was then able to draft the findings
 13 stating that the standards had been met.
 14 Of course, this decision concerning
 15 buffers is entirely up to the Planning Commission. The
 16 code states, "The vegetation and fence shall be of
 17 sufficient height and density to provide visual and
 18 noise screening of the proposed use as deemed
 19 appropriate by the Planning Commission."
 20 While we are still on the map on page
 21 119, some of the property lines are not accurately
 22 depicted on these maps that I created. We've been
 23 updating the -- once I discovered the error, we've been
 24 updating the borough's mapping system, but I wasn't
 25 able to generate a new map for tonight's meeting.

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1 What I'm getting at there is Beachcomber
2 Street on the north portion of the property coming off
3 of Anchor Point Road, where it ends it looks like
4 there's a gap between that parcel -- at the end of
5 Beachcomber Street and the parcel, and that's
6 inaccurate.
7 To get a better representation of that
8 would be to go to the site plan on page 113 where you
9 can see that there's not that gap there. Like I say,
10 we're fixing that.
11 So now that we are looking at the site
12 plan, it indicates that the proposed processing area is
13 located 200 feet from the south of the last lot of
14 Beachcomber Street, which is currently undeveloped.
15 The parcel across the street from that one is developed
16 and it is located within 300 feet of the proposed
17 processing area.
18 This parcel is owned by the applicant's
19 daughter. A waiver is being requested for the 300-foot
20 processing distance requirement from this property
21 line. Staff does not recommend approval of the
22 processing distance waiver request.
23 We have numerous letters from adjacent
24 property owners and agencies in your desk packet
25 tonight. The staff report in your packet recommends

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1 approval of the conditional land use permit, however
2 because of the amount of written materials that you
3 have received tonight, I'm recommending that you
4 conduct the public hearing tonight and then continue
5 the hearing to your August 13th meeting to allow
6 yourselves time to read the written comments that you
7 have received.
8 That is the end of my report.
9 **CHAIRMAN MARTIN:** Thank you. Anyone here
10 wishing to testify? Please state your name and address
11 at the microphone.
12 **ROBERT CORBISIER:** This is the right
13 gravel permit?
14 **CHAIRMAN MARTIN:** Yes, sir.
15 **ROBERT CORBISIER:** Mr. Chairman, I do
16 apologize. I was working on my notes, and all of a
17 sudden I heard "materials site extraction," and I
18 wanted to jump. I was like, "Why isn't anybody else
19 saying anything?"
20 My name is Rob Corbisier. I do have
21 prepared statements. I would ask for ten minutes, I
22 think I can still get through it in five.
23 **CHAIRMAN MARTIN:** Go for it.
24 **ROBERT CORBISIER:** I am a resident of
25 Anchor Point, however, I'm an attorney here

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1 representing Robert Bob Baker on behalf of the R.O
2 Baker Trust. He is an adjacent property owner. I have
3 submitted written comments, I'd like to briefly
4 summarize them orally though.
5 I primarily make five points in the
6 written comments. First of all, there's no way that a
7 conditional use permit in this location could
8 adequately protect the environment. Fugitive dust is
9 going to be coming off of the gravel pit into the
10 adjacent wetlands, the Anchor River, and the estuary.
11 There is going to be drainage issues.
12 There's going to be dewatering issues. Although the
13 applicant has stated at this time he's planning on
14 staying above the water table, the application does
15 state at some point in the future he intends on going
16 into the water table.
17 The well location itself is deceptive
18 when you look at the gradient of where the test hole
19 was dug. It is at a near -- it's at a high point in
20 the area adjacent to a bluff that drops way off, and so
21 naturally you are going to have a lower water table at
22 that spot. It also violates the ADEC best practices
23 manual, which suggests having a four-foot separation.
24 You are also going to have noise that is
25 going to damage wildlife habitat and it violates the

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1 borough's Costal Zone Management Plan.
2 Second, it's not going to be able to
3 preserve recreational values. There are two state park
4 campsites adjacent to the area. Anglers fishing on the
5 Anchor River and camping on the beach and in the
6 campsites are going to be able to hear the noise, and
7 the heavy truck traffic is going to interfere with
8 recreational traffic going to and from the beach and
9 the tractor launch site. That road is quite narrow,
10 that is going to be ripe for disaster.
11 It is going to impact residential values
12 dramatically. There are 13 classified -- residential
13 classified parcels that are adjacent to right next to
14 it. There are -- I counted approximately 40 within
15 1,500 feet.
16 A six-foot berm is not going to be
17 sufficient for either visual separation or auditory
18 separation especially when you consider second-story
19 houses.
20 This is going to create an attractive
21 nuisance. You have Chapman Elementary School that is
22 not far from that. Children go down and play near the
23 beach and in that area all the time.
24 In the borough's working group on the
25 material site regulations there was testimony

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1 describing how winds in the wintertime turn otherwise
 2 vacant gravel pits into sandblasting facilities that
 3 absolutely knock out somebody's house next door.
 4 In this location, it is adjacent both to
 5 Cook Inlet and the Anchor River flats there, there is
 6 undoubtedly going to be high winds. It is the highest
 7 level HUD wind zone.
 8 It is going to impact property values. I
 9 understand the borough assessor does not necessarily
 10 drop property values just based on the existence of a
 11 gravel pit; however, studies in the Lower 48 show a
 12 documented drop of around 33 or higher percent when a
 13 gravel pit is developed.
 14 Although staff has recommended a buffer
 15 on the east side and the north side, there is not a
 16 buffer that is being recommended even on the south
 17 side. And so you are still going to have residential
 18 parcels with nothing other than a six-foot berm.
 19 Lastly, for residential values, Danver
 20 Street does not comply with the ADEC best management
 21 practices for a dedicated access point.
 22 Third, this is not needed. There are
 23 approximately 50 parcels in the greater Anchor Point
 24 area either off the Old Sterling Highway, the Sterling
 25 Highway, or the North Fork Road that either have

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1 conditional use permits as gravel pits or are existing
 2 prior uses.
 3 So lastly, the borough should simply just
 4 wait for the regs to come out. There's no reason for
 5 the Planning Commission to approve this application
 6 right now. Let the process that has been started by
 7 the assembly finish before the conditional use permit
 8 is authorized.
 9 If the Planning Commission feels a need
 10 to do something, an alternative that should be
 11 considered would be only developing the Phase 1 portion
 12 of the project allowing then the applicant to come back
 13 for later phases after the regulations are in place.
 14 Now lastly, my client asked me to make
 15 several additional points here at this meeting. To his
 16 knowledge, the applicant has no experience operating a
 17 gravel pit. I mean, simply from an LLC standpoint,
 18 Beachcomber, LLC is a brand new LLC, it has no business
 19 history.
 20 He has questions about what -- what is
 21 the financing for the extraction? The start-up costs?
 22 The ability for the applicant to post a requisite bond?
 23 What is the insurance going to be like? What is the
 24 LLC's solvency?
 25 In the event that the LLC is to become

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1 insolvent, there is a potential for an outside operator
 2 that could come in and continue to decimate the mouth
 3 of the Anchor River and its recreational values in the
 4 event that there's a sale.
 5 Thank you very much. I will otherwise
 6 defer to my comments. Are there any questions?
 7 **CHAIRMAN MARTIN:** Any questions?
 8 **ROBERT CORBISIER:** Thank you.
 9 **CHAIRMAN MARTIN:** None at this time.
 10 Thank you. Next testifier, please.
 11 **MICHAEL BRANTLEY:** Good day, ladies and
 12 gentlemen of the assembly. You are here today to
 13 represent --
 14 **CHAIRMAN MARTIN:** Name and address for
 15 the --
 16 **MICHAEL BRANTLEY:** Pardon me?
 17 **CHAIRMAN MARTIN:** Name and address for
 18 the record.
 19 **MICHAEL BRANTLEY:** Yes, ma'am -- yes,
 20 sir.
 21 My name is Michael Brantley. My address
 22 is 74057 Anchor Point Road, 300 miles west -- I mean,
 23 300 feet west of Danver Road, which is going to be the
 24 access road for this pit.
 25 I just retired after 41 years and three

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1 months working for the federal government. 31 years of
 2 that working history I worked gravel pits and quarries.
 3 I've seen a lot of noise, or heard a lot of noise too
 4 actually, and these things create carcinogens, and
 5 carcinogens is cancerous.
 6 Imagine somebody with their family
 7 driving down with their RV or SUV, windows down, and
 8 their children breathing in all this air every day that
 9 this is going on. Just imagine that.
 10 We have a traffic problem as it is on the
 11 beach road. And to be exact, that road is a disaster,
 12 it is a hazard, it is a liability to the Kenai
 13 Peninsula Borough as of this day, that is my opinion.
 14 This needs to be rectified.
 15 This pit is on the backside of my lot, it
 16 borders it. I am north of his line there. I spent
 17 hundreds of thousands of dollars the past couple of
 18 years to build my dream, my business down there, a
 19 fly-tying shop. And now I will have a pit going in
 20 next door.
 21 I've got guests that gets up at all types
 22 of hours to fish, you all know that, they go according
 23 to the tide and the weather. So if they are going to
 24 put a berm up there, they better also put up a wall.
 25 They also need to have DEC inspections if

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1 this is going to happen, and I mean on a regular basis.
 2 I had 12 certificates dealing with hazardous waste
 3 working for the Air Force, so I have experience in all
 4 of this, and I'm telling you that it's not right for
 5 the neighborhood.
 6 I've spent tens of thousands of dollars
 7 to get my DEC engineer-approved water system put in.
 8 That was quite the experience. I drilled four wells
 9 right next to one that was producing 26 gallons a
 10 minute. I went down a few hundred feet and still
 11 couldn't find water. Fortunately for me the borough
 12 came back and changed the regulations and now my well
 13 is classified as private, so therefore I can use it.
 14 However, the well is only down 38 feet. And I'll let
 15 you know again, Kenai Peninsula Borough/DEC has
 16 approved this.
 17 There is something that came to my
 18 attention some time ago when I first bought this
 19 property. The property was previously owned by Albert
 20 Don Magee from Oregon. Now some time ago I heard a
 21 story, so I did some inquiring. The story I understand
 22 was that he had a son that had passed away and he
 23 decided to bury his son on this property that we are
 24 talking about today. I have been in contact with the
 25 family members down there trying to get verification of

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1 this as we speak, and as I get this information I will
 2 pass it on to the appropriate people.
 3 And this is all I have to say. Let me
 4 check my notes.
 5 **CHAIRMAN MARTIN:** Do you have any
 6 questions?
 7 **MR. WALL:** Mr. Chairman, if I could.
 8 **CHAIRMAN MARTIN:** Yes.
 9 **MR. WALL:** You mentioned that you have
 10 well. Did you indicate that's approved as a public
 11 water supply system?
 12 **MICHAEL BRANTLEY:** Yes, sir.
 13 **MR. WALL:** And when was that approved?
 14 **MICHAEL BRANTLEY:** Here I got -- finally
 15 got the approval last -- a couple weeks ago.
 16 **MR. WALL:** Okay. Because I was going to
 17 say that doesn't -- in our comment letter from DEC they
 18 didn't mention that.
 19 **MICHAEL BRANTLEY:** Sure.
 20 **MR. WALL:** So I'll do some follow up with
 21 them. Thank you.
 22 **MICHAEL BRANTLEY:** Sure, sure, that's
 23 fine. I appreciate that.
 24 Something else I want to talk about this
 25 possible deceased son that possibly could be buried on

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1 that property. It so happens to be his ancestry is
 2 Cherokee.
 3 I shall leave you with that, and you all
 4 have a good evening. I hope you make the right
 5 decision on this. The community can't have this.
 6 If you are going to put this in and you
 7 push it through, there's three things that I want. I
 8 want that road to be completely redone from the boat
 9 launch all the way to the bridge.
 10 The borough came down the other day and
 11 did some shoulder work. There is no shoulder on one
 12 side of that road half the way down. If you fall -- if
 13 you go over that line, white line, you are down four
 14 feet, your car is ruined, and you guys will get a bill.
 15 I've seen a lot of foot traffic. I got
 16 photos. I have a photo of a woman pushing three babies
 17 in a cart down that road. I have one of two babies. I
 18 have a group of six people. Unfortunately, rushing
 19 here from my place, I left all that information there,
 20 but I'll gladly dig it up and send it to any one of you
 21 that want to look at that.
 22 **CHAIRMAN MARTIN:** Thank you.
 23 **GARY CULLIP:** My name is Gary Cullip and
 24 I'm a resident there. I'm up on the end of Seabury
 25 Court, and I overlook this whole area for the gravel

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1 permit.
 2 My biggest concerns I have -- he might
 3 meet all of the regulations, but I think there's
 4 circumstantial evidence that's involved here that you
 5 really need to take a hard look. I think you really
 6 need to table this, take it up on your August 13th
 7 meeting.
 8 My biggest concerns I have is the
 9 condition of the road, number one. I know the borough
 10 does not have the money to go rebuild that road. So if
 11 that has to happen, you need to put a condition to the
 12 permit to make the permittee liable for it.
 13 And I don't know how in the world anybody
 14 could really address the safety issues. Number one
 15 safety as I see, is that road is the main access for
 16 people to get from the state parks down to the beach.
 17 So you have all kinds of foot traffic on a very, very
 18 narrow road as is. You have up to 40 boats traveling
 19 that road to get launched every day, and you are going
 20 to put these dump trucks and stuff in there, it's going
 21 to be a disaster. It really, really -- you people need
 22 to take a hard look at it.
 23 And like I said, it's a very different
 24 permit that we are talking about here. This is in the
 25 middle of a residential area, lots and lots of people

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1 to be affected by this.
 2 Now if you at all can find yourselves to
 3 go ahead and table this, take all the rest of the
 4 information that you are going to receive from all
 5 these people that are here and then make a wise
 6 decision. Thank you.
 7 **CHAIRMAN MARTIN:** Thank you. Any
 8 questions? None at this time. Next testifier, please.
 9 Name and address for the record.
 10 **WILLIAM PATRICK:** William Michael Patrick
 11 at 34897 Fisher Court in Anchor Point.
 12 I'm a coward. I ran away from the Lower
 13 48 in 1990 and came up here and taught in rural Alaska
 14 for a long time. I came to Anchor Point because it's a
 15 beautiful place. I picked a lot on a hill. I look out
 16 my front window and I can see Mt. Iliamna. I look out
 17 the side window, I see Mt. Redoubt. I go over to my
 18 neighbor's house across the street and we can even see
 19 Mt. Augustine.
 20 Over the past six years I've had the
 21 pleasure, the ecstatic pleasure of a lifetime -- talk
 22 about quality of life -- to see three sets of twin
 23 calves born in my front yard. I actually got to see
 24 them coming out, and I got to enjoy them running around
 25 on the front lawn.

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1 In the fall, sandhill cranes fly about
 2 that amphitheater bowl that we have there at the mouth
 3 of the Anchor River, and they are just squawking, and
 4 the way sounds carry there it sounds like they are in
 5 your living room. They will land on the hillside and
 6 down in the very area where this pit is going to be and
 7 they walk around. They are a majestic bird to see.
 8 I can drive down by the beach and I can
 9 see people walking on the beach, enjoying it. There is
 10 much beauty there. This is a very unique area. It's
 11 not down some dirt road. The farthest westerly point
 12 on the American highway system is right down there, and
 13 I can just see the tourist now, "Hey, I drove out as
 14 far west as I can in the United States and there's a
 15 gravel pit there." You know, "Go West, young man, go
 16 West." I guess you have to go farther west to get away
 17 from the gravel pits.
 18 I don't begrudge anybody making money, I
 19 don't. As a school teacher, I wish I could have found
 20 a way to make a little more money, but I don't begrudge
 21 business, any of that, but I do have some questions as
 22 a science teacher.
 23 You guys are talking about water tables.
 24 When these people make gravel pits and they let them
 25 fill up with that water, does that subject your

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1 groundwater to pollution? Because it's in contact with
 2 the atmosphere now.
 3 When you allow them to dig that out and
 4 put a pond in there, what about attractive nuisance?
 5 Let's say a neighborhood kid falls in there. Is the
 6 gradient on the pond steep enough to where he can't get
 7 out? Or you've got moose walking around, they'll -- if
 8 you've ever watched a moose, he'll walk right into
 9 something like that. Would he end up drowning because
 10 he can't get out of the hole in the ground that's
 11 covered up with water so that the gravel guy didn't
 12 have to reclaim it? I don't know.
 13 Flora and fauna, very unique. You've got
 14 a collision between freshwater systems and saltwater
 15 systems. What is on the ground there? What type of
 16 viruses? What types of bacteria? Are they helpful?
 17 Harmful? And what happens when you make them airborne
 18 on dust particles and they blow around? I personally
 19 am allergic to dust.
 20 But my house sits at 110 feet elevation
 21 about 150 yards from the entrance to this pit. The pit
 22 is at 44 feet elevation. You can't -- you'd have to
 23 put a dome over there to keep me from seeing into it.
 24 But then you would also make Mt. Iliamna and Mt.
 25 Redoubt disappear and that might cause a big stir in

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1 the National Geographic Society.
 2 But sea breezes, land breezes. We always
 3 get a sea breeze. Sometimes it's hurricane force. But
 4 when that sea breeze comes in every evening, guess
 5 what, it blows the dust right on my house, but not just
 6 mine, I've got a neighbor just to the right of me, I've
 7 got a neighbor behind me. Mr. Cullip there lives just
 8 within 100 yards of me.
 9 As you come up my private road, Deesa
 10 (ph) Road -- it's not really a road, it's kind of a
 11 path, but I have one, two, three more neighbors there.
 12 And on the left-hand side I have another neighbor
 13 there.
 14 These people are even closer than 150
 15 yards. But picture that, over 150 yards you have a
 16 rise in elevation of, like, 66 feet.
 17 Now I have two wells at my house. The
 18 reason I have two wells is I drilled the first one and
 19 I ran into an underground stream, an underground
 20 stream. Perfect water, okay.
 21 But through happenstance it gave out in
 22 just a couple of years, so I had to drill another well.
 23 Now that's 70 feet down. Now if you go 70 feet down
 24 from my house into the aquifer that I'm in --
 25 **CHAIRMAN MARTIN:** Could you wrap up?

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1 That's five minutes.
 2 **WILLIAM PATRICK:** All right. Could I
 3 just --
 4 **CHAIRMAN MARTIN:** Yes.
 5 **WILLIAM PATRICK:** -- you carry that over,
 6 that puts the ground level estimate down there at four
 7 feet above the water table. That's just an estimate.
 8 But I would suggest that you would have
 9 to drill more than one hole to determine the validity
 10 of the water table in that area, particularly in that
 11 area because it has many underground streams. Gravel
 12 filters water. That water is running down towards the
 13 ocean and towards the Anchor River.
 14 So, you know, scientifically if you look
 15 at these things it's fine, but I'm going to get the
 16 noise, I'm going to get the dust, I'm going to have the
 17 visual impact. I'm going to be subjected to safety
 18 pulling out of my road and not getting run over by a
 19 dump truck and so are many, many other people.
 20 I've seen the kids at the elementary
 21 school down there on walking field trips. And the
 22 bridge that services that Anchor River Road is
 23 condemned, it's condemned.
 24 **CHAIRMAN MARTIN:** Thank you.
 25 **WILLIAM PATRICK:** Thanks.

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1 **CHAIRMAN MARTIN:** Questions? Ms. Bentz?
 2 We have a question, sir.
 3 **COMMISSIONER BENTZ:** What was the depth
 4 of your first well?
 5 **WILLIAM PATRICK:** 20 feet.
 6 **COMMISSIONER BENTZ:** Thanks.
 7 **CHAIRMAN MARTIN:** Thank you.
 8 **TODD BAREMAN:** My name is Todd Bareman,
 9 and I live on the Old Sterling in Anchor Point, and I
 10 own the tractor launch down there at the beach.
 11 I would like to say that that road does
 12 need some addressing. It's in terrible shape. That's
 13 not what we are here for, but we are here to not make
 14 it any worse and cut into the recreational use that's
 15 going on down there.
 16 This pit, if it's permitted, there will
 17 be a crusher that five campgrounds are able to hear, a
 18 trailer park and two RV parks.
 19 How are recreational people going to get
 20 along with that, much less all the residents here that
 21 do have a problem with it.
 22 I'd like to say we are here because
 23 there's not enough regulations and that's why you are
 24 changing this permit process. And I think it should be
 25 tabled until you get some new regulations. This is not

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1 a normal gravel pit and it's not in a normal area as
 2 you can see by this testimony.
 3 And I would ask that you be a little bit
 4 lenient about people here testifying. This is very
 5 personal, because this is their property and their
 6 livelihoods that are going to be affected here.
 7 That's all I have.
 8 **CHAIRMAN MARTIN:** Thank you. Any
 9 questions? No questions at this time. Next testifier,
 10 please.
 11 **UNKNOWN SPEAKER:** Come on, stand right
 12 behind me. Come on, stand here.
 13 **LINDA PATRICK:** My name is Linda M.
 14 Patrick, I live at 34897 Fisher Court. That was my
 15 husband that spoke earlier.
 16 And I too want to mention all of the
 17 points that he mentioned, however, I'm going to stick
 18 to just one, and that's the noise level.
 19 Now there is excavating going on
 20 presently at that north corner of the designated area,
 21 already been dug out, consistently digging and hauling
 22 gravel and trucks in and out of there right now. That
 23 can sometimes start by 7:30, 7:00 in the morning -- the
 24 other day it was 7:00, and it runs all day. We can
 25 hear it. We can close our doors and our windows; that

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1 noise still permeates our house. Where is our
 2 protection? Where is our safety, our visual, our
 3 hearing? I just want to know, where is our protection?
 4 **CHAIRMAN MARTIN:** Any questions? None.
 5 **JOHN GIRTON:** Hello, my name is John
 6 Girton, and I live on Twin Peaks Loop. I'm about a
 7 mile from this construction site, so it's really not
 8 going to affect me much as far as what most of the
 9 people here are concerned about.
 10 Before I get into my concern, there is at
 11 least two graves in the middle of this site. One is
 12 the son of Joe and Gladys Dandona, their son is buried
 13 there. And I think there's another one, I think the
 14 McDonalds' have a son buried there also. I can't take
 15 you right to where it is, but it's definitely right in
 16 the middle of this plot.
 17 I'm moved to Anchor Point 25 years ago,
 18 and for one reason, the use of the beach road and the
 19 beach launch because I fish. And that road is so bad
 20 that somebody is going to get killed on it the way it
 21 is now.
 22 Three times in the last 25 years I have
 23 had gravel trucks coming down Danver from a project up
 24 there that hit my boat and my tow vehicle. Once it
 25 took my left-hand mirror off and twice it hit the back

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1 of my trailer. There's not enough room to move over to
 2 make room for these boats and the gravel pit trucks.
 3 And believe me, the gravel drivers are
 4 not going to get out of way of the boats, they just
 5 push us off. Now that they put in -- they dug out the
 6 berm, there's no place to go.
 7 And my boat is wide, my boat is 11-foot
 8 wide. And somebody said 40 boats a day. There are
 9 days when there are 100, 125 boats down that road.
 10 There's a lot of traffic. Plus you have the campers
 11 and the motorhomes that, you know, they need room. And
 12 these trucks, when they start rolling, it's going to be
 13 a very, very serious problem.
 14 There's a lot of walkers, a lot of kids,
 15 a lot of bicyclers, and it's -- right now when you
 16 drive onto the beach or back, you always have to move
 17 over to the side of the road to make room for the
 18 people walking along the road.
 19 I don't know if you've ever been down
 20 there. I mean, maybe you guys all live up here and
 21 don't know this road and don't know the problems, but
 22 you should get down and take a look at it before you
 23 make a decision, because it's a very serious problem.
 24 The road is in very, very bad shape and somebody is
 25 going to get killed.

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1 If you do approve it, which God, I hope
 2 you don't, you put in one of these restrictions. One
 3 of the restrictions should be no Jake brakes, because
 4 those trucks go down that hill on the Old Seward
 5 Highway down the left hand appearing to the beach, and
 6 they run those Jake brakes, and it is horrible where I
 7 live.
 8 I only live 150, 200 feet off the Old
 9 Sterling Highway, but it's a big problem when they do
 10 that. And they all do it, and there's no -- there's no
 11 enforcement. I mean, you guys can tell them not to do
 12 it, but nobody is going to enforce it.
 13 Just like -- I've had a couple of gravel
 14 pit operators tell me -- they just laughed. They said,
 15 "Well, once we get the permit we do anything we want.
 16 We come to this, we get our permit, and they tell us
 17 what we can do and what we can't do, but we do it
 18 anyway once we have it."
 19 And that really concerns mem especially
 20 with some of the people involved in this project.
 21 So I really hope you do not approve this.
 22 It's like -- it's just like signing a death warrant to
 23 Anchor Point if you do, because if that tractor and
 24 launch cannot continue to operate because of the road
 25 conditions and the lack of boats going down to launch,

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1 there's nothing else in Anchor Point to do. That is,
 2 like, 95 percent of our commerce in Anchor Point. It's
 3 a very serious thing you are going to do to Anchor
 4 Point if you allow this gravel pit to go in.
 5 Todd was going to expound it a lot more
 6 on what it would do to his business, but I guess he's
 7 just more of a gentleman than I am. But I'll tell you,
 8 it will be devastating if -- to that whole community if
 9 we lose that beach launch. That is the only thing
 10 anybody -- that's the only thing Anchor Point has. We
 11 don't even have a restaurant anymore. We have a beach
 12 launch, and you take that away from us, you are going
 13 to hurt a lot of people.
 14 **CHAIRMAN MARTIN:** Thank you.
 15 **JOHN GIRTON:** I guess that's all.
 16 **CHAIRMAN MARTIN:** Any questions? No
 17 questions at this time. Thank you for your testimony.
 18 **JOHN GIRTON:** Safety is my whole thing.
 19 I don't know anything about that pit. I'm not going to
 20 live by it and I'm not going to smell it, I'm not going
 21 to get the dust from it, it's the safety of that road.
 22 Thank you.
 23 **CHAIRMAN MARTIN:** Thank you.
 24 **HANS BILBEN:** We have some handouts to
 25 hand out to -- for the Commission.

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1 **CHAIRMAN MARTIN:** Patty will take care of
 2 it for you.
 3 **HANS BILBEN:** My name is Hans Bilben. I
 4 live at 35039 Danver Street where we built our home,
 5 and we've resided there for the past 15 years.
 6 I'm going to read a little statement here
 7 that kind of sums up why Jeanne and I, as well as most
 8 people in Anchor Point, live where we do.
 9 The statement says, "The natural beauty,
 10 the authenticity of the people, the adventure and the
 11 peaceful life come together to make Alaska a place to
 12 realize dreams.emm
 13 Funny thing about that statement, it's
 14 the first paragraph from the Coastal Realty website.
 15 That's the company that's owned by the same people who
 16 want to destroy the lifestyle that they claim to
 17 promote in their website. They want to develop a mine
 18 in the very heart of Anchor Point.
 19 There's an unlimited number of
 20 well-qualified reasons not to have a gravel pit in this
 21 location, while greed is truly the only driving force
 22 for its creation. We realize that the Planning
 23 Commission is bound by the Borough Code of
 24 Ordinances -- pardon me -- okay.
 25 We realize that the Planning Commission

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1 is bound by the Borough Code of Ordinances in their
 2 decision making process, and unfortunately these codes
 3 are severely lacking and vague in some areas. The six
 4 standards that the applicant must satisfy are pretty
 5 skimpy, but that's what you guys have to live by for
 6 now.

7 In the case of this application, there's
 8 no possible way that the applicant can meet those
 9 standards due to the topography of the area surrounding
 10 this proposed mine. No amount of berming or vegetated
 11 buffer will meet the standards pertaining to minimizing
 12 noise or visual impact on other properties and not
 13 other homes, as Emmitt would like to say, as required
 14 by the code because of the steep rise in elevation to
 15 the north, the east, and the south of the proposed
 16 mine.

17 Our property is 500 feet south of the
 18 proposed area and 75 feet above the existing floor.
 19 From our property we have clear view and earshot of a
 20 large percentage of the proposed site. If you look at
 21 page 2 and 3 on that handout, it shows some not so good
 22 pictures of what we look at out of our window. But you
 23 can see where the proposed area would be down below us.
 24 There is a lot of people that are much more impacted
 25 than we are.

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1 Recently myself and a friend walked
 2 through and talked with neighbors and actually looked
 3 at the view from the area. On the first page of my
 4 handout -- and you can see that one that has a bunch of
 5 little red dots all over it -- okay, that crosshatched
 6 area is the mine, proposed mine area.

7 The red dots, when we walked through the
 8 neighborhood and talked with neighbors and looked at
 9 them -- and we didn't really just look at homes,
 10 because the code doesn't say you can't impact homes, it
 11 says you can't impact other properties.

12 We counted -- on the red dots you can see
 13 on this thing, we counted 22 homes and talked to those
 14 people in most of those places, and they were impacted,
 15 and they will have visual and noise impact because no
 16 amount of berming can cover that up. You'd have to
 17 build a 100-foot berm down there to block that view.

18 Let's see. And in talking about this
 19 berm thing again and the vegetated buffer, the picture
 20 that we handed out to you -- and again, I'm a little
 21 premature on that, but this one right here, this is my
 22 neighbor Rick Oliver, he lives on Danver Street, he's
 23 going to speak here in a few minutes, but you can see
 24 the vegetated berm is that one tree to his left.

25 Now Rick lives on Danver, you can see the

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1 edge of Danver Street in the picture, okay. The road
 2 he's standing on or the cleared area that he's standing
 3 on is the access road to the pit, which would be to the
 4 processing plant, which would be right in front of his
 5 house.

6 Rick walked in 50 feet on Emmitt's
 7 property, and he trespassed probably. He is standing
 8 there, he's almost six feet tall he claims, and he's
 9 got a ten-foot two-by-six or something in his hand.
 10 The trees behind him will all be lost to excavation,
 11 they will be part of the pit. So what do you think
 12 about the visual impact, the noise impact, and the dust
 13 impact on Rick Oliver's house? Okay.

14 One thing -- we just got here a few
 15 minutes ago, Emmitt handed out a little handout and he
 16 says, "In only three hours we did this. Only five
 17 homes have been -- they have a limited view now." How
 18 many homes do we have to destroy or decimate before we
 19 say no to a gravel pit? Only five homes?

20 And the truth of the matter is it doesn't
 21 matter if it's 50 homes, it doesn't have anything to do
 22 with homes, it has to do with properties. People that
 23 own property up there are going to lose value, they are
 24 impacted by the visual and the noise part of that
 25 thing, and there's no way he can get around it because

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1 of the topography of that area. It's like being in an
 2 amphitheater when you go there.

3 The property, the proposed mine is in the
 4 heart of a residential recreational gem, and we call it
 5 Anchor Point. This property could, if properly
 6 developed, could be a very desirable addition to the
 7 community.

8 **CHAIRMAN MARTIN:** That's five minutes.
 9 **HANS BILBEN:** Okay.
 10 **CHAIRMAN MARTIN:** Can you wrap up?
 11 **HANS BILBEN:** I need about one more
 12 second.

13 **CHAIRMAN MARTIN:** Yep.
 14 **HANS BILBEN:** It's the function of our
 15 elected and appointed officials to represent and hold
 16 up these ordinances and not merely to rubber stamp this
 17 thing. This pit is at the wrong place and it has no
 18 business even getting this far in the process.

19 **CHAIRMAN MARTIN:** Any questions? None at
 20 this time. Thank you. Yep, name and address for the
 21 record.

22 **PETE KINNEEN:** Name is Pete Kinneen, and
 23 I live at 34969 Danver just behind Echo overlooking
 24 this proposed mine.
 25 And I'm here with a slightly different

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1 take. I'm an Irishman and I'm as passionate as anyone
 2 else is, however I'm going to put that aside, save you
 3 from my passion, and strike strictly to the reasons
 4 that you cannot approve this tonight.
 5 It does not meet the conditions. And
 6 the -- you know, the valid concerns about the safety of
 7 the road, et cetera, et cetera are not within your
 8 toolbox to use to make the decision. So just going on
 9 the ordinances and the exact interpretation of them, I
 10 don't think any of the conditions can be met.
 11 In fact, if this were to be -- first of
 12 all, this is not a permit of right. You do not have a
 13 right to do it, you must come and ask permission, and
 14 there's conditions.
 15 And I'm going to suggest, because of the
 16 uniqueness of this, if this were to be passed, there is
 17 no other operation in the Kenai Peninsula Borough --
 18 you might as well just rip up the ordinance and say,
 19 "Pshh, you can do anything you want."
 20 But the way it stands right now in Title
 21 21.29.050(A)(2)(a)(iie) says specifically, "Buffer
 22 requirements shall be made in consideration of and in
 23 accordance with existing use of neighboring property at
 24 the time of approval of the permit."
 25 "Shall" is a mandatory word, it is not

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1 permissive. You must do this, you must keep this in
 2 mind. The road and kids getting running over and all
 3 that is real, but it's not what you are to use in your
 4 decision, but "shall," that you will consider all of
 5 us.
 6 And the uniqueness of this is that if you
 7 were in a helicopter flying up the coastline, you would
 8 see tall bluffs for a mile after mile almost all the
 9 way in from Homer and far north.
 10 The exception is there's a little
 11 amphitheater or bathtub that inundates right in here,
 12 and that was caused by the outflow of the Anchor River.
 13 And it's a small flat area surrounded by a bathtub, and
 14 the noise comes in primarily from the water.
 15 The atmospheric conditions of the body of
 16 water right there play havoc with the sound. I mean,
 17 sometimes you can hear any little thing and other times
 18 you don't hear. But the noise cannot be minimized,
 19 there's virtually nothing you can do. You can have all
 20 the buffers you want.
 21 And in the photos that I've included here
 22 for your perusal, they were taken from my living room
 23 inside the house and they look out over the tops of the
 24 fully matured trees and they look out over -- you will
 25 see just a corner of a blue roof, it's a 20-something

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1 foot home, and everything behind it is part of this
 2 proposed mine.
 3 And there is -- I don't know, you can put
 4 up six-foot or 12-foot fence, you can make the buffer
 5 50 feet wide, 100 feet wide, 150 feet wide, it doesn't
 6 matter. And so this is a unique situation all the way
 7 around.
 8 The stated intent, which is your guide,
 9 is found in Title 21.29.040 and (A) clearly says
 10 "intent". What is the intent? Is the intent just to
 11 shovel out to anybody who comes in here and asks for a
 12 gravel mine anywhere at any time? That's not what the
 13 intent says. The intent says protect against six
 14 different conditions, including dust, noise, and visual
 15 impact.
 16 So with all due respect, because of the
 17 uniqueness of this area, if there's ever been a gravel
 18 mine application that should be denied, this is it.
 19 And I don't understand, I really do not understand how
 20 a permit could be issued for this under these
 21 ordinances and any interpretation of it.
 22 So at my invitation, Bruce Wall came to
 23 the house -- and again, all these photos were taken
 24 from my living room or the deck -- and he and I stood
 25 there and I said, "Here you go." And basically the

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1 entire floor of this bathtub or amphitheater, except
 2 for the estuary of Anchor River itself, virtually
 3 everything else is in this proposed mine. And I said,
 4 "Bruce, look, show me what you could do. I mean, we
 5 are open for ideas, all of us."
 6 And incidentally, there's a lot more than
 7 five houses. I mean, that's just probably an
 8 indication of the people who are proposing this. You
 9 know, Hans found over 20 houses that are impacted by
 10 this, I found more. So there's a lot of people
 11 impacted.
 12 And so anyway, I'm standing there with
 13 Bruce and I said, "Here it is. I can see the entire
 14 mine from left to right. And how can you protect us
 15 per your ordinance -- 'you shall' -- and this is the
 16 intent?"
 17 And I think he was kidding around. He
 18 just kind of jumped over here and said, "Well, you
 19 know, I can't see it now." That was a tree that was
 20 there in front of the house.
 21 And incidentally because of the
 22 atmospheric conditions right up to Echo Road does have
 23 original, vibrant, verdant, green, mature spruce trees.
 24 Past that and coming up the hill it doesn't, because
 25 the ecosystem that comes in behind us is the uplands

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1 boreal forest, and that's just been decimated by the
2 beetle kill.

3 **CHAIRMAN MARTIN:** It's been five minutes.
4 Could you --

5 **PETE KINNEEN:** All right, I'll wind it up
6 here in just a second. I appreciate it, sir.
7 I'm open to questions. But again, all
8 you need is one condition not being met. And as I
9 challenged Bruce Wall -- very nice guy, gentleman, I
10 like him -- I said, "How can you follow the intent?
11 Please show us how you can do it."
12 And you just saw a picture from Hans, of
13 the guy right down on Danver, and I'm like way up
14 there, and Hans looks over my house.
15 So I guess we are open to ideas, but a
16 50-foot buffer along the road, parallel height isn't
17 going to do anything at all. What it is is we're
18 looking down on a box.
19 And the bad thing is normally on a flat
20 plane when you are going down the road, you put up the
21 fence, you know, about the height of eye level and that
22 works. This doesn't work.
23 **CHAIRMAN MARTIN:** Thank you. Are there
24 any questions? None at this time. Thanks for your
25 testimony.

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1 **PETE KINNEEN:** Okay. Great.
2 **CHAIRMAN MARTIN:** Next testifier, please.
3 **RICK OLIVER:** Good evening. My name is
4 Rick Oliver. My address is 34880 Danver Street. Our
5 home is somewhat above and directly opposite the
6 proposed Danver Street -- I'm sorry, site on Danver
7 Street. The activity allowed by this application will
8 totally decimate the property value of our home as well
9 as the quality of life that we now enjoy.
10 We are most definitely not alone in this
11 regard. Obviously the standards set for the sand,
12 gravel, or material sites are said to protect -- again,
13 I'm saying the same thing everybody else has said --
14 against aquifer disturbance, road damage, visible
15 damage to adjacent properties, dust, noise and visual
16 impact.
17 I can state unequivocally that the
18 proposed setbacks, berms, vegetation buffers, et
19 cetera, will not and cannot protect our homes from
20 this -- from these disturbances.
21 No. 1 of said standards addresses a
22 lowering of water sources serving other properties.
23 The existence of substantial lake just below my
24 property indicates that a major mining operation cannot
25 help but affect my water source. I'm told there's some

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1 more significant and additional information regarding
2 that water standards to be presented.
3 No. 3 addresses the minimization of dust
4 offsite areas. Due to the proposed placement of the
5 proposed -- of the processing equipment, any onshore
6 breeze will bring dust to my home directly across the
7 street.
8 No. 4 addresses the noise disturbance to
9 other properties. According -- excuse me. According
10 to the radii shown on the application, the processing
11 equipment is roughly set 300 feet from my front door.
12 I'm close to six feet -- well, kind of
13 close, used to be closer. I'm holding in this picture,
14 of which you guys now have a copy, is a ten-foot board
15 just to show you how a six-foot board would -- so you
16 could see how a six-foot berm will minimize the visual
17 impact, which is not at all.
18 Mrs. Trimble approached a neighbor of
19 mine after the informal meeting last Wednesday and
20 stated that she and her husband had walked the property
21 and said they could see only six houses. This does not
22 include other properties as addressed by the code that
23 could at some point be developed. This begs the
24 question as to just how many homes does the project
25 have to decimate in order to convince this body that it

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1 should not happen?
2 For the record, let it be known that my
3 family and I, along with the dozens of other families
4 residing in this area, vehemently oppose the granting
5 of this permit.
6 Enough said. Thank you.
7 **CHAIRMAN MARTIN:** Thank you. Any
8 questions? Next testifier, please.
9 **JEANNE BILBEN:** My name is Jeanne Bilben.
10 I'm the wife of Hans Bilben that just spoke. And I
11 won't take very long, I just have a few things to say.
12 With the papers that I've handed out is
13 just regarding some of the information that we
14 discovered.
15 We love this beautiful recreation area.
16 Some of us have bought and built homes here. We own
17 land here just as the permit owner owns lands, but we
18 are not digging a gravel pit in his front or back yard.
19 We are not against a gravel pit, but we
20 do not want them in our neighborhoods. You would think
21 we have just as many rights as a gravel pit. We pay
22 our taxes too.
23 This is called gravel pit -- this
24 so-called gravel pit will be disturbing the peace of
25 our beautiful area. We know once this permit is issued

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1 it goes with the land, no matter who owns it, making it
 2 even more valuable to the owner and making our property
 3 values go down.
 4 Not only is this a recreational area,
 5 it's also a historic area. We have been in contact
 6 with the State Historic Preservation Office and there
 7 are documents like the ones that you have that there is
 8 a highly potential historic archeological site and
 9 that's the documents I have of historic graves,
 10 possible cache pits, et cetera.
 11 So I'm asking to stop this permit and
 12 keep this area away from mining and gravel. The state
 13 recreational area in Anchor Point is where people come
 14 to see the beauty and the history of this part of the
 15 world. Do you really want a gravel pit in this place
 16 for them to see?
 17 Please keep gravel pits away from our
 18 neighborhoods, historical lands, and recreational
 19 areas. That's all. Thank you. That's all we ask.
 20 Thank you.
 21 **CHAIRMAN MARTIN:** Thank you. Any
 22 questions?
 23 **JEANNE BILBEN:** Any questions?
 24 **CHAIRMAN MARTIN:** None at this time.
 25 Thank you.

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1 **JEANNE BILBEN:** I dropped it again. I'm
 2 old, I can't do this.
 3 **JIM REID:** Hi. My name is Jim Reid. I'm
 4 a retired paramedic, fire lieutenant, metro Dade, Miami
 5 Dade, and my address is 73820 Seaward Avenue.
 6 And my issue is the safety factor. Okay.
 7 This is what I did for 30 years, and I can tell you
 8 that that road that they are talking about, both roads,
 9 when they come down off of that hill down Danver, if
 10 you are coming down there in the winter time and a dump
 11 truck -- and that gravel truck pulls out, you are not
 12 stopping. Everybody in the neighborhood has complained
 13 about it. I mean, there's just nothing you can do. It
 14 gets iced over and you are going. That part.
 15 The other part is there's kids, and
 16 that's what I deal with, okay. And you've got four
 17 parks there or five parks, but you got three of them
 18 that them trucks have to pass with every load. And you
 19 are talking five -- you're not talking a couple hundred
 20 trucks a year, you're talking 5,000 trucks is what they
 21 are talking about.
 22 With the amount of aggregate they want to
 23 take out of there, you are talking five -- ten yards a
 24 truck, just figure it real quick, it's 5,000 trucks.
 25 We're not -- this is not a little thing. And I'll tell

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1 you right now, whatever happens, I will write a letter
 2 on this, because this is -- you know, this is what I
 3 did, and I don't like picking up kids.
 4 But even the gentleman who is trying do
 5 this, I believe it was his daughter and grandson, they
 6 were walking down there, and we were coming out with a
 7 boat trying to go down to Homer and there was another
 8 car coming the other way, and we had to stop, and she
 9 had to push the kid off the side of the road. All
 10 right. So I was there.
 11 And I can tell you, usually when I face
 12 12 people it's called a jury and I don't like that, so
 13 I don't normally get up and do anything like this, but
 14 this is really a serious problem. Okay.
 15 Aside from the bridge is condemned, so we
 16 really kind of left a bunch of people off. Well, they
 17 have to turn right and go out seven or eight miles to
 18 get back out to Seward Highway (sic).
 19 **UNKNOWN SPEAKER:** Sterling.
 20 **JIM REID:** The Old Seward (sic) --
 21 **UNKNOWN SPEAKER:** Sterling, Sterling.
 22 **JIM REID:** Sterling, I mean.
 23 That's like a snake. So we should have
 24 included all of those people who live down that road
 25 that want to get to look at them 5,000 trucks. That

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1 road is dangerous anyway. They run off that road for
 2 whatever reason.
 3 Okay, folks, thank you.
 4 **MS. REID:** I want to say -- my name is
 5 Susan Reid and I'm at 73820 -- where am I -- Seaward
 6 Avenue.
 7 We stand here with all of our friends and
 8 our neighbors and our community to let you know that we
 9 are really opposed to this and we object to the
 10 applicant for all the reasons everybody has stated,
 11 from bridge repair that's not going to hold their
 12 weight, from the property value of us going down. I
 13 assume if our property value does go down you would be
 14 very happy to lower our taxes, I'm assuming that you do
 15 that.
 16 **JIM REID:** Yeah, I'm sure.
 17 **SUSAN REID:** I'm assuming if you let him
 18 have this -- if you let him have this permit you are
 19 going to widen that road. Because right now it's not
 20 wide enough, like Mr. Cullip said, for all of this
 21 traffic. That's probably going to cost you a million
 22 and a half to fix the road.
 23 **JIM REID:** Well, right now all the dumps
 24 trucks that are empty go right out across that bridge.
 25 Well they just lowered from -- to 11 tons, which is

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1 22,000 pounds. And an empty dump truck weighs how
 2 much -- he should know that right off hand -- about
 3 26-, 28,000 empty. So right off the bat they are not
 4 abiding by the law right now.
 5 **SUSAN REID:** It's a highly, highly
 6 congested --
 7 **JIM REID:** That bridge is very dangerous.
 8 **SUSAN REID:** -- residential area.
 9 **CHAIRMAN MARTIN:** Yeah, one at a time.
 10 We are almost done.
 11 **SUSAN REID:** Okay. It's a highly
 12 residential -- it's a highly residential area, and all
 13 of us as the residents just want you to understand
 14 we're not taking this -- we're taking it very harshly
 15 here. We don't want you to do it, we don't want you to
 16 pass the permit.
 17 I know he has a right to try to make
 18 money off of his land, that's why he bought it, but
 19 years ago we all bought in this beautiful neck of the
 20 woods because it was quiet, not a lot of noise. I'm
 21 hearing beeping backup noises right now. I don't care
 22 how much white noise stuff you put on these trucks, you
 23 are still going to have this.
 24 Thank you for listening to us and I hope
 25 we aren't too emotional about it.

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1 **CHAIRMAN MARTIN:** Thank you. Next
 2 testified, please.
 3 **DON HORTON:** Hi. My name is Don Horton,
 4 and I live on 34910 Echo Street, directly across the
 5 street from this proposed gravel pit.
 6 We bought this property 15 years ago for
 7 recreational purposes and maybe some day to build a
 8 house on it when I retire. A month ago I retired and I
 9 get -- a month later I get a letter stating that I'm
 10 going to have -- look at a gravel pit directly across.
 11 My only view is this field. I look across this field
 12 and I see Mt. Redoubt.
 13 So if you build a 12-foot berm, six-foot
 14 berm, eight-foot berm, I'm going to look at berm, a
 15 gravel pit, and then Mt. Redoubt, so that -- it's going
 16 to virtually ruin my property. I would never build on
 17 it now, it's -- not even with a consideration of this
 18 going in, never could I build on it. I could never
 19 even give the property away.
 20 I have three sons and a daughter that
 21 hopefully someday this -- and a grandson now --
 22 hopefully that someday this will be his property.
 23 Well, I'd hate to see you guys ruin my
 24 little slice of heaven. Thank you.
 25 **CHAIRMAN MARTIN:** Thank you.

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1 **EILEEN SHERIDAN:** There's no place to
 2 sign. Next page?
 3 **UNKNOWN SPEAKER:** Just carve your name in
 4 the wood there.
 5 **UNKNOWN SPEAKER:** Better save room for
 6 the rest of us.
 7 **EILEEN SHERIDAN:** Right here, if you will
 8 take that page, yeah.
 9 While she's changing that, I'm Eileen
 10 Sheridan, I am around a 50-year resident of Alaska.
 11 We've lived in -- we've lived in Juneau, Sitka,
 12 beautiful places.
 13 **CHAIRMAN MARTIN:** And your current
 14 address?
 15 **EILEEN SHERIDAN:** We've lived in Palmer.
 16 We now live in 34860 Seabury Court, Anchor Point.
 17 We're above this area. We're secondary families, we
 18 live right near these people right here.
 19 We understand the noise, because if
 20 you've ever been out there when the wind is going 125
 21 miles-an-hour, you can feel it whooshing up that river.
 22 You talked about the cliffs and it coming up, and
 23 definitely there's no way berms or vegetation like that
 24 is going to take away those noises.
 25 When they had that oil/gas people out

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1 there in the Bay making their sonogram things all
 2 summer long, that was distracting. This gravel pit
 3 will be distracting too.
 4 We put our retirement into this home.
 5 It's going to go down in value. There's no way -- even
 6 Emmitt has said at the meeting the other night that,
 7 yeah, a gravel pit would make the value of your
 8 property go down. We had hoped that our kids could
 9 enjoy this later in life also. We've worked hard to do
 10 what we are doing, and so we understand him wanting to
 11 do something too, but not a gravel pit that we have to
 12 live with.
 13 And the dust, I had terrible allergies up
 14 in the Valley. We moved down here, because every time
 15 we brought our boat down or our trailer down, my
 16 allergies were halfway better living right there by
 17 ocean instead of up in the hay fields. And even though
 18 it was beautiful up there, we retired down here.
 19 So for -- if you are looking at how it's
 20 going to be a noise area, minimizing the dust, we
 21 already get dust from our dirt roads that are up there.
 22 Right now our Seabury Court road is just
 23 mainly a trail, a road trail. We have to go up to
 24 Seaward or down Deesa -- they said it's Deesa Avenue
 25 now onto a dirt road.

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1 The trucks speed down that road and
 2 there's no other way, you know, except to go and pick
 3 up dust, so you get the extra dust from a gravel pit.
 4 We lived next to one when we were -- while we were
 5 building this home and I was very glad to get up on my
 6 peaceful house to look at Mt. Iliamna and out at Mt.
 7 Redoubt.
 8 And I realize that if he gets these
 9 permits that he has the right to sell and have maybe
 10 even a bigger gravel pit put in there.
 11 Lowering of water sources, we noticed
 12 that there was only one test hole shown and was
 13 wondering if there's any consideration of loss of
 14 vegetation and resulting water rises from this.
 15 There seems to be, looking at the maps,
 16 some wetlands in there. We watch as we go down Denver
 17 to the right just across from that property the ducks
 18 that come in, they have their babies, the moose have
 19 their babies down there. If you get that noise in from
 20 the gravel pit, those moose mothers, they get so
 21 disturbed. They could be leaving their babies too.
 22 **CHAIRMAN MARTIN:** That's five minutes.
 23 **EILEEN SHERIDAN:** Thank you.
 24 **CHAIRMAN MARTIN:** Any questions? None at
 25 this time. Thank you for your testimony.

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1 **EILEEN SHERIDAN:** Pardon?
 2 **CHAIRMAN MARTIN:** Thank you. There's no
 3 questions.
 4 **EILEEN SHERIDAN:** Yes. I hope that you
 5 will reconsider and maybe think about looking at the
 6 new resolutions you're thinking about.
 7 **UNKNOWN SPEAKER:** There's two more spots
 8 there.
 9 **GERALD BLAIR:** Good evening. My name is
 10 Gerald Blair, I live at 73600 Twin Peaks Loop.
 11 Most of what I might have said this
 12 evening has already been said, probably far more
 13 eloquently than I would have, by prior speakers.
 14 But there is one issue that has not been
 15 covered, and that is not just the safety of that road,
 16 but the cost of that road. What I've been able to
 17 determine is that that road started life as a Cat trail
 18 that went from the Sterling Highway out to the beach,
 19 and that it was never engineered or properly built so
 20 it has no base.
 21 It doesn't have even enough right-of-way
 22 to be any wider than it is in spots, and that is barely
 23 wide enough. Two trucks could lose their mirrors if
 24 they are not careful because there's no way to get off
 25 the road, particularly with a loaded truck.

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1 Estimates. If you are going to fix that
 2 road to where it will handle these dump trucks -- and
 3 some of the trucks I see going up the North Fork weigh
 4 well in excess of 100,000 pounds. They are a tractor
 5 pulling two side dump trailers that haul 20 yards of
 6 rock a piece, and that's about 60,000 worth of rock per
 7 trailer plus the truck and the trailers.
 8 Guesstimates to fix that road to bring it
 9 up to par is in excess of \$2 million, because you get
 10 to rip it all up and rebuild it all, plus you've got to
 11 go in a do right-of-way work and achieve right-of-way
 12 to make the road wide enough.
 13 Over the lifespan of this pit, if the
 14 road isn't totally fixed in the beginning, you could
 15 spend \$6 million in maintenance maintaining that road
 16 for 15 years, and that's if the pit stops at 15. I
 17 don't know if the Kenai Borough has that kind of money
 18 laying around that they would want to put into that
 19 when all they are going to get is some mineral
 20 separation fees, which is not going to amount to very
 21 much money.
 22 So to me, I'm lucky enough to be far
 23 enough away from that that the dust and the noise, it
 24 will be minimal. The truck noise will be there. But
 25 by and large, the cost to the borough to maintain that

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1 road or to rebuild that road, it's -- it would not be a
 2 business I would go into, because you would spend 2- or
 3 \$3 million and you'd get back almost nothing.
 4 That's all I have to say. Thank you.
 5 **CHAIRMAN MARTIN:** Thank you.
 6 **UNKNOWN SPEAKER:** Don't forget the
 7 bridge.
 8 **GERALD BLAIR:** Well, I think the bridge
 9 is going to be built anyway. I don't know that the
 10 gravel pit will have much to do with that.
 11 **CHAIRMAN MARTIN:** All right. Thank you.
 12 Next testifier, please.
 13 **BOB SHAVELSON:** Thank you. Again, my
 14 name is Bob Shavelson, I'm the Director of Advocacy for
 15 Cook Inletkeeper. And I'm hearing a lot of concerns
 16 from property owners around here, and it brings to mind
 17 the whole notion of private property, which is
 18 obviously vital to our economic system.
 19 But one of the central tenets of property
 20 rights is that you can do what you want on your own
 21 property, but you can't harm folks around you, okay,
 22 and that includes private property and that includes
 23 public property, and that's the issue that I'm here to
 24 talk about tonight is the public property and, again,
 25 the ground and the surface water resources.

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1 And when I look at the staff report and
2 the findings of fact, Finding of Fact 8C says, "You
3 shall keep two feet above the seasonal high water
4 mark." And again, I'm going to come back to the issue
5 that I raised the last time, but nothing in the
6 application says that the test hole was drilled and
7 monitored to ascertain the seasonal high water mark.
8 So how can you, as the Planning Commission, how can the
9 staff know what that level is? You cannot.

10 And so I would say that you can't approve
11 the permit if you want to abide by the ordinance. And
12 I'd say if you do, then it's just guess work, and we
13 shouldn't be gambling with the resources that we have
14 in the estuary of the Anchor River.

15 And I'll also go back and refer to the
16 scientist from the National Estuarine Research Reserve,
17 and they provided you with a groundwater flow that
18 shows that this parcel -- excuse me -- at least
19 partially flows to the Anchor River, and that water
20 plays a vital role in the life stage of various salmon.

21 And when I first thought about an
22 estuary, you know, I think I'm like a lot of people, I
23 think, well, salmon goes down and it goes through the
24 estuary, and then comes back and it goes through the
25 estuary again.

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1 It's a lot more complicated than that,
2 and we're just beginning to scratch the surface on this
3 complexity.

4 As I mentioned before, you know, our
5 ecology of these salmon systems is kind of like a
6 fabric, and when you start to pull at the threads of
7 that fabric it will unravel. So we've got to be really
8 careful here.

9 One of the things that really concerns
10 me, and when I looked at the ordinance it says you have
11 to comply with all these other environmental laws and
12 rules. And there's something that I call the myth of
13 rigorous permitting.

14 And the myth of rigorous permitting is
15 that there's this whole alphabet soup of local, state,
16 and federal laws and rules, and if you dot all the i's
17 and cross all the t's, then, viola, you are going to
18 have salmon habitat protection.

19 But I've been doing this for 25 years,
20 and I can tell you that that's not the case. You know,
21 we've got a 50-foot buffer on our salmon streams in the
22 Kenai Peninsula Borough. We know that Mayor Pierce is
23 now looking actively to revoke some or all of those
24 protections.

25 We have what's called Title 16 in our

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1 state law, that's our habitat protection law. We have
2 one law in the state that protects habitat protection.
3 It's one sentence long and it was adopted at statehood.
4 There's an effort now to revise that in a ballot
5 measure that's causing a lot of controversy.

6 But a lot of people feel that there's
7 this whole alphabet soup of laws and rules out there;
8 they don't protect our habitat. This is one of the
9 ways that you can.

10 And it reminds me of a book that some of
11 you might have read, it's called the King of Fish by a
12 professor named David Montgomery at the University of
13 Seattle, and he talks about the demise of salmon from
14 Europe to New England to the Pacific Northwest.

15 And the thing that you take from it is
16 that it wasn't just neglect that led to the loss of
17 these salmon runs across the world, it was knowing
18 neglect, okay. We knew what we were doing was wrong
19 and we did it anyway, and that's how I feel about these
20 permits that just continue to get rubber stamped
21 through this process.

22 And I'm coming to the end of my time, but
23 I'll just say I think a lot of you feel like your hands
24 are tied. There's this ordinance and it puts you in a
25 straight jacket and you can't do anything, but you have

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1 enormous discretion. You have discretion that's given
2 to you by the borough. And if you look, and I provided
3 this in my written comments, but under Kenai Peninsula
4 Borough's 2.40.050 you have broad discretion to
5 investigate and make recommendations, including to the
6 assembly.

7 And so I sense that this is going to be
8 deferred to your August 13th meeting. I would
9 encourage you to ask the questions that need to
10 answered to do this right, because the mouth of the
11 Anchor River is a special place, it's why you have this
12 room packed tonight, and I think this body needs to
13 represent the public interest.

14 The private interest is always adequately
15 represented, the public interest needs to be
16 represented, and I feel like that's the job of the
17 Planning Commission.

18 Thank you very much.

19 **CHAIRMAN MARTIN:** Thank you. Any
20 questions? Next.

21 **ELDON OVERSON:** I'd like to apologize, I
22 didn't make enough copies of my picture, but that is
23 the view from my property from which I built a cabin
24 this winter.

25 I have a statement that I would like to

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1 read, and then I have a few questions if that's all
 2 right with the Committee. Is that acceptable?
 3 **CHAIRMAN MARTIN:** Yes.
 4 **ELDON OVERSON:** Okay. I would like to
 5 thank you guys for hearing my thoughts on the proposed
 6 Beachcomber gravel pit that is being submitted by
 7 Emmitt and Mary Trimble in our community.
 8 I will thank you even more after this
 9 meeting if you reject the proposed land use permit that
 10 will decimate my neighbors' and my view for the next 15
 11 to 20 years.
 12 I was at work on the Slope when I got the
 13 e-mail for this planning meeting, and I flew today and
 14 drove down from Anchorage just for today, and I have to
 15 drive up and fly back up to work tomorrow. I say this
 16 to show the importance that this proposed gravel pit
 17 means to me and how much I do not wish it to go
 18 forward. I feel that this is a very bad proposal and
 19 deserved more of my time and effort.
 20 I bought my lot on the corner of Danver
 21 and Seaward about eight years ago, and it's the spot
 22 that I would eventually build my dream home. I
 23 started, like I stated, to build a cabin on the lot to
 24 use for summertime camping this winter, and that
 25 picture is of me standing on my loft from that cabin.

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1 The red area that is marked is where the proposed
 2 gravel pit will be. I'm approximately 65 feet above
 3 the gravel pit, so I will be looking directly into it.
 4 The view of Iliamna, the ocean, and the
 5 river was the main reason for me purchasing my
 6 property. And as the permit states, that -- the
 7 six-foot high berm in the plan will offer little to no
 8 relief from the visual impact of the gravel pit. This
 9 is true for my lot, my neighbors', and many others.
 10 I don't feel that they have offered any
 11 mitigating factors to lowering our value of the
 12 surrounding properties to increase his.
 13 Noise is also another factor that will
 14 keep me from using my property in the future as I
 15 intended. The machinery that will be working in the
 16 daytime hours will make me basically not want to be
 17 there. There is no buffer between me and the gravel
 18 pit, so I will have to hear the constant droning of the
 19 processing of the sand and gravel for the next 15-plus
 20 years. This was a very tranquil neighborhood and I
 21 enjoyed hanging out there during the summer months.
 22 In closing, I find it very disingenuous
 23 and unethical that Emmitt and Mary Trimble have
 24 profited from selling many of the lots in our
 25 neighborhood, and now single handedly want to undermine

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1 the enjoyment, the view, and the property values of the
 2 same people that they sold the property to.
 3 I find it very disrespectful that they
 4 did not consider anybody but themselves and do not wish
 5 to accurately describe what they want to use the
 6 property for. I have heard from many of the neighbors
 7 from the meeting that they attended that they said that
 8 they only wanted to go down ten feet. The permit
 9 states that they want to go down 18, and then apply
 10 further in the future for going down even farther. So
 11 I would like to hear him address those.
 12 And also on the permit that it says that
 13 this land was not intended for future subdivision,
 14 which he also claims that that's why he's only going
 15 down ten feet was to later subdivide the property,
 16 which will also make all the septs in that area lower
 17 to the water table.
 18 The questions I have, I'll skip to those.
 19 I would like to ask how could the borough
 20 simultaneously tax me for my view while also approving
 21 a big eyesore right in the middle of it? I know that
 22 in Homer they've started to assess views on top of
 23 property. So I was just wondering, will there be a
 24 waiver granted for all of us that are being impacted by
 25 this gravel pit, and if so, what's the loss revenue to

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1 the borough? Does anybody want to speak to that?
 2 **CHAIRMAN MARTIN:** This is your night to
 3 speak.
 4 **ELDON OVERSON:** All right.
 5 **CHAIRMAN MARTIN:** If you could wrap it
 6 up, you've had five minutes.
 7 **ELDON OVERSON:** I thought if I requested
 8 longer, I could have longer.
 9 **CHAIRMAN MARTIN:** How much more are
 10 you --
 11 **ELDON OVERSON:** I just have a few other
 12 things.
 13 **CHAIRMAN MARTIN:** Okay.
 14 **ELDON OVERSON:** I won't -- I won't
 15 mention the campgrounds, but it's already been
 16 addressed, I think, better than I would have.
 17 And then also there is some incorrect and
 18 wrong statements on the permit concerning that there
 19 were no wells within 100 feet of the property boundary.
 20 There is -- I do believe the We Tie Fly has a well
 21 within 100 feet, so that is inaccurate on the permit.
 22 So I don't know how they can claim that there's no
 23 wells within 100 feet of the property when there is.
 24 And also -- I think that's all I had.
 25 Thank you for your time.

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1 **CHAIRMAN MARTIN:** Thank you. Any
2 questions?
3 **UNKNOWN SPEAKER:** Mr. Chairman.
4 **CHAIRMAN MARTIN:** Yes.
5 **UNKNOWN SPEAKER:** I apologize, I didn't
6 get your name.
7 **ELDON OVERSON:** Eldon Overson, and my
8 address is 73976 Seaward Avenue.
9 **CHAIRMAN MARTIN:** I'd like a show of
10 hands of how many more we have left to testify. I'm
11 going to declare a five-minute recess.
12 (Recess - 10:07 p.m. - 10:15 p.m.)
13 **CHAIRMAN MARTIN:** All right, we are ready
14 to go.
15 **PHIL BRNA:** My name is Phil Brna. I live
16 at 5601 E. 98th Avenue in Anchorage, but I've spent a
17 good part of spring, summers, and falls in Anchor Point
18 for the last 41 years. I own a cabin on the Anchor
19 River inside the state park, and I also have a piece of
20 property that's surrounded by the proposed gravel pit.
21 In the last 41 years I spent 21 years
22 with the Alaska Department of Fish & Game as a habitat
23 biologist, and 14 years with U.S. Fish & Wildlife
24 Service. I'm retired from both. I have lots of
25 experience with large development projects like Pebble

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1 Mine, Donlin Mine, Chulitna Mine to name a few. I was
2 the Fish & Wildlife Service biologist on all of those.
3 I just want to make an aside here that
4 the science related to groundwater here and the other
5 gravel permit is a total joke. I have worked with some
6 of the best groundwater hydrologists in the country and
7 in Canada, and it is pretty stunning how you are making
8 decisions based on groundwater with no groundwater data
9 other than one test hole that's dug who knows where.
10 Anyway, as former governor Jay Hammond
11 once said -- former governor Jay Hammond once said
12 this is about Pebble Mine. "The only worse place for a
13 mine would be in my back yard."
14 Well, this proposed gravel pit is in my
15 back yard. In fact, it surrounds my one-acre property
16 on three sides. I'm the last lot on Beachcomber. I
17 bought the property to build a small house when I fully
18 retired, which I did two years ago, and this proposal
19 will pretty much destroy my plans to do that, my wife
20 and I, and it will destroy my property value. I'm not
21 going to go on and on because most things have been
22 said.
23 In 2018, I think it is ludicrous to think
24 that someone could develop a gravel pit in the middle
25 of a residential area and one of the most heavily used

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1 recreational areas in Alaska. It's really unthinkable.
2 As far as the noise, when the property
3 was being cleared and when the other little gravel pit
4 across the street was being built, from my cabin I
5 could hear every truck backing up, I could hear every
6 truck going down the -- down the road, I could hear
7 Todd's tractors backing up. You can hear everything in
8 that valley, and it's not going to be any better with a
9 gravel pit.
10 There's also archeological sites on my
11 property, there's old cache pits, and probably at least
12 one house pit. I walked the gravel pit property a long
13 time ago, and there's a bunch of house pits and cache
14 pits on that property as well.
15 There's also an old wagon road that goes
16 off the end of Beachcomber that was built in the 1920s,
17 I believe, to get to an old homestead, and it goes
18 across my property and it goes through the -- through
19 the gravel pit.
20 I've submitted written comments, I guess
21 I have enough time to read them, but I won't. If you
22 promise to read them, I won't read them.
23 So I hope the Kenai Borough Planning
24 Commission, or whatever you are, I'm not even sure,
25 denies the proposal for this project because it's not

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1 good for Anchor Point, it's not good for the people
2 that live there, it's not good for the people that come
3 there to recreate.
4 There are people from all over the world.
5 I was fishing the Anchor River today, and I probably
6 talked to 20 people from all over the world, and this
7 is kind of not a good thing. Thank you.
8 **CHAIRMAN MARTIN:** Thank you.
9 **PHIL BRNA:** Questions?
10 **CHAIRMAN MARTIN:** Do you have any
11 questions? Not at this time.
12 **LYNN WHITMORE:** My name is Lynn Whitmore.
13 I live at 34680 Beachcomber Street. And the proposed
14 project is literally in my back yard and is adjacent to
15 my property.
16 When I first -- when the applicant first
17 bought the property he told me he was going to
18 subdivide it and put homes back there. And I
19 considered moving since I had that nice piece of the
20 world to myself for a long time with just one neighbor.
21 And when he told us it was going to be a
22 gravel pit, then I went to the staff, and the staff
23 said this pretty much flies through if he can meet
24 those six conditions.
25 And so everybody I talked to said, "Well,

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1 Lynn, it's just going to fly through." And it's a
 2 frustrating thing to watch all these people speak
 3 knowing that it's just going to fly through. So why
 4 are you having this hearing? What is the purpose?
 5 What do you gain out of that if he meets
 6 those conditions and it flies through? So maybe that
 7 wouldn't be the best way to approach this thing is tell
 8 everybody it's just going to fly through. And I've
 9 heard from the neighbors that they were told the same
 10 thing.
 11 So if there is a chance to consider their
 12 feelings and what they are going to listen to and what
 13 I'm going to hear and listen to and we can reduce or
 14 stop that, that would be a great benefit to me. And I
 15 feel like you guys have had enough time with everybody
 16 talking here, so I'll keep it short. Thank you.
 17 **CHAIRMAN MARTIN:** Thank you.
 18 **JAMES GORMAN:** Good evening. My name is
 19 James Gorman, I live at 73608 Twin Peaks Loop, Anchor
 20 Point. I look right down on the beach road. The
 21 things these people say, I see them every day.
 22 I was a history major in college, maybe
 23 you will appreciate this letter. This comes from the
 24 Alaska State Historical Preservation Office:
 25 In receipt of your request for

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1 information regarding known historical sites in the
 2 area of a proposed gravel mine, upon review of the
 3 Alaska Heritage Resource Survey database there are two
 4 reported cultural resource sites in the area of the
 5 proposed mine.
 6 One I've referenced as SEL-00280,
 7 prehistoric site reported to consist of two house pits.
 8 Location is represented as a large polygon on the
 9 site -- you can see that -- exact location of features
 10 is unknown, but current projected boundaries are within
 11 the proposed mining area.
 12 Second one is SEL-00281, historic graves
 13 and possible cache pits reported to consist of five
 14 graves that at one time had grave markers.
 15 Depressions, tentatively described as cache pits, were
 16 reported north of the graves. Location is represented
 17 as a large polygon. Exact location of features is
 18 unknown, but current projected boundaries are within
 19 the proposed mining area.
 20 In Alaska, there are two historical
 21 perseveration laws that may apply unless the project is
 22 entirely private in nature.
 23 The first one is the Alaska Historic
 24 Preservation Act: State law requires all public
 25 construction or improvement activities conducted by or

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1 requiring licensing and permitting from the state to
 2 comply with the Alaska Historic Preservation Act, AS
 3 41.35.070. This also includes required reporting of
 4 historic and archeological sites on lands covered under
 5 contract with or licensed by the state or government
 6 agency of the state. This would include any material
 7 resources used under contract with the state.
 8 And secondly, the National Historic
 9 Preservation Act: If there is federal involvement,
 10 financial assistance, permit, license, or approval with
 11 the project, it is the statutory obligation of the lead
 12 federal agency to comply with Section 106, 36 CFR-800
 13 of the National Historic Preservation Act which
 14 requires the federal agency to take into account the
 15 effects that their undertaking may have on historic
 16 properties.
 17 Were either of those laws to apply, our
 18 office would be likely to request that an
 19 archaeological survey is conducted to verify the site
 20 locations and assess the potential effects of the
 21 project pursuant to the applicable historic
 22 preservation law.
 23 In addition, there are state laws
 24 requiring the discovery and/or intentional disturbance
 25 of human remains. This pertains to all lands in

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1 Alaska, including private. I have attached our handout
 2 regarding human remains.
 3 Due to the lack of clear information
 4 regarding the site locations, our office strongly
 5 encourages the use of a qualified cultural resource
 6 professional to verify the site.
 7 Questions? I'll leave you a copy of this
 8 if you'd like.
 9 **CHAIRMAN MARTIN:** Any questions?
 10 **UNKNOWN SPEAKER:** We got it.
 11 **JAMES GORMAN:** You've got a copy.
 12 **CHAIRMAN MARTIN:** Thank you.
 13 **JAMES GORMAN:** Oh, and one more thing.
 14 According to the recently retired chief ranger of the
 15 park system, the park owns both sides of the beach road
 16 and they will not permit a widening of that road.
 17 Thank you.
 18 **CHAIRMAN MARTIN:** Next testifier.
 19 **XOCHITL LOPEZ-AYALA:** Hello, my name is
 20 Xochitl Lopez Ayala. I currently reside in Homer, but
 21 my family owns the property directly across from this
 22 proposed gravel mine at 34910 Echo.
 23 It is on the corner of Danver and Echo,
 24 so right literally standing at the edge of our property
 25 we will look up to a berm. We will actually submit a

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1 picture for you so you can see what our proposed view
 2 will look like here if this goes through.
 3 I did want to bring up to you all that --
 4 I want you to see that everyone here drove from Anchor
 5 Point or Homer or Anchorage, and we want you to make
 6 that same commitment that we are here to commit to you.
 7 And, you know, since this is proposed to
 8 be shelved, is drive down to Anchor Point, drive down
 9 to that road, look at this site, because you will see
 10 what we are all so passionate about.
 11 And I want you all to know that although
 12 all this negative talk about this, it's actually been
 13 really great in terms of the community. I've gotten to
 14 know people that I didn't get to know before, and we've
 15 all really kind of grouped together and found one
 16 common thing that we all love and that's Anchor Point.
 17 That's why we go there.
 18 And this mine, which is should be
 19 described as a mine, not a pit, a mine, is not good for
 20 us, it's not good for Anchor Point. And you just have
 21 a lot of passion in this room and we want you to
 22 recognize that.
 23 And I know you guys are glossing over,
 24 it's getting late. So, you know, thank you for staying
 25 here. But there's tons of people who want to talk and

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1 want you to hear their testimony, so please read over
 2 our information that we are trying to send you and
 3 understand that, you know, it's -- do what's right for
 4 the public, not necessarily a private owner, because
 5 it's affecting all of us.
 6 And I also wanted you to realize that --
 7 don't you think it's kind of odd that there's a lot of
 8 gravel pits and mine proposals going up now that
 9 this -- now that this ordinance has been pushed back a
 10 year? I mean, you approved two earlier today, and now
 11 a third. Like, how many more are you going to see?
 12 Obviously, that's a lot of red flags that
 13 you should see that if people are doing this, obviously
 14 they are trying to skirt something or get past
 15 something, and really look into why they are trying to
 16 do this. Are they trying to sell to a corporation up
 17 in Anchorage? Are they trying to sell to an
 18 out-of-state investor?
 19 You know, why -- why don't we just keep
 20 what we love, and why we moved down here, why we moved
 21 to the Peninsula.
 22 My husband and I just relocated here from
 23 Juneau, and now I get to look at a fricken mine and a
 24 berm. So, yeah, I'm kind of disappointed in that.
 25 So, you know, thank you all. And, you

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1 know, thank you all, everybody, for coming here, even
 2 Emmitt and his family. You know, it's hard -- it's
 3 hard on all of us, a lot of tears, a lot of anger, and
 4 it really means a lot to us. So thank you.
 5 **CHAIRMAN MARTIN:** Thank you.
 6 **BRUCE WALL:** Mr. Chairman. Ma'am, could
 7 I get you to do me a favor and put your name and your
 8 address on the sign-up sheet?
 9 **XOCHITL LOPEZ-AYALA:** Oh, sure.
 10 **BRUCE WALL:** Thank you.
 11 **CHAIRMAN MARTIN:** Who is next?
 12 **JOSH ELMALEH:** Hi. My name is Josh
 13 Elmaleh, I own the property 34885 Seabury Court. My
 14 wife and I looked over many properties over the last
 15 couple of years, and we purchased our place a year ago,
 16 overlooking several -- probably half a dozen to a dozen
 17 houses that were beautiful houses, beautiful land, but
 18 they were really close, within earshot of a gravel pit.
 19 And we strongly oppose it.
 20 My first king salmon I caught in the
 21 Anchor River probably half a dozen years ago, and I
 22 want that same thing for my four-month-old son, I want
 23 that same thing for my six-year-old daughter. I want
 24 them to be able to enjoy the things that I got to
 25 enjoy. It is a piece of heaven. And I'm terrified to

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1 talk up here, so I'm done.
 2 **CHAIRMAN MARTIN:** Any questions? Thank
 3 you. Who is next? I think we've heard from you --
 4 **UNKNOWN SPEAKER:** Am I permitted to talk
 5 for another minute?
 6 **CHAIRMAN MARTIN:** No, we are going to run
 7 out of time. Everybody -- we need everybody to be as
 8 quick -- as punctual as possible.
 9 **UNKNOWN SPEAKER:** All right. I just
 10 wanted you to know that sound travels up and the wind
 11 blows it the other way.
 12 **LAUREN ISENHOUR:** Hello. My name is
 13 Lauren Isenhour, I own -- I live at 34737 Beachcomber
 14 Street, which is three acres that borders this
 15 property. Mary and Emmitt are my parents.
 16 I understand everyone's concerns and I
 17 respect everyone's opinion in here. This is my back
 18 yard too, so I definitely understand the concern.
 19 And I understand the scope of what the
 20 permit allows is a lot, and I certainly understand and
 21 respect everyone's concerns.
 22 My husband and I live there for all the
 23 same reasons that everyone else in this room has chosen
 24 to live in Anchor Point. We recreate, we walk on that
 25 road, we go to the beach, we do all those things too

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1 and love it there.
 2 I was born there and grew up in Anchor
 3 Point. My parents have been in Anchor Point for 40
 4 years and have made a living in real estate by
 5 developing and improving land. And they have -- I'm
 6 sure everyone in the room will scoff at it, but they
 7 have a great reputation of improving land.
 8 **UNKNOWN SPEAKER:** (Indiscernible).
 9 **LARUEN ISENHOUR:** I feel I'm respectful
 10 to others' opinions, so I'd appreciate the same.
 11 They have made a living for 40 years
 12 improving land and selling it and caring for the land,
 13 and they are very meticulous in how they care for
 14 things. And everyone here can see that because they
 15 look out at this beautiful property that my parents --
 16 they bought it and then they invested \$60,000 into
 17 improving it by clearing all the stumps, burning the
 18 burn piles, and they mow it and care for this property,
 19 because that's how they care for land. And they've
 20 done it for a long time.
 21 They have other subdivisions that they've
 22 developed in Anchor Point that are on solid gravel, and
 23 they chose not to develop that to a gravel pit. They
 24 are land developers, not pit developers. And as
 25 someone mentioned, they don't have equipment, they

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1 don't have a plan for operating procedures as people
 2 have been asking detailed information about that, and
 3 they don't have that. And I understand the scope of
 4 the permit and the concerns.
 5 There is obviously a benefit to gravel,
 6 and everyone in that community has benefitted by the
 7 road development in that subdivision. All the
 8 subdivisions back in there, all their driveways and
 9 their foundations have all been built with gravel, and
 10 the majority of it from a previous pit right there off
 11 Denver that's been reclaimed and subdivided and sold
 12 and now homes are on that.
 13 And there is a way, a balance. There is
 14 a need for gravel, and in Anchor Point, above others,
 15 gravel is a main cornerstone to the infrastructure of
 16 Anchor Point and the families that are employed by road
 17 construction, by building residential construction, by
 18 equipment operating. There's a lot of families that
 19 are not represented here who are -- I respect and
 20 understand everyone's concerns here, and they do
 21 represent a portion of Anchor Point for sure, but there
 22 is another portion of Anchor Point that is fine with
 23 pit development and understands the balance of it, and
 24 that's why there are the regulations, too.
 25 We do need some gravel. I respect my

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1 parents' ability to develop land in such a strategic
 2 and thoughtful way that there is a way with the
 3 regulations that the borough sets to excavate some
 4 gravel and reclaim it.
 5 And unlike some other pit developers, and
 6 like Mr. Walt who came and presented earlier, who
 7 that's what they do and they have equipment and they
 8 are -- immediately when they get the permit they are
 9 going to go and use the permit and use the gravel.
 10 My parents' primary interest in that
 11 property is the property, and other land developers it
 12 wouldn't. Their primary interest in a pit -- or a
 13 property with that much financial gain in it would be
 14 the resource below the property, but my parents'
 15 primary interest there is the property itself.
 16 I understand they are requesting for a
 17 permit with a large scope and that it could be a gravel
 18 pit. I live right there too. My parents would like to
 19 build a house down on the property.
 20 And again, everyone in this room will
 21 scoff at it, but as real estate professionals, it's in
 22 their best interest, and they fought for a long time to
 23 help maintain property and home values in Anchor Point,
 24 and they have roots in the community.
 25 And not just because I live there,

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1 they've lived there and invested interest maintaining a
 2 quality of life in Anchor Point. Their first home in
 3 the area in the '70s was on Beach Access Road when it
 4 was a dirt trail, and they operated a tackle shop right
 5 there.
 6 They've had an invested interest in this
 7 area for many decades, and they've managed to develop
 8 land and provide a living for them and their family in
 9 this small area and done so with great care for
 10 property and for land. And something they've instilled
 11 in myself and my sister is care for the land.
 12 And I can -- I can understand the
 13 concerns in this room about the scope of the permit and
 14 what could potentially happen there.
 15 **CHAIRMAN MARTIN:** Can you -- can you
 16 summarize?
 17 **LAUREN ISENHOUR:** Oh, sure.
 18 **CHAIRMAN MARTIN:** Kind of wrap up.
 19 **LAUREN ISENHOUR:** I was just, I guess,
 20 looking at the time, not the amount left.
 21 Yes. I just wanted to, I guess, say I
 22 understand the concerns. It's my area too. And I have
 23 a lot of respect for my parents and how they care for
 24 the land.
 25 Some previous speakers, Lynn Whitmore has

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1 been a good friend of my parents for a long time, and
 2 also Phil, who has the property next door, neither
 3 chose to mention that my parents voluntarily built a
 4 14-foot berm along their property at their own cost,
 5 they believe at \$10,000 worth of cost, voluntarily
 6 built a large berm there to try to protect them when
 7 they weren't required to do so. They are the type of
 8 people to do those things. Thank you.
 9 **CHAIRMAN MARTIN:** Thank you. Any
 10 questions? Next. Oh, we had one -- we had a question.
 11 I'm sorry, we did -- there was a question after all.
 12 **COMMISSIONER CARLUCCIO:** So my question
 13 is are you saying that your parents don't have any
 14 plans to develop this right now, that they just want to
 15 get this gravel pit on the books?
 16 **LAUREN ISENHOUR:** I can't really say. I
 17 can speculate at what I think their plans are. And I
 18 can say their primary plan for the property is to own
 19 it, and what they want above all else is to own the
 20 property in its entirety.
 21 They have plans to subdivide it, a plat,
 22 a plan, but that doesn't mean they will enact that
 23 plan. And they would like the permit to potentially do
 24 a gravel pit. This is my opinion of theirs, so
 25 please --

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1 **COMMISSIONER CARLUCCIO:** Okay. Okay.
 2 That's all right. Thank you.
 3 **LAUREN ISENHOUR:** Okay.
 4 **COMMISSIONER FIKES:** I have a question.
 5 **CHAIRMAN MARTIN:** Yes.
 6 **COMMISSIONER FIKES:** You say you are near
 7 the location of the actual mining itself. What kind of
 8 impact on your personal water well? How close is your
 9 well to the site?
 10 **LAUREN ISENHOUR:** I don't know. You
 11 could look on the map. I guess it probably shows in
 12 the development where my well is in relation. I
 13 couldn't tell you, I'm sorry.
 14 **CHAIRMAN MARTIN:** Any other questions?
 15 All right. Thanks. Next, please. Is anyone else in
 16 the audience wishing to testify?
 17 **GINA DEBARDELABEN:** This is my third
 18 time. My name is Gina DeBardelaben, I'm with McLane
 19 Consulting. I'm a principal engineer with McLane, and
 20 I was hired by the property owner -- my firm was hired
 21 by the property owner to survey the property and
 22 prepare the permit and exhibits and application.
 23 Just a few points really quick. We've
 24 been through a lot. You've had a plethora of public
 25 comments and a packet to read.

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1 A few things that have kind of come up I
 2 just kind of want to point to is that Anchor River Road
 3 is state owned and maintained, not borough owned. So
 4 requirement -- you know, DOT enforces, requires the
 5 gross vehicle weight measure on the bridge, which is
 6 actually on Old Sterling, speed, proper use of lane,
 7 shoulders, the health and use of the road, and it
 8 really doesn't apply to the borough CLUP permitting
 9 process.
 10 Some other things that have come up
 11 tonight were questions about wells being within --
 12 within -- one well being within 100 feet of -- yes,
 13 within the property, but not within the extraction
 14 area, the proposed extraction area. So there's fine
 15 points about the permit that always need to be read
 16 that sometimes isn't interpreted well during public
 17 meetings. And so I hope that you -- that as you always
 18 do your due diligence, read the fine points, and read
 19 the -- read the notes in the permit.
 20 Gravel extraction for a material site is
 21 always based on -- is usually based on a prospective
 22 sales as is -- it is with this site. This site isn't
 23 being permitted for a DOT project like we see sometimes
 24 or a commercial development. So the amount of material
 25 to be utilized is just a prospective. That's why it

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1 says, you know, less than 50,000 cubic yards.
 2 That number is one that we kind of always
 3 choose based on the area. And DNR permitting changes
 4 with greater than and less than 50,000 yards. The
 5 reality of 50,000 cubic yards coming out of this
 6 material site in a year is -- is not very realistic.
 7 You know, a large gravel sale in a rural
 8 area like this would be 10,000 yards or maybe 25,000
 9 yards. And, you know, that would equate to -- it's a
 10 lot still. It would equate to less than 1,500 yards --
 11 1,500 trucks, not 5,000 trucks.
 12 You know, if you are going to sell -- if
 13 you are going to sell a large amount of material you
 14 are not going to run it in a 10-yard end dump. You are
 15 going to be running a side dump or a belly dump, which
 16 is 17 yards, it separates out your weight on your axle
 17 load and such.
 18 So other test hole information, there was
 19 one test hole at the time of application. There has
 20 been additional since then. And as with -- as I
 21 continue to point out at material site hearings is that
 22 as a developer or an operator enters a pit, they
 23 continually test hole for groundwater and for different
 24 materials that meet specification for whatever they are
 25 trying to sell, whatever they are trying to make.

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1 All roads have a specification that the
 2 material has to meet, and maybe, you know, 200 feet
 3 over here it meets it, but over here it doesn't, so
 4 they are going to test hole, they are going to move
 5 around and will constantly be checking, you know,
 6 groundwater if it varies.
 7 The whole requirement is that you stay
 8 two feet above it, so that's -- you know, it's not that
 9 it's at 20 feet, it's two feet above.
 10 I think I just have just a couple of
 11 other little notes here. Yes, the owner has in their
 12 permit that they plan on installing monitor wells for
 13 potentially -- potentially a different permit, but, you
 14 know, that's again, that's prospective. They do want
 15 to put -- putting in monitor wells on a material site
 16 is a great benefit to the owner and also to the
 17 borough.
 18 It gives you some comprehensive data on a
 19 quarterly basis or a monthly basis of where the
 20 groundwater is at. So they do -- they are proposing
 21 that they might do that in the future even though this
 22 permit isn't to enter the groundwater table.
 23 There's other concerns regarding site
 24 buffers and such, we've heard lots of those.
 25 Do you guys have any questions for me at

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1 this time?
 2 **CHAIRMAN MARTIN:** Any questions? None at
 3 this time.
 4 **GINA DEBARDELABEN:** Okay. Thanks.
 5 **UNKNOWN SPEAKER:** I have a question.
 6 **CHAIRMAN MARTIN:** Who is the next
 7 testifier?
 8 **UNKNOWN SPEAKER:** I have a question.
 9 **CHAIRMAN MARTIN:** You've had your chance.
 10 You've had your five minutes. We are trying to get --
 11 make sure everybody gets at least five minutes.
 12 **UNKNOWN SPEAKER:** I heard something I
 13 don't like. Don't I get a right to ask a question?
 14 No? Yeah, that (indiscernible).
 15 **EMMITT TRIMBLE:** I'm Emmitt Trimble,
 16 managing member of the Beachcomber, LLC and the
 17 principal applicant.
 18 Just as I did in Anchor Point voluntarily
 19 last Wednesday opening myself for some questions and
 20 anything that you would like clarified.
 21 There were a number of things here that
 22 could be clarified tonight, but most of them were not
 23 pertinent any way to what you will be deliberating on,
 24 so I'm not going to try to counter those things. But
 25 if you have questions for me, I'm here.

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1 **CHAIRMAN MARTIN:** Mr. Ruffner.
 2 **COMMISSIONER RUFFNER:** Thank you, Mr.
 3 Chairman.
 4 Mr. Trimble, so we heard at the beginning
 5 the staff report that their recommendation was, given
 6 the volume of information that's come in recently, some
 7 of it is kind of technical and science in nature, their
 8 recommendation was to postpone this or put it off at
 9 least until the August meeting.
 10 So, you know, I hoping that you are in
 11 concurrence with that so that -- I mean, it's a
 12 complicated thing that we want to chew on a little bit.
 13 So I just kind of wanted to ask what your thought on
 14 that were.
 15 **EMMITT TRIMBLE:** I have no problem with
 16 that at all.
 17 **UNKNOWN SPEAKER:** Mr. Trimble, I have a
 18 question.
 19 **CHAIRMAN MARTIN:** This is -- we have
 20 certain steps that we do. No, sir, we're not in that
 21 part of the meeting.
 22 **COMMISSIONER RUFFNER:** So I'll follow up,
 23 because there's a couple of people that still have
 24 stuff they want to want to say.
 25 **EMMITT TRIMBLE:** Sure.

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1 **COMMISSIONER RUFFNER:** I get that. And I
 2 guess what I would say is that, given that the staff's
 3 recommendation is for us to postpone this, and even the
 4 applicant himself said he's willing to put this off for
 5 a month, so that's going to give you a chance to ask
 6 those questions that you have of staff or of us, you
 7 know. I just wanted to put that out there for you.
 8 **CHAIRMAN MARTIN:** Thank you, that was
 9 really helpful.
 10 **EMMITT TRIMBLE:** I will offer that, you
 11 know, I sent some pictures to Mr. Wall over the
 12 weekend, and I did say in about three hours we put up a
 13 pretty extensive berm, just mostly as a demonstration
 14 as to what could be done blocking those homes.
 15 There's about five homes that have any
 16 way to see into any of the property, and, you know, I
 17 could not see any of -- from the pit itself, not the
 18 floor of the pit, but the top level of excavation, I
 19 couldn't see any of those homes. That can be
 20 replicated moving back.
 21 I don't -- I'm not in the gravel
 22 business, but it is part of the asset value of this
 23 property, and it's incumbent upon me to protect my
 24 family and our investment to maximize that possible
 25 value.

1 Now, what I would like to do really is my
2 own business, my family's business as to what we would
3 like to do. I have a subdivision plan, but I have no
4 intention of submitting it for preliminary approval,
5 it's just I want to know that I've done my homework
6 ahead of time.

7 And it's the same way, we've taken a --
8 we took a few loads of gravel out of that pit of less
9 than an acre to take to -- down to the boat launch to
10 put the ramp in. We took some more down to expand a
11 parking lot, and that's the kind of thing that's
12 happening. But I do intend to pursue this for the
13 entire property that we permitted -- or we're applying
14 for.

15 **CHAIRMAN MARTIN:** Any questions for the
16 applicant? Ms. Carluccio.

17 **COMMISSIONER CARLUCCIO:** Yes, thank you
18 for testifying. I think it was your daughter who spoke
19 before --

20 **EMMITT TRIMBLE:** Yes, ma'am. Quite proud
21 of her.

22 **COMMISSIONER CARLUCCIO:** -- that I asked
23 what -- so you right now have no intentions to develop
24 this as a gravel pit? You just want to get it on the
25 books?

1 and I've owned property there since then, there was a
2 small half-acre pit that Ralph Miller had. And Buzz
3 Kyllonen bought from him, developed all the
4 surrounding -- paid for the Silver King Village, all of
5 the subdivisions from that gravel pit, and it's now a
6 lake and it's very nice. We have it listed for sale.

7 **COMMISSIONER CARLUCCIO:** Okay. Thank
8 you.

9 **EMMITT TRIMBLE:** Thank you.

10 **CHAIRMAN MARTIN:** Any other questions for
11 the applicant? Mr. Venuti.

12 **COMMISSIONER VENUTI:** Thanks for coming,
13 Mr. Trimble.

14 **EMMITT TRIMBLE:** Yes, sir.

15 **COMMISSIONER VENUTI:** So you heard
16 concern from the people who testified --

17 **EMMITT TRIMBLE:** Sure.

18 **COMMISSIONER VENUTI:** -- about the hazards
19 of trucks on the road, on the haul road, and also there
20 was a mention of the condition of the bridge that goes
21 over the Anchor River.

22 I would presume that any haul road out of
23 your pit, if this comes to be a pit, would go over that
24 bridge. Is that going to --

25 **EMMITT TRIMBLE:** Well, that's not

1 **EMMITT TRIMBLE:** I've already started
2 developing a small pit that was within the one-acre
3 confines. So I want to go through this procedure,
4 submit myself to the process, live up to the permit if
5 and when I get it, and I would be able to do whatever
6 the permit allowed at that time.

7 My plan is pretty small scale. It's for
8 local projects. All of those homes, all of these
9 people have those properties because Buzz Kyllonen took
10 a small, like less than two-acre pit that built all of
11 those roads and built all of those driveways and
12 provided the gravel for almost all of those people up
13 there or those properties wouldn't be there now to be
14 concerned. And it's now one of the nicest looking
15 properties in the area. It's directly across the road
16 from mine.

17 **COMMISSIONER CARLUCCIO:** So I'm sorry, it
18 doesn't really pertain. I was going to ask you if that
19 property was originally yours and you subdivided it,
20 but that doesn't --

21 **EMMITT TRIMBLE:** Which one?

22 **COMMISSIONER CARLUCCIO:** That really
23 doesn't pertain to what we're talking about, so...

24 **EMMITT TRIMBLE:** No, the other property,
25 that was -- that was in 1975 when I first came there,

1 possible now. It's been condemned, so that's why
2 people are having to drive from the North Fork Road all
3 the way to Eight Mile and back down the Old Sterling to
4 go down and bring gravel down to the beach. You can't
5 go across the bridge now. But they are going to
6 rebuild that within a year or two here.

7 **COMMISSIONER VENUTI:** Okay. That was a
8 concern.

9 **EMMITT TRIMBLE:** Yeah, and there are
10 trucks -- there are gravel trucks going up and down
11 Danver all the time right now. And, you know, I have
12 no complaint about those big boats going up and down
13 that road.

14 Buzz Kyllonen and I got that road paved
15 through a maintenance budget with DOT for \$150,000
16 because we gave them permission to go through our
17 properties where there's not a right-of-way to this
18 day.

19 So those people that are worried about
20 that road, we would have loved to have had them there
21 by our side helping us back then.

22 **COMMISSIONER VENUTI:** Thank you very
23 much.

24 **EMMITT TRIMBLE:** You bet.

25 **CHAIRMAN MARTIN:** Anyone else?

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1 **EMMITT TRIMBLE:** Thank you.
 2 **CHAIRMAN MARTIN:** Not at this time.
 3 Thank you.
 4 Is there anyone else in the audience
 5 wishing to testify? Please.
 6 **DON HORTON:** Hi. My name is Don Horton,
 7 my family owns property at 34910 Echo. Like my father
 8 said, it is directly across the street from that
 9 proposed gravel pit.
 10 I just had a couple of quick questions
 11 for, I guess, you guys. If a permit is issued for this
 12 property, is it attached to the property or is it
 13 attached to the owners of the property? Like, if it is
 14 sold, does the permit stay with it?
 15 **CHAIRMAN MARTIN:** With the property.
 16 **DON HORTON:** With the property, okay,
 17 that's what I thought.
 18 The Trimbles, they spoke on -- the last
 19 guy that spoke, he just spoke that he wants to maximize
 20 the property value of his property that he owns by
 21 applying for this permit while it is at the expense of
 22 everyone's property around it, I want everyone to
 23 realize that. I don't think that's right.
 24 That's mainly what I wanted to ask.
 25 Thank you for your time.

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1 **CHAIRMAN MARTIN:** Next. Did we get your
 2 name and address?
 3 **DON HORTON:** No pen.
 4 **CHAIRMAN MARTIN:** Is there anyone else?
 5 Please.
 6 **RICHARD CARLTON:** I am a retired lineman.
 7 I fell in love with the Anchor Point River area in 1996
 8 and started coming up here pretty regularly. The wife
 9 and I purchased a piece of ground in 2007, it's 73500
 10 Seabury Road. We go up Danver to Seaward and then take
 11 a right and go to our house.
 12 It's kind of an emotional thing for me,
 13 because I fell in love with the place and the lack of
 14 noise. You know, these people talk about machinery and
 15 things like that.
 16 I had 40 years with backup alarms and
 17 backhoes, you know, and noise. And I go up there and I
 18 can sit on my patio and look out at Iliamna and drink
 19 my coffee and I'm in heaven. It's a wonderful thing.
 20 I've got wonderful neighbors that all
 21 give a shit about one another. And if they need
 22 something, they help each other. And if they are
 23 making too much noise, they say something and you quiet
 24 down. It's a great, great life.
 25 I don't know why it matters who owns the

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1 road that goes to the beach. The bridge is condemned,
 2 the Old Sterling Highway is a hazard, and if you take
 3 just a 10-yard, 12-yard dump truck by itself and drive
 4 it up and down that road with its Jake brakes, that
 5 quiet goes away.
 6 There is all these RV parks. Buzz
 7 Kyllonen's RV Park was where we fell in love with the
 8 area. We'd come here year after year, and it's right
 9 across where one of the entrances to this Beachcomber
 10 Road is. We'd take a rubber boat out and catch a
 11 halibut, and then we'd drive all the way down to
 12 Southeast Washington and plan for next year to go back
 13 up here. That will all change if they dig a big hole.
 14 And I'm kind of like some of these other
 15 people. You know, I don't begrudge anybody wanting to
 16 make a living, but this has no place where it is at. I
 17 mean, you know, people raise hell about Pebble Mine.
 18 Well, it's a long ways away. It's, you know, it's --
 19 maybe -- maybe it does -- it could trash a lot streams
 20 and salmon runs and things like that, but I don't see
 21 it so it isn't personal to me.
 22 But if I have to drive when I go to the
 23 post office, and I got to come up Danver and I got to
 24 hear backup alarms or white noise, I'm not going to
 25 enjoy the place like I used to.

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1 And so I really think the road safety and
 2 these things, even though maybe the borough doesn't
 3 have any jurisdiction over the road because it's a
 4 state road or the Old Sterling Highway, I really think
 5 you guys should be able to have some input on this
 6 project and do the right thing. Thank you.
 7 **CHAIRMAN MARTIN:** Thank you. Any
 8 questions?
 9 **THE CLERK:** Mr. Chairman.
 10 **CHAIRMAN MARTIN:** Yes.
 11 **THE CLERK:** Could he state his name?
 12 **CHAIRMAN MARTIN:** Did you state your name
 13 and address?
 14 **RICHARD CARLTON:** Yes, I did.
 15 **CHAIRMAN MARTIN:** In the record, in the
 16 microphone? It helps if she gets it recorded as well.
 17 **THE CLERK:** Could you please state your
 18 name. I didn't catch it.
 19 **RICHARD CARLTON:** Yes. It is Richard
 20 Carlton, 73500 Seabury Road. I did -- we did send a
 21 letter in, too.
 22 **CHAIRMAN MARTIN:** Okay. Thank you. Mr.
 23 Ruffner.
 24 **COMMISSIONER RUFFNER:** Mr. Chairman, at
 25 this time I would like to vote to suspend the rules so

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1 that we can extend any public comment beyond our normal
 2 closing time at 11.
 3 **COMMISSIONER CARLUCCIO:** Second.
 4 **CHAIRMAN MARTIN:** Is there any opposition
 5 to the motion? Seeing none, the motion to extend the
 6 rules passes.
 7 And I will ask another time for the next
 8 testifier.
 9 **STEVE HABER:** My name is Steve Haber.
 10 Sorry, it's late. I just want to tell you all I was
 11 at -- on the beach road this morning, and everyone who
 12 knows it mentioned it before, someone is going to die
 13 if this project goes through.
 14 I unfortunately had a high school
 15 incident with my son's school many years ago, and we
 16 couldn't get a traffic light put in at a very famous
 17 school in the desert, and three kids got killed, you
 18 know, several weeks later. And then, of course, the
 19 whole town went crazy and put the light in. That's
 20 what's going to happen here.
 21 And you may be under such tremendous
 22 pressure from the way you do it that you are going to
 23 approve this. This won't work with this road, beach
 24 road. Everything that everybody else has said about
 25 the views and stuff doesn't compare to the bike

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1 companies going up and down. The boat trailers are
 2 going 60 miles an hour themselves -- I mean, the boats
 3 that are going to get put in the water. They are not
 4 obeying the laws either.
 5 I was trying to hitch from one campground
 6 to the other this morning, and it was crazy. There was
 7 two kids being pulled in a deal and being wheeled up
 8 there. Someone is going to die. You remember I said
 9 this tonight, every one of you. You are sitting here,
 10 you can prevent it.
 11 And I don't mean to think you are bad
 12 people. Someone is going to die on that road and then
 13 you are all going to change your mind. Thank you.
 14 **CHAIRMAN MARTIN:** Anyone else?
 15 **DAVID GREGORY:** Okay. My name is David
 16 Gregory. I live on 73850 Seaward, which is just up
 17 Danver around the corner from this proposed pit.
 18 We are calling it a pit, a gravel
 19 extraction area, which is actually a mine as it was
 20 mentioned earlier.
 21 I work at a mine, and there's a place for
 22 mines, but the mine I work at is way out in a remote
 23 area.
 24 And I've sent an e-mail several days ago,
 25 and noise and dust is one of my big concerns. And then

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1 as it was mentioned, the noise goes uphill, and there's
 2 numerous homes. Maybe there's only five that could be
 3 seen from one particular point, but there are dozens up
 4 this hill that the noise will carry right up there, as
 5 well as the dust. And the dust can be carried by the
 6 wind or if it is -- if the wind is still, it just hangs
 7 in the air.
 8 Now at the mine where I work, the whole
 9 ground for a large area, in the wintertime especially
 10 so you can see it, fresh snow will only stay fresh for
 11 a day or two and it's got a dark color, crusty, dirty
 12 look for a big area around the mine. So this is one of
 13 my biggest concerns at this point is the noise and the
 14 dust. Thank you.
 15 **CHAIRMAN MARTIN:** Thank you. Anyone
 16 else? This will be the last call for public comment
 17 this evening. Hearing and seeing no further requests,
 18 we close public comment and bring it back to the
 19 Commission for a motion. Mr. Ruffner.
 20 **COMMISSIONER RUFFNER:** Thank you, Mr.
 21 Chairman. Move to postpone action on this item until
 22 next meeting and hold public comment open.
 23 **COMMISSIONER BENTZ:** Second.
 24 **CHAIRMAN MARTIN:** Discussion. Ms.
 25 Ecklund.

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1 **COMMISSIONER ECKLUND:** I really would
 2 like to take action on this tonight. We've heard the
 3 public. I would -- you know, if we did bring it back
 4 on August 13th, I would hope that they would all be
 5 back again and we'd hear it again.
 6 I did have opportunity to look through a
 7 bit of the material prior to the meeting, but I believe
 8 what I've heard tonight and I think it would be just
 9 verified in these documents. And I think I would like
 10 to take action on this conditional use permit tonight
 11 rather than postpone it until August 13th.
 12 **CHAIRMAN MARTIN:** Mr. Whitney.
 13 **COMMISSIONER WHITNEY:** I concur with
 14 that. I had an opportunity to read through everything,
 15 and I just as soon do it tonight and get it over with.
 16 **CHAIRMAN MARTIN:** Roll call, please.
 17 **THE CLERK:** Thank you, Mr. Chairman.
 18 This was a motion to postpone action until the next
 19 meeting or to continue the public hearing. Carluccio?
 20 **COMMISSIONER CARLUCCIO:** No.
 21 **THE CLERK:** Ecklund?
 22 **COMMISSIONER ECKLUND:** No.
 23 **THE CLERK:** Fikes?
 24 **COMMISSIONER FIKES:** No.
 25 **THE CLERK:** Martin?

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1 **CHAIRMAN MARTIN:** Yes.
 2 **THE CLERK:** Morgan?
 3 **COMMISSIONER MORGAN:** No.
 4 **THE CLERK:** Ruffner?
 5 **COMMISSIONER RUFFNER:** Yes.
 6 **THE CLERK:** Venuti?
 7 **COMMISSIONER VENUTI:** Yes.
 8 **THE CLERK:** Whitney?
 9 **COMMISSIONER WHITNEY:** No.
 10 **THE CLERK:** Bentz?
 11 **COMMISSIONER BENTZ:** Yes.
 12 **THE CLERK:** Four yes, five no.
 13 **CHAIRMAN MARTIN:** So the motion to
 14 postpone fails.
 15 Ms. Ecklund.
 16 **COMMISSIONER ECKLUND:** To put this on the
 17 floor, I would like to make a motion to approve the
 18 conditional use permit for a material extraction site
 19 in the Anchor Point area.
 20 **COMMISSIONER CARLUCCIO:** Second.
 21 **CHAIRMAN MARTIN:** Discussion. Ms.
 22 Ecklund.
 23 **COMMISSIONER ECKLUND:** I believe that we
 24 have sufficient findings to deny this permit based on
 25 the public opinion or the public testimony and the

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1 borough code as it is written now and the facts that
 2 were written in the staff report.
 3 I do have a question for staff, for Mr.
 4 Wall at this time, to know if we can even address this
 5 because they requested a waiver for the processing
 6 portion of the pit, and you recommend denying that
 7 waiver, which would then not allow them enough area for
 8 a processing as submitted tonight. Would that require
 9 a new submission of their application?
 10 **MR. WALL:** The permit would be for the
 11 extraction, they could certainly extract. To process
 12 the material, it would still leave them a narrow area
 13 within the proposed area, within the material site to
 14 do some processing.
 15 But the material extraction would be
 16 approved, but they wouldn't be able to process outside
 17 of that narrow area that would be -- and I'd have to
 18 put my scale to it, but it would pretty narrow if we
 19 narrow it down to the 300 foot from the property lines.
 20 **COMMISSIONER ECKLUND:** Yeah, I think it
 21 would be 50-foot wide or so, so it would be a pretty
 22 narrow area.
 23 So then the motion -- the motion was to
 24 approve this. Do we have to address that waiver or do
 25 we just take your recommendation?

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1 **MR. WALL:** Right. If you -- the motion,
 2 it sounded like it was to approve as recommended in the
 3 staff report, which includes the approval -- I mean,
 4 the denial of the waiver.
 5 **COMMISSIONER ECKLUND:** Okay. Okay.
 6 Thank you.
 7 **CHAIRMAN MARTIN:** Further discussion? Go
 8 ahead, Mr. Ruffner.
 9 **COMMISSIONER RUFFNER:** Thank you, Mr.
 10 Chairman.
 11 So I was kind of hoping to put this off
 12 because I had a couple of legal questions that I would
 13 have wanted to ask. I don't think we have time to go
 14 through kind of a memo that I was thinking about asking
 15 for.
 16 So I will try to summarize what I know
 17 about where we stand legally with looking at this and
 18 why I had to give this little talk a number of times in
 19 an uncomfortable way, is that, you know, the borough
 20 bssembly has given us the rules by which we are allowed
 21 as Planning Commission members to work under.
 22 And so they've kind of put the side
 23 boards up there that says what we can and can't
 24 approve. And the six criteria that staff has laid out
 25 shows that, in their opinion, that it meets those

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1 conditions.
 2 So what I would want to hear from my
 3 fellow commissioners, is of those six criteria, which
 4 ones you -- if you are going to vote against this, you
 5 know, which ones you don't think we're meeting in the
 6 discussion so that I can at least understand where you
 7 would be deviating from what's been presented to us in
 8 the staff report.
 9 **CHAIRMAN MARTIN:** Ms. Ecklund.
 10 **COMMISSIONER ECKLUND:** Yes. With the
 11 findings that I've drafted, the first one addresses
 12 current Ordinance 21.29.040(A)(4). That states that
 13 the noise -- let me find it on page 101 -- that states
 14 "...minimizes the noise disturbance to other
 15 properties."
 16 And from the testimony I've heard tonight
 17 and the documents that have been submitted, I don't
 18 think that the berms or the vegetation buffers will do
 19 justice to minimize the noise disturbance to other
 20 properties. We've been handed out maps with properties
 21 identified, so I think that's one finding.
 22 Another finding right along with that is
 23 21.29.050(A)(5), and I don't think that the visual
 24 effects will be reduced sufficiently with buffers,
 25 berms. I don't think they could build them high enough

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1 for that.
 2 The application was submitted without the
 3 seasonal high water determination. I don't think that
 4 was sufficiently delineated in the application.
 5 And I don't know if this is a finding or
 6 not, but I think we need to determine if that well that
 7 was mentioned several times tonight is within 100 feet
 8 of the pit as designated in the application.
 9 **CHAIRMAN MARTIN:** It comes down to did
 10 you state your case?
 11 **COMMISSIONER ECKLUND:** So I guess that
 12 would be -- that's my case.
 13 **CHAIRMAN MARTIN:** That's your findings.
 14 **COMMISSIONER ECKLUND:** And then the vote
 15 would determine if we stated it. And if we fail this
 16 motion to approve it, then there's followup procedures
 17 that could be taken by the applicant, as I understand,
 18 is that correct, through the chair to staff?
 19 **MR. WALL:** So your question was is if it
 20 is denied, what the applicant's recourse is?
 21 **COMMISSIONER ECKLUND:** Yes, if you could
 22 explain that for us.
 23 **MR. WALL:** Yes. There is a 15-day appeal
 24 period once the decision is made, once the notice of
 25 decision is issued, and that appeal would go to the

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1 hearing officer. And that would be -- anybody that
 2 testifies tonight or has written -- submitted written
 3 comment would have the ability to appeal.
 4 **COMMISSIONER ECKLUND:** Just to follow up.
 5 So anyone that testified and any comments, the hearing
 6 officer would get a transcript of the comments tonight
 7 as well for their review?
 8 **MR. WALL:** That is correct. The
 9 transcript is provided to the hearing officer.
 10 **COMMISSIONER ECKLUND:** Okay. Thank you.
 11 **CHAIRMAN MARTIN:** Mr. Ruffner.
 12 **COMMISSIONER RUFFNER:** So I thank my
 13 fellow commissioner for kind of laying out what will be
 14 the findings, I think, attached if it goes that way.
 15 So I'll just summarize. And I think this
 16 would be good if it were to be appealed just to have
 17 this on the record as my understanding of kind of how
 18 we get to where we feel like, as commissioners, our
 19 hands are tied. And, I mean, I think we heard it from
 20 the public that you've heard that our hands are tied in
 21 a number of cases.
 22 So as best I can, I can lay out what my
 23 understanding of the legal -- legal standing that we
 24 have is here, and we have an attorney here that can
 25 correct me if I run astray here.

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1 So one testifier talked about the broad
 2 authorities that have been given to the Planning
 3 Commission very early on in borough code at 240.050,
 4 which authorizes the Planning Commission to kind of
 5 consider all the factors in everything that we do and
 6 make a good determination, so that's very high in our
 7 code.
 8 Then later on in 21.25 it lays out the
 9 procedures for when we would authorize a conditional
 10 land use permit, and there are several steps in there.
 11 And then later in the code is 21.29,
 12 which is the code specifically for gravel pits. Now my
 13 understanding of -- or interpretations of how we've
 14 gotten to this point in the past has been that 21.29
 15 really lays out what you can do with buffers and what
 16 you can't do with -- what limitations you could put on
 17 a pit operator, and those are handed down to us from
 18 the bssembly.
 19 Previously I think I've heard that the
 20 21.29 says it's the most recent set of code is that
 21 that's the ones that are supposed to govern our
 22 decisions. And then looking further up the code where
 23 we have broader latitude has not been afforded to us in
 24 the past.
 25 So that's been my understanding, and if

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1 there's any clarification or corrections to that, I
 2 mean, I would like to hear that from counsel.
 3 **MS. MONTAGUE:** That was a good summary,
 4 Mr. Ruffner. The one thing I would add is it's not
 5 just a matter of the ordinance that is adopted later in
 6 time, but also the ordinance that is most specific to
 7 what you are reviewing.
 8 And in this case, the KPB 21.29 is the
 9 ordinance that very specifically addresses material
 10 sites. So that has more weight than a very general
 11 purpose clause, for example, that just says that the
 12 Planning Commission can review the public health,
 13 safety, and welfare. The very specific criteria in
 14 21.29 is how the assembly has chosen to protect the
 15 public health, safety, and welfare.
 16 **CHAIRMAN MARTIN:** Ms. Carluccio.
 17 **COMMISSIONER CARLUCCIO:** If 21.29 says
 18 that a 50-foot berm or 50 feet of vegetation is one of
 19 the criteria and a ten-foot berm, but yet the pit is
 20 lower than all of the surrounding area, and the 50 foot
 21 doesn't do anything, don't we have some authority to
 22 say that this is the letter of the law, but it is not
 23 the intent of the law, because the intent of the law is
 24 to protect the surrounding land owners?
 25 **MS. MONTAGUE:** The intent of the law is

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1 to protect the surrounding land owners in the way the
2 assembly has laid out in the borough code.
3 **CHAIRMAN MARTIN:** It's the unique
4 topography that -- what gets us into this corner right
5 now. It's hard to foresee all the different
6 ramifications of a crater.
7 **COMMISSIONER CARLUCCIO:** That's true, but
8 I would not be able to support this at the time -- at
9 this time anyhow.
10 **CHAIRMAN MARTIN:** Ms. Bentz.
11 **COMMISSIONER BENTZ:** Yeah, I would just
12 like to follow up on that with just an observation that
13 in our staff report it says that the proposed
14 extraction meets the material site standards from 21.29
15 minimizing noise disturbance from other properties, but
16 I don't agree with that. I don't think these
17 conditions will minimize noise disturbance to other
18 properties and the conditions won't minimize visual
19 impacts either.
20 **COMMISSIONER MORGAN:** I have to agree as
21 well. I don't see how the 50-foot buffer or berms are
22 going to minimize visual impact or sound impact because
23 of the unique topography.
24 **CHAIRMAN MARTIN:** Are we ready to -- Mr.
25 Ruffner.

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1 **COMMISSIONER RUFFNER:** I just want to say
2 one more thing. I think we've done a good job of
3 laying out the record of why -- why we're going to vote
4 the way we are or not. And likely, you know, if it
5 doesn't be approved it would likely be appealed, and so
6 the Board of Adjustment will have a good record from us
7 about why -- why we thought that it might not meet
8 those criteria of being able to screen or vegetation.
9 So at least it's all there for the process.
10 **CHAIRMAN MARTIN:** Yes, thank you. Roll
11 call, please.
12 **THE CLERK:** Thank you, Mr. Chairman. The
13 motion was to approve the conditional land use permit
14 application for a material extraction on a parcel in
15 Anchor Point.
16 Carluccio?
17 **COMMISSIONER CARLUCCIO:** No.
18 **THE CLERK:** Ecklund?
19 **COMMISSIONER ECKLUND:** No.
20 **THE CLERK:** Fikes?
21 **COMMISSIONER FIKES:** No.
22 **THE CLERK:** Martin?
23 **COMMISSIONER MARTIN:** Yes.
24 **THE CLERK:** Morgan?
25 **COMMISSIONER MORGAN:** No.

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1 **THE CLERK:** Ruffner?
2 **COMMISSIONER RUFFNER:** Yes.
3 **THE CLERK:** Venuti?
4 **COMMISSIONER VENUTI:** Yes.
5 **THE CLERK:** Whitney?
6 **COMMISSIONER WHITNEY:** No.
7 **THE CLERK:** Bentz?
8 **COMMISSIONER BENTZ:** No.
9 **UNKNOWN SPEAKER:** Three yes, six no.
10 **CHAIRMAN MARTIN:** The motion fails.
11 I'd like to -- I would like to thank
12 everyone for the effort and sacrifice it took to come
13 to this hearing. And I want to encourage you to
14 continue to stay connected as a community and make the
15 most of your community, and thanks for coming.
16 Yeah, we are still going. Down while the
17 gang is working on the findings. Okay.
18 **COMMISSIONER ECKLUND:** Do you want me to
19 read them into the record?
20 **CHAIRMAN MARTIN:** Yes, ma'am.
21 **COMMISSIONER ECKLUND:** Okay. I move that
22 we attach the following findings to the denial of
23 the --
24 **CHAIRMAN MARTIN:** We can hear. We can
25 hear.

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1 **COMMISSIONER ECKLUND:** -- conditional use
2 permit for the Anchor Point material extraction site,
3 that the Borough Code 21.29.040(A)(4), we find that the
4 noise will not be sufficiently reduced with any buffer
5 or berm that could be added.
6 Borough Code 21.29.040(A)(5), that the
7 visual impact to the neighboring properties will not be
8 reduced sufficiently.
9 **MR. WALL:** Mr. Chairman, can I go close
10 the door real quick?
11 **CHAIRMAN MARTIN:** Yes. Mr. Wall
12 interrupted to close the door, because --
13 **COMMISSIONER ECKLUND:** Okay.
14 **CHAIRMAN MARTIN:** -- they weren't -- they
15 weren't clueing in.
16 **COMMISSIONER ECKLUND:** Do you think
17 you've got those?
18 **CHAIRMAN MARTIN:** The recording?
19 **COMMISSIONER ECKLUND:** Thank you. All
20 right.
21 **COMMISSIONER CARLUCCIO:** Second.
22 **CHAIRMAN MARTIN:** Discussion on the
23 motion. Any opposition of adding these findings?
24 Seeing no opposition, the motion passes unanimously.
25 11:23:14

1 (End of requested portion)
2 11:24:07
3 (Meeting ajourned at 11:24:07 p.m.)
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1 CERTIFICATE
2 I, Sheila Garrant, transcriber, do hereby certify
3 that the foregoing pages numbered 1 through 112 are a
4 true, accurate, and complete transcript of proceedings
5 transcribed by me from a copy of the electronic sound
6 recording to the best of my knowledge and ability.
7
8
9 8/28/18
Date Sheila Garrant, Transcriber
10
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**Kenai Peninsula Borough, Alaska
144 North Binkley Street
Soldotna, Alaska 99669**

In the matter of the Kenai Peninsula)
Borough Planning Commission's decision)
to approve a conditional use permit)
for a material site that was requested for)
KPB Parcel 169-010-67; Tract B, McGee)
Tracts - Deed of Record Boundary Survey)
(Plat 80-104) - Deed Recorded in Book 4,)
Page 116, Homer Recording District)
Hans Bilben,)
Appellant)
Emmitt and Mary Trimble)
Beachcomber, LLC,)
Applicants)
_____)

Case No. 2019-01-PCA

HEARING OFFICER DECISION AND ORDER

I. INTRODUCTION

The undersigned hearing officer held a hearing in the above-titled appeal on October 30, 2019. Appellant Hans Bilben ("Appellant") appealed the Kenai Peninsula Borough Planning Commission's ("Commission") approval of Beachcomber, LLC's ("Applicant") application for a conditional land use permit ("CLUP" or "material site permit") for a material site on KPB Parcel 169-010-67. Twenty-nine individuals joined

Appellant's Opening Statement.¹ Pete Kineen filed a separate Opening Statement. The Kenai Peninsula Borough ("Borough") and the Applicant each filed Opening Statements.

After careful review and consideration of the Record, the legal arguments presented by the parties and their representatives both at the hearing and in writing, and applicable law, the undersigned hearing officer finds that the Commission's findings of fact are supported by substantial evidence and that due consideration is warranted to the Commission's legal interpretations of the Borough Code ("Code"). The Commission's decision to approve the Application is therefore upheld.

II. PROCEDURAL AND FACTUAL BACKGROUND

On June 4, 2018, Applicant filed an application with the Kenai Peninsula Borough for a conditional land use permit to extract peat, sand and gravel from its property (the "Application").² Beachcomber also owns the property on which the proposed material site would be located, 74185 Anchor Point Road (KPB Tax Parcel 169-010-67), an irregularly shaped parcel of 41.72 acres. The site plan and associated documents attached to the Application stated that extraction would be limited to the eastern 27.7 acres of the parcel and that the site haul route would be via Denver Street, a Borough maintained road, to Anchor Point Road.

This is the second appeal regarding this Application. The first time the Commission considered the Application in 2018, the Commission denied the

¹ Philip Brna, George Krier, David Gregory, Theresa Ann Jacobson, Rick Oliver, Shirley Gruber, Todd Bareman, Xochitl Lopez-Ayala, Richard and Marie Carlton, Mike and Linda Patrick, Joseph Sparkman, Vickey Hodnik, Michael Brantley, Gary Cullip, John Girton, Linda R. Bruce, Steve Thompson, Lynn Whitmore, Donald and Lori Horton, James Gorman, Linda Stevens, Gary and Eileen Sheridan, Thomas J. Brook, and Joshua and Christine Elmaleh.

² R. 1-10.

Application, which led Applicant to an appeal. A hearing officer reviewed the matter on appeal and remanded the case back to the Commission with instructions to conduct additional fact hearings and draft more detailed findings in support of their decision.³

In 2019, the Commission considered the Application again at public meetings on March 25, April 8, April 22, June 10, and June 24, 2019. The Commission heard public comments at the June 10 meeting.⁴ At the final meeting on June 24, 2019, the Commission reversed its earlier decision and voted to approve the Application via Resolution 2018-23.⁵ Resolution 2018-23 contains 30 findings of fact and 22 permit conditions.⁶

III. STANDARD OF REVIEW

Pursuant to the Kenai Peninsula Borough Code of Ordinances (“KPB”), the following three standards apply to an appeal of the Commission’s decision:

1. The hearing officer may exercise independent judgment on matters that relate to the interpretation or construction of ordinances or other provisions of law; however, due consideration shall be given to the expertise and experience of the planning commission in its interpretations of KPB titles 20 and 21.
2. The hearing officer shall defer to the judgment of the planning commission regarding findings of fact if they are supported in the record by substantial evidence.
3. The hearing officer may revise and supplement the planning commission's findings of fact. Where the hearing officer decides that a finding of fact made by the planning commission is not supported by substantial evidence, the hearing officer may make a different finding on the factual issue, based upon the evidence in the record developed before the planning commission if it concludes a different finding was supported

³ R. 276-291.

⁴ T. 116-187.

⁵ T. 200.

⁶ R. 247-252.

by substantial evidence, or may remand the matter to the planning commission as provided in KPB 21.20.330(B).⁷

The above standards both define and limit a hearing officer's authority.

IV. FINDINGS AND DECISION

After reviewing the record, statements of the parties, oral presentations at the hearing, and the relevant law, it is my determination as the hearing officer for this appeal that the Commission acted within the scope of its authority in approving the Application. Due consideration must be given to the Commission's expertise and experience in interpreting KPB titles 20 and 21, and the additional facts presented at the Commission's 2019 public meetings on this Application provide the evidence to support the Commission's findings of fact, and for these reasons the Commission's decision is upheld.

A. Appellant's Procedural Claims

Appellant's Opening Statement first raises two procedural issues – arguing that Commissioner Ruffner should have been disqualified for bias pursuant to KPB 21.20.240, and that the Commission improperly failed to allow public comment towards the end of the series of public meetings.⁸ Neither claim has merit. KPB 21.20.240 concerns conflicts of interest for hearing officers and does not apply to Commission members. No Code provision specifically prohibits bias in Commission decision-making, but even if such a prohibition could be read into the Code as a whole, the outcome of the Commission's vote on this Application did not turn on one vote. If

⁷ See KPB 21.20.320

⁸ R. 862 – 865.

Commissioner Ruffner should have been excused from deliberating and voting on the Application on the basis of bias, the final vote tally was eight “yes” votes to two “no” votes,⁹ and therefore removing Commissioner Ruffner’s “yes” vote would not have changed the outcome of the vote.

Appellant also argues that it was unfair for the Commission to allow Applicant to respond to public comments after the public comments on the Application were closed.¹⁰ The bulk of the public comments on this Application were heard in the June 10, 2019 meeting, at the conclusion of which public comments were closed and deliberations on the Resolution were postponed.¹¹ At the June 24, 2019 meeting, Applicant responded to some of the comments and answered questions from the Commission.¹²

Appellant does not cite any Code provision in support of the argument that this sequence of events is unfair. Appellant does point to language in the Planning Commission Manual, which provides that if the Commission allows new testimony in the Applicant’s rebuttal, the Commission “may...take additional public comment regarding the new evidence.”¹³ However, this language is permissive (using the term “may”), and therefore does not require the Commission to take additional public comment on rebuttal testimony. More broadly, a fair proceeding is one where participants in a government process receive the “opportunity to be heard and the right to adequately

⁹ T. 200.

¹⁰ R. 863-865.

¹¹ T. 150, 159.

¹² T. 192-194.

¹³ R. 864.

represent one's interests".¹⁴ The opportunity to be heard does not necessarily include the right to comment on every detail of a proposed activity, only adequate and reasonable. The record indicates that the individuals in opposition to the Application's approval had at least two different opportunities to present their concerns: through written comments and in person comments at the June 10 meeting. There was no unfairness perpetrated as a result of allowing Applicant to briefly make follow-up comments.

Pete Kineen, in his Opening Statement in support of remanding the Commission's decision, also alleges procedural errors that include prosecutorial misconduct and other unspecified misconduct related to the Borough's influence over the Commission members' decision-making.¹⁵ Neither claim is supported by the evidence in the record. An application for a conditional land use permit is not a criminal matter and the Commission does not have any authority to enforce criminal provisions of the Borough Code. As for other improper conduct, Mr. Kineen's opening statement provides scant detail as to the nature of the Borough's alleged influence. Absent specific details, the hearing officer has no facts on which to review these claims.

B. Appellant's Substantive Claims

Appellant makes three arguments against the Commission's decision to approve the Application: (1) the Commission should have made its decision within the context of an interpretation of the Code that the Commission has the authority to disapprove a

¹⁴ See *Keyes v. Humana Hospital Alaska, Inc.*, 750 P.2d 343, 353 (Alaska 1988).

¹⁵ R. 856-858.

CLUP application,¹⁶ (2) the Commission was required to independently consider the standards in KPB 21.29.040 and the specific permit conditions in KPB 21.29.050, and (3) the Commission's findings of fact were not supported by substantial evidence.¹⁷ None of these arguments compel the hearing officer to disturb the Commission's interpretation of the Code or the Commission's findings of fact.¹⁸

Appellant points out that the Commission has the authority to disapprove or deny a CLUP application. KPB 21.25.050.B. provides that the Commission shall "either approve, modify or disapprove" a CLUP application. KPB 21.29.040 and 21.29.050 supply the specific guidelines and requirements the Commission must use when determining whether to approve, modify, or disapprove a material site permit such as the one submitted by Beachcomber in this case. The fact that the Commission reversed its prior decision on this Application and approved the Application on the second round is not sufficient to justify overturning the Commission's decision. The Commission gathered additional facts and evidence on the second round, as evidenced by the additional public meetings at which the Applicant and members of the public testified and presented evidence, and ultimately determined that the Application did meet the requirements in KPB 21.29.040 and 21.29.050.¹⁹

¹⁶ R. 869.

¹⁷ R. 869. These two broad categories encompass the substantive appeal points listed in Appellant's original appeal filing, see R. 789-791.

¹⁸ Pete Kineen joined in Appellant's arguments. See R. 856.

¹⁹ R. 248, "Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040."

Appellant next argues that KPB 21.29.040 and 21.29.050 must be read independently.²⁰ This is a legal argument whereby Appellant advances an interpretation of the Code that is in opposition to the Commission's interpretation. The Commission interprets the Code to mean that these two provisions are read together, and that compliance with KPB 21.29.050 necessarily means that KPB 21.29.040 is satisfied.²¹ In the face of differing opinions on Code interpretation, the standards of review require the hearing officer to give due consideration to the Commission's expertise and its interpretations of Titles 20 and 21 of the Code.

It is well-established that planning "authorities are bound by the terms and standards of the applicable zoning ordinance, and are not at liberty to either grant or deny conditional use permits in derogation of legislative standards."²² Given the plain meaning of the word "only" in KPB 21.29.040, KPB 21.29.040 bars the Commission from imposing conditions in CLUPs that are not contained in KPB 21.29.050. Thus, the conditions in KPB 21.29.050 are the "sole" or "exclusive" conditions that may be applied. No additional conditions are required of the Applicant by the Code, and the Commission lacks the authority to impose additional conditions, except as the Applicant may voluntarily agree to

The citation to KPB 21.29.050 in the text of KPB 21.29.040 indicates that the drafters of these two Code provisions intended them to be read together, rather than independently. Thus, the specific conditions in KPB 21.29.050 are the "sole" or

²⁰ R. 869-870.

²¹ R. 248.

²² *S. Anchorage Concerned Coal., Inc. v. Coffey*, 862 P.2d 168, 174 (Alaska 1993) quoting *Thurston v. Cache County*, 626 P.2d 440, 444-45 (Utah 1981).

“exclusive” conditions that may be applied to minimize the adverse impacts listed in KPB 21.29.040. The Commission’s interpretation that these two provisions must be read together, and that compliance with KPB 21.29.050 necessarily means compliance with KPB 21.29.040, is reasonable.

As explained in the first hearing officer’s decision in this case, the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in KPB 21.29.050. Instead, the Code grants the Commission limited authority to review material site permit applications to ensure that the conditions in KPB 21.29.050 are met and the application complies with the application requirements. The testimony of the Appellant and other parties in opposition to the Application shows the depth of concern of neighboring property owners, but ultimately it is the Borough Assembly that has the authority to set the conditions and standards required for material site permits under KPB 21.29.040 and 21.29.050, or change those conditions and standards. The Commission’s interpretation of KPB 21.29.040 and 21.29.050 is a reasonable one based on the language in those provisions. The hearing officer therefore finds no reason so substitute her judgment for that of the Commission.

Finally, Appellant argues that there was insufficient evidence to support the Commission’s findings of fact, mainly with respect to noise and visual impacts.²³ Appellant does not call out any specific finding of fact that is allegedly unsupported by substantial evidence in the record, but points to the number of individuals opposing the Application, the “rolling berm” voluntary condition, and the unchanged geography of the

²³ R. 870.

site.²⁴ Appellant also argues that none of the findings of fact indicate how the evidence “shifted” from the first time the Commission considered the Application.²⁵

As explained above, due consideration must be given to the Commission’s interpretation of the Code. The Commission interprets the Code to require that only the conditions set forth in KPB 21.29.050 may be imposed to ensure the standards in KPB 21.29.040 are met. Thus, there must be substantial evidence in the record to support the Commission’s findings that the conditions in KPB 21.29.050 are imposed by the CLUP granted in Resolution 2018-23. Substantial evidence is defined in KPB 21.20.210.A.7. as “relevant evidence a reasonable mind might accept as adequate to support a conclusion.” Notably, substantial evidence does not require a weighing of the number of persons on either side of an issue. Findings prepared by staff that are supplemented by documents in the record and statements in transcripts, and adopted by the Commission, are sufficient.²⁶

The large number of individuals presenting testimony in opposition to the Application is undisputed. At least 31 neighbors²⁷ have voiced opposition. Written public comments were included in the Commission’s meeting packets.²⁸ At the June 10, 2019 public meeting on this Application, the Commission took public comment from many people both for and against the Application at a meeting that lasted more than four

²⁴ R. 871-873.

²⁵ R. 871.

²⁶ *S. Anchorage Concerned Coal* at 171 (Alaska 1993) (affirming findings of fact prepared prior to an Anchorage Planning and Zoning Commission hearing).

²⁷ This number includes all those filing or signing on to an Opening Statement.

²⁸ For example, R. 576-675 contains the packet for the June 10, 2019 meeting and includes many pages of written public comments.

hours.²⁹ Many spoke in opposition to the Application, citing concerns about noise from the gravel pit,³⁰ visual impacts,³¹ adequacy of the proposed buffers,³² and increased traffic of gravel hauling trucks on Anchor Point Road.³³ However, a large number of opponents does not by itself constitute substantial evidence.

The Record contains a large amount of material that the Commission members reviewed before and during the public meetings and deliberations on this Application. This includes several meeting packets and miscellaneous information totaling at least 493 pages out of the 987 pages of the total record, containing written comments from members of the public,³⁴ maps of the property and surrounding areas,³⁵ photographs,³⁶ and diagrams depicting the line of sight to the proposed extraction area.³⁷ A review of the minutes and verbatim testimony of the Commission's several meetings show that the Commission members listened to and discussed the Application at length. The Commission then adopted extensive findings in Resolution 2018-23 detailing each condition required by KPB 21.29.050. The Application materials, the extensive record, and the detailed findings constitute reasonable evidence in support of the Commission's

²⁹ The portion of the hearing transcribed for this matter started at 7:32 pm (T. 117) and ended at 11:39 pm (T. 159).

³⁰ Testimony of Christina Elmaleh at T. 124, Testimony of Ed Martin, III at T. 133.

³¹ Testimony of Pete Kineen at T. 127, Testimony of Todd Bareman at T. 132, Testimony of Richard Cline at T. 136.

³² Testimony of Vickey Hodnick at T. 134, Testimony of Rick Oliver at T. 135, Testimony of Jim Reid at T. 138, Testimony of Hans Bilben at T. 141, Testimony of Lynn Whitmore at T. 145.

³³ Testimony of Paul Morino and Judy Aaron at T. 123, Testimony of Gary Sheridan at T. 130.

³⁴ For example, R. 28-60, R. 532-552.

³⁵ For example, R. 492-495.

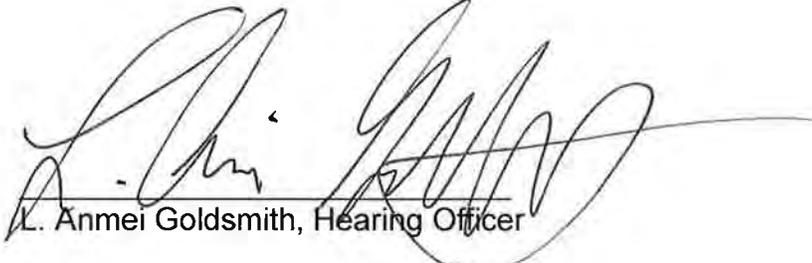
³⁶ For example, R. 487-491, R. 553-558, R.607-614.

³⁷ For example, R. 726-728.

conclusion that the conditions imposed in Resolution 2018-23 meet the requirements of KPB 21.29.050. The hearing officer finds that the Commission's findings of fact are supported by substantial evidence in the record and deference to those findings is warranted.

V. ORDER

For the reasons stated in this decision, Appellant Hans Bilben's request for the hearing officer to overturn the Commission's decision to approve the Application is DENIED.



L. Anmei Goldsmith, Hearing Officer

Right of Reconsideration

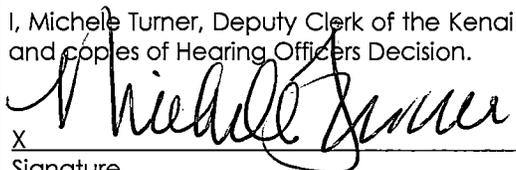
Pursuant to KPB 21.20.350, any party that participated in the hearing may request reconsideration of this decision by filing a motion for reconsideration with the Borough Clerk within fourteen (14) days after the date of distribution of this decision. A motion for reconsideration may be based only on the criteria in KPB 21.20.350.A.1.-4. and must comply with all other requirements of KPB 21.20.350.

Right to Appeal

This Decision and Order is a final decision. An appeal from an officer decision may be filed in the Alaska Superior Court within 30 days after the date of distribution of this decision and is governed by Part 6 of the Alaska Rules of Appellate Procedure. This decision remains in effect while an appeal is pending unless stayed by the Alaska Superior Court. See KPB 21.20.350.E. and 21.20.360.

CERTIFICATE OF SERVICE

I, Michele Turner, Deputy Clerk of the Kenai Peninsula Borough, do hereby certify that, I served the foregoing notice and copies of Hearing Officers Decision.

X 
 Signature

Dated this 15th day of November, 2019.

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October 30, 2019

10:00 AM

Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Kenai Peninsula Borough Appeal Hearing Record

Case No. 2019-01-PCA: In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District.

Han Bilben,

Appellant

Emmitt Trimble,
Beachcomber, LLC

Applicant.

APPEAL & NOTICE OF APPEAL

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ENTRIES OF APPEARANCE AND ENTRIES OF
APPEARANCE

Page 798

NOTICE OF CERTIFICATION OF THE RECORD
AND NOTICE OF HEARING OFFICER AND
HEARING DATE

Page 851

NOTICE OF OPENING STATEMENTS AND
OPENING STATEMENTS

Page 854

MOTION TO EXPAND THE RECORD

Page 906

HEARING OFFICER'S DECISION ON MOTION TO
EXPAND THE RECORD

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NOTICE OF REPLY STATEMENTS AND REPLY
STATEMENTS

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Office of the Borough Clerk

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

Johni Blankenship, MMC
Borough Clerk

July 25, 2019

Notice of Appeal of Planning Commission Decision

Case No. 2019-01-PCA: In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District. *[Enclosed please find a copy of the appeal filed in this matter and the Notice of the Planning Commission's decision.]*

Please Complete the Following Steps:

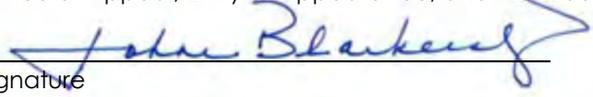
- Step 1.** If you wish to participate in the appeal process, you **must** file an entry of appearance (*form enclosed*) with the Borough Clerk within 15 days of the mailing date of the notice of appeal by the Borough Clerk.
- Step 2.** Any party filing an entry of appearance **may** also file additional designations of error or other alternative requests for modification or reversal of the decision.
- Step 3.** The original Entry of Appearance **must** be filed with the Borough Clerk on or before **Friday, August 9, 2019**. Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternated forms of service.

This notice is being sent to you because our records indicate you are a party of record in the subject Planning Commission decision.

Johni Blankenship, MMC
Borough Clerk
jblankenship@kpb.us

CERTIFICATE OF SERVICE

I, John Blankenship, Clerk of the Kenai Peninsula Borough, do hereby certify that I mailed or caused to be mailed a Notice of Appeal, Entry of Appearance, and this Proof (Certificate) of Service.

X 
Signature

Dated this day of July 25, 2019.

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WHITMORE LYNN PO BOX 355 ANCHOR POINT, AK 99556	XOCHITL LOPEZ-AYALA PO Box 2552 HOMER, AK 99603	YALE MARK & LEE PO Box 429 ANCHOR POINT, AK 99556 markyale2001@yahoo.com	Kenai Peninsula Borough Max Best, Planning Director 144 N. Binkley Street Soldotna, AK 99669 mbest@kpb.us
Kenai Peninsula Borough Bruce Wall, Planner 144 N. Binkley Street Soldotna, AK 99669 bwall@kpb.us	Kenai Peninsula Borough Sean Kelley, Deputy Borough Attorney 144 N. Binkley Street Soldotna, AK 99669 skelley@kpb.us	NICK FINLEY nicfin23@hotmail.com	DANICA HIGH danicabrianne@icloud.com

Appeal of Planning Commission Decision
Kenai Peninsula Borough
Office of the Borough Clerk

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

Phone: (907) 714-2160
Toll Free: 1-800-478-4441
Fax: (907) 714-2388

RECEIVED
JUL 10 2019
Borough Clerk's Office
Kenai Peninsula Borough

For Official Use Only

Appeals must be filed within 15 days of the Planning Commission Decision.

The appropriate filing fee must be received at the time of filing.
Make Checks Payable to: Kenai Peninsula Borough

Filing Fee: \$300.00
 Cash
 Check # 5263

Any party of record may file an appeal of a decision of the Planning Commission within 15 days of the date of the notice of the decision with the borough clerk on the forms provided and by paying the filing and records preparation fee of \$300. An appeal may be filed by personal delivery or mail as long as it is complete and received in the clerk's office by 5:00 p.m. on the day the notice of appeal is due. All appeals shall be to the hearing officer and shall be conducted in accordance with the provisions of KPB Chapter 21.20 unless otherwise provided by the Kenai Peninsula Borough Code. [KPB 21.20.250]

Appellant: Hans Bilben

Mailing Address: PO Box 1176 Anchor Point AK 99556

Email Address: catchalaska@alaska.net Daytime Telephone No.: 907 398-6156

I agree to service via email: Yes Initials HKB (provide email address above) No:

I hereby give notice that I am appealing a decision of the Kenai Peninsula Borough Planning Commission as set forth below. I understand that this appeal will not be accepted unless accompanied by a receipt verifying that the required fee has been paid.

1. Date and resolution number of the Planning Commission's written decision from which you are appealing:

Date of decision: June 24, 2019 ^{NOD} _{6/26} Resolution No. 2018-23

Summary of Decision being appealed:
Material site CLUP for Parcel 169-010-67. Applicant Beachcomber LLC.

2. State specific errors asserted in the Commission's findings of fact or conclusions of law. (Attach additional sheets if necessary.)

See attached sheets:

3. State the relief you are requesting from the Board of Adjustment including whether you want the Planning Commission decision reversed, modified or remanded for further proceedings. (Attach additional sheets if necessary.)

Reverse the decision. If the Hearing Officer finds that reversal is not warranted, then modification is required to reflect conditions that will actually meet the requirements of 21.29.040 and 21.29.050. Proposed Findings of Fact are spelled out in Meeting Packet Volume 2, pages 40 - 49 of 686 for the 6/24/2019 PC Meeting.

Appeals to the Hearing Officer are governed by KPB 21.20.200-360. You will receive notice from the Borough Clerk informing you of the deadlines and requirements for filing written statements and a hearing date for the appeal.

Date: 7/10/2019

Appellant's Signature: [Handwritten Signature]

2. SPECIFIC ERRORS...

The Hearing Officer remanded to the Planning Commission in December 2018 for **two** reasons. One was to list Findings of Fact referencing the Mandatory Conditions defined in KPB 21.29.050, and the other was to Provide the **substantial evidence** that supports those findings. The applicant failed to provide substantial evidence which would support the Findings. Those opposed to the permit provided substantial evidence using KPB's own technology to prove that mandatory standards in KPB 21.29.040 could not be met by the Conditions—both imposed and voluntary.

A. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A FINDING THAT BUFFERS/BERMS MINIMIZE NOISE DISTURBANCE AND VISUAL DISTURBANCE.

B. STAFF ERRED IN ADVISING THE PLANNING COMMISSION ON THE REQUIREMENTS OF THE CODE.

C. THE PLANNING COMMISSION ERRED IN INTERPRETING THE CODE ON THE ISSUE OF DISCRETION AND AUTHORITY TO DENY A PERMIT.

D. THE CONDITIONS IMPOSED ON THE PERMIT DO NOT PROVIDE SUFFICIENT VISUAL AND NOISE SCREENING.

E. THE VOLUNTARY CONDITIONS DO NOT PROVIDE SUFFICIENT VISUAL AND NOISE SCREENING.

F. MINIMUM STANDARDS FOR THE LAND USE WERE NOT MET IN THIS SITUATION WHICH CAUSES DAMAGE TO THE PUBLIC HEALTH, SAFETY, AND WELFARE.

G. THE DECISION DOES NOT RECOGNIZE PRIVATE PROPERTY RIGHTS OF THE SURROUNDING USERS.

H. THE ISSUANCE OF THIS PERMIT IS IN VIOLATION OF THE REQUIREMENTS IMPOSED UNDER KPB 21.25 AND UNDER KPB 21.29.

I. ONE OR MORE COMMISSIONERS SHOULD HAVE RECUSED THEMSELVES BASED UPON DEMONSTRATED BIAS AND/OR CONFLICT OF INTEREST ISSUES.

J. ADDITION OF LAST MINUTE VOLUNTARY AND IMPOSED CONDITIONS SHOULD HAVE REQUIRED THAT PUBLIC COMMENT BE RE-OPENED, AS REQUESTED, AT 6/24 MEETING.

K. IN SEVERAL KPB CONDITIONS AND FINDINGS OF FACT THE WORD "ADJACENT" WAS SUBSTITUTED FOR THE CORRECT WORD "OTHER" FROM KPB 21.29.040. THIS SUBSTITUTION WRONGLY INFLUENCED COMMISSIONER'S DECISIONS.

L. COMMISSIONERS DELIBERATED VERBIAGE AT LENGTH ON SEVERAL MEANINGLESS VOLUNTARY CONDITIONS, BUT SPENT NO TIME DISCUSSING HOW OR IF THOSE CONDITIONS COULD ACTUALLY MEET THE MANDATORY STANDARDS OF KPB 21.29.

M. PRIOR TO THE 6/24 DELIBERATIONS TWO COMMISSIONERS ABSENT FOR THE 6/10 HEARING WERE SHOWN VIDEO PREPARED BY THE APPLICANTS DAUGHTER. THOSE TWO COMMISSIONERS WERE NOT SHOWN THE PRESENTATION PREPARED BY THOSE OPPOSED TO THE PERMIT WHICH CLEARLY DEMONSTRATED THE DEFICIENCIES IN THE APPLICATION USING GEOGRAPHIC INFORMATION SYSTEM (GIS) TECHNOLOGY OWNED BY KPB.

N. COMMISSIONER ECKLUND INDEPENDENTLY VISITED THE SITE AND QUESTIONED THE LACK OF VEGETATION IN THE 50 FOOT VEGETATED BUFFER. BRUCE WALL AGREED THAT GRASS WAS THE PRIMARY VEGETATION IN NEARLY 60% OF THE BUFFER AREA. KPB 21.29.050 MANDATES BUFFER/BERM TO BE OF SUFFICIENT **HEIGHT AND DENSITY.**

O. IN THE MINUTES BEFORE THEY VOTED, ONE COMMISSIONER ASKED WHAT A ROLLING BERM WAS. A ROLLING BERM IS NOT REFERENCED OR DEFINED IN KPB 21.29. CLEARLY THERE IS NO DEFINITION FOR WHAT A ROLLING BERM IS, WHEN IT WOULD BE MOVED (ROLLED), WHERE IT WOULD BE MOVED (ROLLED), WHAT OBJECTIVE METHOD WAS USED TO DETERMINE THE BERM HEIGHT, OR WHETHER IT COULD MEET THE STANDARDS OF KPB 21.29.040 IN EACH (OR ANY) OF THE THREE PHASES OF THE APPLICATION.

P. COMMISSIONERS ON SEVERAL OCCASIONS DURING DELIBERATIONS MADE COMMENTS INDICATING LACK OF KNOWLEDGE ON WORDING OF KPB CODE. THEY APPEARED TO JUDGE THE APPLICATION, AND VOTE, WITHOUT WITHOUT A CLEAR UNDERSTANDING OF THE CODE.

Q. DURING DELIBERATIONS THERE WAS CONFUSING OR CONFLICTING LOCATIONS OF MATERIALS IN THE RECORD. STAFF AND COMMISSIONERS APPEARED TO HAVE DIFFERING PAGE REFERENCING WHICH CREATED A SITUATION WHEREBY COMMISSIONERS HAD DIFFICULTY LOCATING EVIDENCE IN THE RECORD, AND VICE VERSA. THIS CONTRIBUTED TO UNINFORMED DECISION MAKING ON THE PART OF THE COMMISSION.



Planning Department

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

June 26, 2019

Charlie Pierce
Borough Mayor

At their June 24, 2019 meeting, the Planning Commission approved a conditional land use permit for a material site that was requested for Parcel 169-010-67, Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

This decision may be appealed within fifteen days of the date of the Notice of Decision. The appeal must be submitted to the borough clerk on forms provided by that office, along with a filing and records preparation fee of \$300.

If you have any questions or comments, please feel free to contact me (907) 714-2206.

Sincerely,

Bruce Wall, AICP
Planner
bwall@kpb.us

Enclosures

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
 - A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm placed near the active extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm placed near the active extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary; and a 12-foot high berm placed near the active extraction area except along the northern 200 feet of the proposed excavation.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.

7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
8. The permittee shall not dewater either by pumping, ditching or any other form of draining.
9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
10. The permittee shall ensure that fuel storage 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.
11. The permittee shall conduct operations 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.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
15. The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.
16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
19. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.
21. The permittee shall operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
22. The permittee shall not operate the material site or haul material from the site on Memorial Day weekend (Saturday through Monday), Labor Day weekend (Saturday through Monday), and the 4th of July holiday to also include:
 - Saturday and Sunday if July 4th is on a Saturday, Sunday, Monday, or Friday
 - Saturday, Sunday, and Monday if July 4th is on a Tuesday
 - Saturday, Sunday, and Friday if July 4th is on a Thursday



Planning Department

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

Charlie Pierce
Borough Mayor

NOTICE OF DECISION

At their June 24, 2019 meeting, the Planning Commission approved a conditional land use permit for a material site that was requested for Parcel 169-010-67, Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

FINDINGS OF FACT

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On June 4, 2018, the applicant, Beachcomber LLC, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 169-010-67, which is located within the rural district.
4. Land use in the rural district is unrestricted except as otherwise provided in KPB Title 21.
5. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres and provides regulations for material extraction.
6. The proposed disturbed area is approximately 27.7 acres.
7. Consistent with KPB 21.25.050(A) on June 21, 2018, the applicant submitted a revised site plan and application to the Planning Department that addressed issues raised by staff with the initial review of the application.
8. The submitted application with its associated documents was reviewed by staff for compliance with the application requirements of KPB 21.29.030. Staff determined that the application was complete and scheduled the application for a public hearing.
9. A public hearing of the Planning Commission was held on July 16, 2018. Public notice of the hearing was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the July 5, 2018 & July 12, 2018 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
10. Testimony was filed and heard regarding issues that are not addressed by the KPB 21.29.040 standards or 21.29.050 conditions. Staff and the Planning Commission in reviewing the application are not authorized by the code to consider those issues such as property values, water quality, wildlife preservation, a material site quota, and traffic safety.
11. A public hearing of the Planning Commission was held on March 25, 2019. Public notice of the hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the March 14, 2019 and March 21, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
12. A public hearing of the Planning Commission was held on June 10, 2019. Public notice of the hearing was mailed on April 30, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at their location. Public notice of the hearing was published in the May 30, 2019 and June 6, 2019 issues of the Homer News. The notice requirements of KPB 21.25.060 for this meeting have been met.
13. At the June 10, 2019 hearing, the applicant volunteered to utilize a moving, or rolling, berm rather than a stationary berm. The berms will be placed near the active excavation area to be moved as the extraction area and reclaimed areas expand.
14. At the June 10, 2019 hearing, the applicant volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
15. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
16. Parcel boundaries. All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. The submitted site plan indicates the location of each of the parcel boundary stakes.
 - B. Planning staff has visited the site several times and has observed that the boundary stakes are in place.
17. *Buffer zone.* A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.

- A. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
 - B. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
 - C. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.
 - D. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.
 - E. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
 - F. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
 - G. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
 - H. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that can provide visual and noise screening of the material site for some of the adjacent uses.
 - I. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent properties.
 - J. A 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - K. The total buffer width, as recommended by staff, along the southern and eastern property boundaries is 98-feet.
 - L. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
 - M. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
 - N. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
 - O. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
 - P. There has been testimony that the material site will mar the view of Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.
 - Q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.
 - R. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.
18. *Processing.* Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
- A. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the north property line.
 - B. The applicant proposed the following justifications for waiving the processing setback: "Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant's daughter & 169-022-08 is not developed."
 - C. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
 - D. The portion of the proposed processing area greater than 300 feet from the property line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.

- E. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.
19. *Water source separation.* All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.
- A. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
 - C. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.
20. *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.
- A. This permit approval does not allow excavation in the water table.
21. *Waterbodies.* An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
- A. The Cook Inlet lies about 600 feet west of the proposed material extraction.
 - B. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
 - C. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast corner of the property.
 - D. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.
 - E. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - F. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the floodplain is an existing stripped area.
 - G. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.
 - H. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
 - I. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
22. *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.
- A. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.20.050(A)(7).
23. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads.
- A. The submitted site plan indicates that the material site haul route will be Denver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - B. There was a significant number of public comments concerning the condition of Anchor Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
 - C. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
24. *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.
- A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.

25. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
26. *Hours of operation.* Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - A. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - B. This condition reduces off-site noise impacts of the material site.
27. *Reclamation.* Reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
 - A. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - B. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.
 - C. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission
 - D. The application states that less than 50,000 cubic yards will be mined annually therefore the material site qualifies for a small quantity exception from bonding.
28. *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.
 - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
29. *Voluntary permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - A. The applicant has volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
 - B. The volunteered condition concerning back-up alarms is in the best interest of the Borough and the surrounding property owners because the multi-frequency alarms better minimizes the noise impacts of the material site.
 - C. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.
 - D. The volunteered condition to place the berm near the active excavation area is in the best interest of the Borough and the surrounding property owners because this placement of the berm will better minimize the visual impacts of the material site.
 - E. The applicant has volunteered a condition a condition that prohibits material site operations on holiday weekends during the summer months.
 - F. The volunteered condition, to not operate on holidays, is consistent with the standard to reduce noise disturbance to adjacent properties.
 - G. The volunteered condition, to not operate on holidays, is in the best interest of the Borough and the surrounding property owners because the Anchor River State Recreational Area has a significantly greater number of visitors on holidays and several of the neighbors and Alaska State Parks has expressed concern about the noise impacts to the recreational area.
30. *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.
 - A. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance

This decision may be appealed through the Borough Clerk within fifteen days of the date of the Notice of Decision.



 Bruce Wall, AICP
 Planner

June 26, 2019
 Date



Office of the Borough Clerk

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

Johni Blankenship, MMC
Borough Clerk

August 12, 2019

Notice of Entries of Appearance filed in Case No. 2019-01-PCA: In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District. *[Enclosed please find a copy of the entries of appearance.]*

The following parties filed entries of appearance in the afore mentioned case:

- Holmes Weddle & Barcott, P.C.
- Gary Cullip
- Katherine Elsner, Ehrhardt, Elsner & Cooley
- Linda M. Stevens
- Tom Brook
- Linda Bruce
- Michael J. Brantley
- Shirley Gruber
- Pete Kinneen
- Joseph Sparkman
- David Gregory & Teresa Ann Jacobsen
- Lynn Whitmore
- Xochitl Lopez-Ayala
- Todd Bareman
- Vickey Hodnik
- G. George Krier
- Emmitt Trimble
- Mary Trimble
- Lauren Isenhour
- Allison Paparoa
- Danica High
- Lawrence "Rick" Oliver
- Hans and Jeanne Bilben
- Gary Sheridan
- Eileen D. Sheridan
- Steve P. Thompson
- Philip J. Brna
- Linda and Mike Patrick
- James Gorman
- Marie J. Carlton
- Richard Carlton
- Gina DeBardelaben
- Sean Kelley
- Max Best
- John Girton
- Joshua & Christina Elmaleh
- Donald L. & Lori L. Horton

This notice is being sent to you because our records indicate you filed an entry of appearance and continue to be a party of record in the subject Planning Commission decision appeal.

Johni Blankenship, MMC
Borough Clerk
jblankenship@kpb.us

Page -2-
 August 12, 2019
 To: Parties of Record
 Re: Case No. 2019-01-PCA

CERTIFICATE OF SERVICE

I, John Blankenship, Clerk of the Kenai Peninsula Borough, do hereby certify that, I served the foregoing notice and copies of Entries of Appearance filed.

X 
 Signature

Dated this 12th day of August, 2019.

Appellant Hans and Jeanne Bilben catchalaska@alaska.net Agent Katherine Elsner Ehrhardt, Elsner & Cooley katie@907legal.com	Applicant Emmitt & Mary Trimble dba Beachcomber LLC emmitttrimble@gmail.com margetrimble@gmail.com Agent Holmes Weddle & Barcott, P. C. Stacey Stone: sstone@hwb-law.com Chantal Trink: ctrinka@hwb-law.com snichols@hwb-law.com	Allison Trimble Papparo allisontrimblerealestate@gmail.com	Sean Kelley, Deputy Attorney Max Best, Planner Kenai Peninsula Borough skelley@kpb.us legal@kpb.us mbest@kpb.us
Brna Philip J fisheyeak@gmail.com	Carlton Richard D & Marie seaburyroad@live.com noregretsm@live.com	Cullip Gary L buffycody@msn.com	Danica High highdanica@yahoo.com
G. George Krier georgerewards@gmail.com	Gina M. Debardeleben ginadebar@mclanecg.com	Girton John johnrgirton@aol.com	Gorman James captainboomer525@hotmail.com
Gregory David & Teresa Ann Jacobson davidgregory0754@gmail.com	Isenhour Lauren laurentrimble@hotmail.com	Linda R Bruce lrb128@hotmail.com	Linda Stevens illuminataarts@aol.com grizzlysafety@aol.com
Oliver Lawrence "Rick" roliverb747@me.com	Patrick Mike & Linda mlpatrick335@yahoo.com	Pete Kinneen storagecondominiumsofalaska@gmail.com	Sheridan Gary Sheridan Eileen twoshar@acsalaska.net
Shirley Gruber shirleytdx@yahoo.com	Sparkman Joseph J jay1332@att.net	Steve Thompson stevethompson1961@yahoo.com	Thomas J Brook tbrook@ak.net
Todd Bareman tbareman@gmail.com	Vickey Hodnik vickey@gci.net	Whitmore Lynn lkwhitmore@acsalaska.net	Joshua Elmaleh jewish8josh@gmail.com Christing Elmaleh christycupp5@hotmail.com
Xochitl Lopez-Ayala PO Box 2552 Homer, Ak 99603	Brantley Michael PO Box 950 Anchor Point, Ak 99556	Donald L. & Lori L. Horton hortons6@gmail.com	

RECEIVED

AUG 08 2019

Borough Clerk's Office
Kenai Peninsula Borough

**Kenai Peninsula Borough
Office of the Borough Clerk
Kenai Peninsula Borough, Alaska
144 North Binkley Street
Soldotna, Alaska 99669**

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to disapprove a conditional use permit for
a material sited that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts – Deed of Record Boundary
Survey (Plat 80-104) - Deed Recorded in
Book 4, Page 116, Homer Reordering
District.

Hans Bilben,

Appellant,

Emmitt Trimble,
Beachcomber LLC,

Applicants.

Case No. 2019-01-PCA

ENTRY OF APPEARANCE

COMES NOW the law firm of Holmes Weddle & Barcott, P.C., and enters its appearance on behalf of Applicants Emmitt Trimble and Beachcomber LLC in the above-titled action and requests that copies of any and all future documents be mailed to its office at 701 West Eighth Avenue, Suite 700, Anchorage, Alaska 99501. Undersigned counsel agrees to service via email to the following addresses: sstone@hwb-law.com, ctrinka@hwb-law.com, and snichols@hwb-law.com.

ENTRY OF APPEARANCE
KPB Planning Commission Appeal

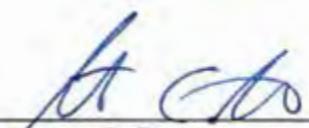
Case No. 2019-01-PCA
Page 1 of 2

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

DATED this 8th day of August, 2019, at Anchorage, Alaska.

HOLMES WEDDLE and BARCOTT, P.C.
Attorneys for Applicants

By: _____


Stacey C. Stone
Alaska Bar No. 1005030
Chantal Trinko
Alaska Bar No. 1505034

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

ENTRY OF APPEARANCE
KPB Planning Commission Appeal

Case No. 2019-01-PCA
Page 2 of 2

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AUG 09 2019

Borough Clerk's Office
Kenai Peninsula Borough

Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts - Deed of Record Boundary Survey
(Plat 80-104) - Deed recorded in Book 4,
Page 116, Homer Recording District.

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: Gary Callip x [Signature]
PRINTED NAME SIGNATURE

Mailing Address: 1523 SW 59th Ln Cape Coral FL 33914

Email Address: gcallipcodg@msn.com

I agree to service via email: Yes Initials GC

Name, Address and Signature of your Agent: Heather Callip Dickensau
9551 Matra Cr Anchorage AK 99518

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): Stop this!!!! It is so wrong

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019**.
Service shall be made by the Borough Clerk either by mail or personal delivery within two business days
of the filing deadline. Service by email or facsimile is permitted when the party to be served has
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RECEIVED

AUG 09 2019

Borough Clerk's Office
Kenai Peninsula Borough

KENAI PENINSULA BOROUGH

In the matter of the Kenai Peninsula)
Borough Planning Commission's)
decision to approve a conditional land)
use permit for a material site that was)
requested for KPB Parcel 169-010-67;)
Trace B, McGee Tracts - Deed of)
Record Boundary Survey (Plat 80-104) -)
Deed Recorded in Book 4, Page 116,)
Homer Recording District)
)
Emmitt and Mary Trimble dba)
Beachcomber LLC,)
Appellant.)
_____)

CASE NO. 2019-01-PCA

ENTRY OF APPEARANCE

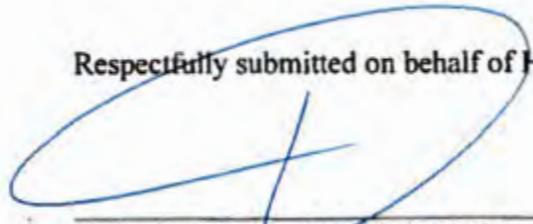
Katherine Elsner of Ehrhardt, Elsner & Cooley hereby enters her appearance on behalf of
Party of Record Hans Bilben. Service can be made on counsel at:

Ehrhardt, Elsner & Cooley
215 Fidalgo Ave, Suite 201
Kenai AK 99611
(907) 283-2876
Katie@907legal.com

I consent to service by email.

DATED August 9th, 2019.

Respectfully submitted on behalf of Hans Bilben



Katherine Elsner, ABA #1411116

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AUG 09 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts - Deed of Record Boundary Survey
(Plat 80-104) - Deed recorded in Book 4,
Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: LINDA M. STEVENS *Linda M. Stevens*
PRINTED NAME SIGNATURE

Mailing Address: P.O. BOX 330 ANCHOR POINT, AK. 99552

Email Address: illuminatearts@aol.com / grizzly safety@aol.com

I agree to service via email: Yes Initials LMS

Name, Address and Signature of your Agent: SELF

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): DETRIMENTAL TO TOURISM & PUBLIC SAFETY. WILL DESTROY CAMPGROUND ATMOSPHERE. CAUSE FURTHER ROAD & BRIDGE DAMAGE.

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019.**
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Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
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KPB Parcel 169-010-67; Tract B, McGee
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(Plat 80-104) - Deed recorded in Book 4,
Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: Tom Brook x Tom Brook

PRINTED NAME

SIGNATURE

Mailing Address: PO Box 39004, Ninilchik, AK 99639

Email Address: tbrook@ak.net

I agree to service via email: Yes Initials TB

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): Everything listed in Hans Bilben appeal plus lack of due process for public after changes to conditions plus new information submitted that public was denied opportunity to comment on.

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): Reverse the decision.

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019**.
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AUG 09 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
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(Plat 80-104) – Deed recorded in Book 4,
Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: Linda Bruce x Linda Bruce

PRINTED NAME

SIGNATURE

Mailing Address: PO Box 39004 Niniilchik, AK 99639

Email Address: lrb128@hotmail.com

I agree to service via email: Yes Initials lrb

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): Everything listed in Hans Bilben appeal plus lack of due process for public after changes to conditions plus new information submitted that public was denied opportunity to consider and comment on.

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): Reverse the decision.

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Page 2 of 2

In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble, Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: Michael J. Brantley x Michael J. Brantley
PRINTED NAME SIGNATURE

Mailing Address: P.O. Box 950, Anchor Point, AK 99556

Email Address: zz49era@outlook.com

I agree to service via email: Yes [checked] Initials

Name, Address and Signature of your Agent:

X

Additional Designations of Error (attached additional pages if necessary):

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): Reversal of Planning Commission Decision

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In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: SHIRLEY Gruber x Shirley Gruber
PRINTED NAME SIGNATURE

Mailing Address: 13701 ERVIN Rd Anchorage AK 99516

Email Address: Shirleytdx@yahoo.com

I agree to service via email: Yes Initials SG

Name, Address and Signature of your Agent: _____

Additional Designations of Error (attached additional pages if necessary): See attached

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): Reverse or at least send it back to Planning for fact Review by a different planner
2nd opinion - one NOT so closely attached to permit Applicant

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019.** Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternate forms of service.

Attn: Hearing Officer

I hereby submit for consideration concerns relating to the conditional land use permit. This permit was approved with missing information, and incomplete knowledge of the permit, reclamation plan and inadequate understanding by the commissioners.

Procedural Concerns:

At the June 24, 2019 meeting which was an extension of the the June 10th meeting, where it was agreed that all testimony was final and that the commission would only discuss and place their vote at the beginning of the June 24th meeting, as a courtesy to the public.

However, at that June 24th meeting, the commissioners brought the permit requester to the podium, and did a question and answer session where the permit requester brought new information, expanded on old information and, voiced complaints about the public being allowed to submit topographical information from the KPB GIS System. Perception was this was a way for those commissioners who missed the previous meeting could catch up and give the appearance of a knowledgeable decision. The commissioners did not allow public comment on the new information or respond to the expanded old information or defend their documentation originally submitted. Those commissioners should have excused themselves, especially one particular commissioner. Obviously, this showed bias for the applicant.

In all appearance, the public's (mine) due process was stymied and the permit requester was shown favoritism, or special buddy buddy treatment.

Continuance of Errors or Omissions in the Findings of Facts and Permit Conditions.

Fact # 13 – Utilizing a rolling berm. A rolling berm is not detailed nor defined in the KPB code, the permit requester explained the concept but presented no actual details; like height, length or type of material it would consist of, or how it would be moved. Since there is no historical data to confirm its success as a mechanism to reduce the impact, it does not fulfill or meet code requirement.

Fact #14 – Volunteering to operate his equipment with white noise back up alarms...but not on any other contractor's equipment. (As stated by applicant during the meeting). This is a pointless fact since the requester only owns a bobcat, and all work would be "subbed out" with out the requested back up sound system. It appears that planning would like to show good will of applicant, not facts.

Fact #17 - Buffer zones. 18 items are listed, as facts yet when scrutinized, these listed facts are repetitive and incomplete as well as subjective in nature such as: Items D & E; the properties noted that are at a higher elevations will not be impacted as greatly as those adjacent is in error, since looking down you see over the berm, and into the site where as adjacent properties would need to look through the berm. Per the KPB GIS systems a 52ft berm would be required to meet the KPB standard. It continues to say that those parcels *further away*, (across the street and higher on a hill- which is not really father away) will be less impacted by noise is also flawed, since this gravel site is a natural amphitheater and the noise travels much further and remains louder than in other gravel sites.

Fact #17 - Buffer zones Item P: states that testimony was made to the fact that this site would mare the view of MT, Iliamna Redoubt, is not quite accurate... with out proper screening there would be a huge visual impact...and yes the KPB code does not provide scenery view protections, but the

code's goal is to reduce CLUP visual impact. Again the wording of this fact finding appears to view public concern in a negative form. Perhaps this particular planner has a conflict of interest or is unable to remain non judgmental.

Fact # 23 – Roads. Planning correctly states that part of the haul out is on borough road and then onto a state road. Per meeting discussions planning says it is only responsible to borough roads. The commission had to press planning to reach out to the state to address what concerns if any the state would have, since it is a state road, in need of repair, and an emergency access road. Question remains as to what liability if any could occur from this permit. No information is listed within the findings.

Fact # 29 items A through G. The permit requester volunteered 2 items, white noise alarms on his (only his) equipment, and not to haul on specific holidays. These two items get exaggerated reviews to give the appearance of grand gestures. This fact finding section seems to be written as a means to again show favorable bias to the permit applicant, where as some of the same fact finding are written to show negative bias to the public interest.

Permit condition #3: Discusses 2:1 slope from buffer to pit floor, but the fact findings do not list any information to the size of pit, or the water table at different times of the year. Other permit applicant have had to list their core sample finding but noting is noted here. The permit just requires the standard code of 100 ft from bodies of water and 2ft from the water table. This omission is of a concern since the discussion of a 25 foot gravel pit would have to have more than 4 “ of top soil to make the reclamation process to have any value. As well as the idea that the deeper the pit the quieter it becomes and less visual it is, see fact finding #17 Item L. Seriously??

Permit Condition #21: Does not detail if “his” equipment means equipment he owns or as well as equipment he has (contracted) or control of while operating at the site. With out that detail this condition is of little value.

During the meetings it appeared that the commissioners were of the understanding that they lacked authority to do anything but approve all permits. One stated that they wished there was more that they could do. It appeared to me, that they were misled by planning, the applicants lawyers, and the hearing officer repeatedly saying: if the application was complete (minimum) it must be approved.

However, the code is explicit that the commission has the discretion to add to, or combine regulations to meet the conditions set out in the code. They even have the authority to remove code items that serve no value for the permit. Like berms that serve no one, do not have to be put into place.

This lack of confidence in their authority, is understandable, since the planning department questioned commissioner Foster of his understanding of the hearing procedures, in front of his peers and the public. (Embarrassing him) Then was coached so Commissioner Ruffner, who was not at the June 10th meeting to hear all given testimony, but was able to do a procedural request to question testimony and used a motion by substantives to walked a yes vote through the commission. This motion, made new questions appeared to become irrelevant, facts versus intent became blurred. Thus this permit was granted without enough due diligence, but an atmosphere of get it over with.

This permit needs to be placed on hold, and sent back to planning for a true review, a different planner who will look at only the facts, show no emotion or bias nor display favoritism for either side with subjective answers when presenting the written facts to create the permit conditions.

There are still too many unanswered questions, or the facts are not summarized sufficiently to show a thorough or complete permit application, one written in factual, unbiased fashion. Much of this permit hints that a conflict of interest exists, with planning, a couple of commissioners and the applicant. While attending the meetings it was most obvious that a conflict may exist, due to all the reassuring glances between the applicant and planning.

Please return this permit for a second opinion from a different planner. This gravel area is not like other gravel pits within Anchor Point. KBP needs to really be correct and sure and get it right.

In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

RECEIVED

AUG 09 2019

Kenai Peninsula Borough
Borough Clerk's Office
Kenai Peninsula Borough

Case No. 2019-01-PCA

ans Bilben)
Appellant)

nmitt Trimble,)
achcomber LLC)
Applicant.)

Entry of Appearance Form

Name: Pete Kinneen x Pete Kinneen
PRINTED NAME SIGNATURE

Mailing Address: P.O. Box 810 Anchorage AK 99556

Email Address: storagecondominiumsofalaska@gmail.com

I agree to service via email: Yes Initials PK

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019**.
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RECEIVED

AUG 09 2019

Borough Clerk's Office
Kenai Peninsula Borough

Kenai Peninsula Borough

Case No. 2019-01-PCA

In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KP8 Parcel 169-010-67; Tract B, McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Hans Bilben

Appellant

Ermitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: Joseph Spivak *[Signature]*
PRINTED NAME SIGNATURE

Mailing Address: RD. Box 767, Anchor Point AK 99556

Email Address: JAY1332@ATT.NET

I agree to service via email: Yes Initials JS

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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AUG 09 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
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Kenai Peninsula Borough

Case No. 2019-01-PCA

Hans Bilben

Appellant

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: David Gregory x David Gregory
Teresa ~~David Gregory~~ Teresa

Mailing Address: PO Box 904

Email Address: dggregory0754@gmail.com

I agree to service via email: Yes & Initials DGJ

Name, Address and Signature of your Agent: ~~David Gregory~~
~~PO Box 904~~
~~Kenai, Alaska~~

X _____

Additional Designations of Error (attached additional pages if necessary): There was
little or no discussion of The 6 Conditions
that must be met for a Material Site Permit
according to KPB codes.

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach
additional pages if necessary): Reverse the decision
Modify so that the 6 conditions in the
KPB code is met.

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RECEIVED

AUG 08 2011

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts - Deed of Record Boundary Survey
(Plat 80-104) - Deed recorded in Book 4,
Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: LYNN WHITMORE x [Signature]
PRINTED NAME SIGNATURE

Mailing Address: PO BOX 355 ANCHOR POINT, AK 99556

Email Address: LWHITMORE@ACSALASKA.NET

I agree to service via email: Yes Initials LW

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

THE APPELLANT HAS DONE A GREAT JOB IN SUMMARIZING
THE ERRORS

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary):

REVERSE DECISION OF PLANNING
COMMISSION BECAUSE SINEY CANNOT BE MET DUE TO
EXISTING TOPOGRAPHY

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019.**
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RECEIVED

AUG 08 2019

Borough Clerk's Office
Kenai Peninsula Borough

Kenai Peninsula Borough

Case No. 2019-01-PCA

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts - Deed of Record Boundary Survey
(Plat 80-104) - Deed recorded in Book 4,
Page 116, Homer Recording District.

Hans Bilben

Appellant

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: XOCHITL LOPEL-AYALA x Xochitl
PRINTED NAME SIGNATURE

Mailing Address: PO BOX 2552 HUMER AK 99603

Email Address: XOCHITLLOPELAYALA@YAHOO.COM

I agree to service via email: Yes Initials _____

Name, Address and Signature of your Agent: XOCHITL LOPEL-AYALA, (Signature)
PO BOX 2552 HUMER AK 99603

X Xochitl

Additional Designations of Error (attached additional pages if necessary): _____

THERE WAS INSUFFICIENT EVIDENCE A BIRM WOULD MINIMIZE
NOISE AS THE LANDSCAPE IS A 'FISH BOWL' MAKING SOUND
ECHO.

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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WOULD LIKE TO SUBMIT THIS AS WELL.
I AGREE WITH THIS!

RECEIVED

AUG 08 2010

Borough Clerk's Office
Kenil Peninsula Borough

2. SPECIFIC ERRORS...

The Hearing Officer remanded to the Planning Commission in December 2018 for **two** reasons. One was to list Findings of Fact referencing the Mandatory Conditions defined in KPB 21.29.050, and the other was to Provide the **substantial evidence** that supports those findings. The applicant failed to provide substantial evidence which would support the Findings. Those opposed to the permit provided substantial evidence using KPB's own technology to prove that mandatory standards in KPB 21.29.040 could not be met by the Conditions—both imposed and voluntary.

A. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A FINDING THAT BUFFERS/BERMS MINIMIZE NOISE DISTURBANCE AND VISUAL DISTURBANCE.

B. STAFF ERRED IN ADVISING THE PLANNING COMMISSION ON THE REQUIREMENTS OF THE CODE.

C. THE PLANNING COMMISSION ERRED IN INTERPRETING THE CODE ON THE ISSUE OF DISCRETION AND AUTHORITY TO DENY A PERMIT.

D. THE CONDITIONS IMPOSED ON THE PERMIT DO NOT PROVIDE SUFFICIENT VISUAL AND NOISE SCREENING.

E. THE VOLUNTARY CONDITIONS DO NOT PROVIDE SUFFICIENT VISUAL AND NOISE SCREENING.

F. MINIMUM STANDARDS FOR THE LAND USE WERE NOT MET IN THIS SITUATION WHICH CAUSES DAMAGE TO THE PUBLIC HEALTH, SAFETY, AND WELFARE.

G. THE DECISION DOES NOT RECOGNIZE PRIVATE PROPERTY RIGHTS OF THE SURROUNDING USERS.

H. THE ISSUANCE OF THIS PERMIT IS IN VIOLATION OF THE REQUIREMENTS IMPOSED UNDER KPB 21.25 AND UNDER KPB 21.29.

I. ONE OR MORE COMMISSIONERS SHOULD HAVE RECUSED THEMSELVES BASED UPON DEMONSTRATED BIAS AND/OR CONFLICT OF INTEREST ISSUES.

J. ADDITION OF LAST MINUTE VOLUNTARY AND IMPOSED CONDITIONS SHOULD HAVE REQUIRED THAT PUBLIC COMMENT BE RE-OPENED, AS REQUESTED, AT 6/24 MEETING.

K. IN SEVERAL KPB CONDITIONS AND FINDINGS OF FACT THE WORD "ADJACENT" WAS SUBSTITUTED FOR THE CORRECT WORD "OTHER" FROM KPB 21.29.040. THIS SUBSTITUTION WRONGLY INFLUENCED COMMISSIONER'S DECISIONS.

L. COMMISSIONERS DELIBERATED VERBIAGE AT LENGTH ON SEVERAL MEANINGLESS VOLUNTARY CONDITIONS, BUT SPENT NO TIME DISCUSSING HOW OR IF THOSE CONDITIONS COULD ACTUALLY MEET THE MANDATORY STANDARDS OF KPB 21.29.

M. PRIOR TO THE 6/24 DELIBERATIONS TWO COMMISSIONERS ABSENT FOR THE 6/10 HEARING WERE SHOWN VIDEO PREPARED BY THE APPLICANTS DAUGHTER. THOSE TWO COMMISSIONERS WERE NOT SHOWN THE PRESENTATION PREPARED BY THOSE OPPOSED TO THE PERMIT WHICH CLEARLY DEMONSTRATED THE DEFICIENCIES IN THE APPLICATION USING GEOGRAPHIC INFORMATION SYSTEM (GIS) TECHNOLOGY OWNED BY KPB.

N. COMMISSIONER ECKLUND INDEPENDENTLY VISITED THE SITE AND QUESTIONED THE LACK OF VEGETATION IN THE 50 FOOT VEGETATED BUFFER. BRUCE WALL AGREED THAT GRASS WAS THE PRIMARY VEGETATION IN NEARLY 60% OF THE BUFFER AREA. KPB 21.29.050 MANDATES BUFFER/BERM TO BE OF SUFFICIENT **HEIGHT AND DENSITY.**

O. IN THE MINUTES BEFORE THEY VOTED, ONE COMMISSIONER ASKED WHAT A ROLLING BERM WAS. A ROLLING BERM IS NOT REFERENCED OR DEFINED IN KPB 21.29. CLEARLY THERE IS NO DEFINITION FOR WHAT A ROLLING BERM IS, WHEN IT WOULD BE MOVED (ROLLED), WHERE IT WOULD BE MOVED (ROLLED), WHAT OBJECTIVE METHOD WAS USED TO DETERMINE THE BERM HEIGHT, OR WHETHER IT COULD MEET THE STANDARDS OF KPB 21.29.040 IN EACH (OR ANY) OF THE THREE PHASES OF THE APPLICATION.

P. COMMISSIONERS ON SEVERAL OCCASIONS DURING DELIBERATIONS MADE COMMENTS INDICATING LACK OF KNOWLEDGE ON WORDING OF KPB CODE. THEY APPEARED TO JUDGE THE APPLICATION, AND VOTE, WITHOUT WITHOUT A CLEAR UNDERSTANDING OF THE CODE.

Q. DURING DELIBERATIONS THERE WAS CONFUSING OR CONFLICTING LOCATIONS OF MATERIALS IN THE RECORD. STAFF AND COMMISSIONERS APPEARED TO HAVE DIFFERING PAGE REFERENCING WHICH CREATED A SITUATION WHEREBY COMMISSIONERS HAD DIFFICULTY LOCATING EVIDENCE IN THE RECORD, AND VICE VERSA. THIS CONTRIBUTED TO UNINFORMED DECISION MAKING ON THE PART OF THE COMMISSION.

RECEIVED

AUG 08 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula)
Borough Planning Commission's decision)
to approve a conditional land use permit)
for a material site that was requested for)
KPB Parcel 169-010-67; Tract B, McGee)
Tracts – Deed of Record Boundary Survey)
(Plat 80-104) – Deed recorded in Book 4,)
Page 116, Homer Recording District.)

Kenai Peninsula Borough

Hans Bilben)
Appellant)
Emmitt Trimble,)
Beachcomber LLC)
Applicant.)

Case No. 2019-01-PCA

Entry of Appearance Form

Name: Todd Bareman X [Signature]
PRINTED NAME SIGNATURE

Mailing Address: 73300 Tryagain Ave. Anchor Point AK 99556

Email Address: tbareman@gmail.com

I agree to service via email: Yes Initials TB

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): I dont feel there was any clarification or proper wording on a rolling berm. With the elevation issue of the neighboring properties the berms are very important and weren't addressed

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): There is no clause if the trucks destroy the road which so many people rely on. Anchor Point Road cannot handle the truck traffic, DOT has said so.

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Kenai Peninsula Borough

Hans Bilben
Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC
Applicant.

Entry of Appearance Form

Name: Vickey Hodnik x Vickey Hodnik
PRINTED NAME SIGNATURE

Mailing Address: PO Box 1836

Email Address: Vickey @ gci.net

I agree to service via email: Yes Initials UJH

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): Please note attached

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Kenai Peninsula Borough
Entry of Appearance Case # 2019-01-PCA
Borough Clerk
August 6, 2019

Specific Errors found in the Planning Commission's vote of 6/2019 in regard to
Beachcomber LLC request for permit parcel 169-010-67

1. The Planning Commission did not do as directed by the hearing officer, Holly Wells. This did not create "findings of fact" to support their original denial of the permit in 2018.
2. The Planning Commission does not appear to have a clear understanding of the borough codes which pertain to this issue.
3. The Planning Commission was ill informed in regard to berms and buffers and one member of the commission was asking, at the last minute, "what is a moving buffer again?"
4. The actual voluntary conditions do not reflect sufficient visual or sound screening for those who live close to the proposed site.
5. Public health, safety, welfare and well being have not been considered by the Planning Commission nor the Planning Department.
6. Private property rights are being ignored by the borough Planning Commission and the planning department.
7. The Planning department showed absolute bias in regard to this permitting process.
8. Loss of property value and peace and quiet should not be handed away by the Planning department. As citizens, we have a right to those commodities and it appears that no one at the borough is willing to support the common citizens.
9. The planning department, including the attorney, are changing language within the various materials, like the Planning Commission Handbook, to change how things read....in other words, to slant the codes or relevant information in their favor.
10. Our rights, as citizens, were not recognized when we were unable to reply to "new information" added to the Planning Commission meeting of 6/2019. Mr. Trimble's rebuttal was uncontested. His voluntary and imposed conditions should have required public comment.
11. The Planning Department had so much influence over the Planning Commission that it obviously is afraid to make decisions on their own.....in fact, to overlook the findings of the Hearing Officer and not properly respond.

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
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KPB Parcel 169-010-67; Tract B, McGee
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Kenai Peninsula Borough

Hans Bilben
Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC
Applicant.

Entry of Appearance Form

Name G. George Krier x G. George Krier
PRINTED NAME SIGNATURE

Mailing Address: P.O. Box 1165

Email Address: georgesrewards@gmail.com

I agree to service via email: Yes Initials GJK.

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): Note attached

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Kenai Peninsula Borough
Entry of Appearance Case # 2019-01-PCA
Borough Clerk
August 6, 2019

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3. The Planning Commission was ill informed in regard to berms and buffers and one member of the commission was asking, at the last minute, "what is a moving buffer again?"
4. The actual voluntary conditions do not reflect sufficient visual or sound screening for those who live close to the proposed site.
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9. The planning department, including the attorney, are changing language within the various materials, like the Planning Commission Handbook, to change how things read...in other words, to slant the codes or relevant information in their favor.
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KPB Parcel 169-010-67; Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCV-E D

AUG 06 2019

Emmitt Trimble,
Beachcomber LLC

Applicant.

Borough Clerk's Office
Kenai Peninsula Borough

Entry of Appearance Form

Name: Emmitt Trimble

PRINTED NAME

Emmitt D. Trimble

SIGNATURE

Mailing Address: Po Box 193 Anchor Point AK 99556

Email Address: emmitttrimble@gmail.com

I agree to service via email: Yes Initials ET

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-REGAIVED

AUG 06 2019

Emmitt Trimble,
Beachcomber LLC

Applicant.

Borough Clerk's Office
Kenai Peninsula Borough

Entry of Appearance Form

Name: Mary Trimble x Mary E Trimble
PRINTED NAME SIGNATURE

Mailing Address: Po Box 193 Anchor Point AK 99556

Email Address: margetrimble@gmail.com

I agree to service via email: Yes Initials mt

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Page 116, Homer Recording District.)
Hans Bilben)
Appellant)
Emmitt Trimble,)
Beachcomber LLC)
Applicant.)

Kenai Peninsula Borough

Case No. 2019-01-PCA

RECEIVED
AUG 06 2019
Borough Clerk's Office
Kenai Peninsula Borough

Entry of Appearance Form

Name: Lauren Isehour x Jarvin Isehour
PRINTED NAME SIGNATURE

Mailing Address: PO Box 317 Anchor Point AK 99556

Email Address: laurenttrimble@hotmail.com

I agree to service via email: Yes Initials JJ

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Page 116, Homer Recording District.)

Kenai Peninsula Borough

Hans Bilben)
Appellant)

Case No. 2819001 + PCA

Emmitt Trimble,)
Beachcomber LLC)
Applicant.)

AUG 06 2019

Borough Clerk's Office
Kenai Peninsula Borough

Entry of Appearance Form

Name: Allison Paparoa x [Signature]
PRINTED NAME SIGNATURE

Mailing Address: 3020 Upland Way Ferndale, WA 98248

Email Address: allisontrimble_realestate@gmail.com

I agree to service via email: Yes Initials AP

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Kenai Peninsula Borough

Hans Bilben)

Appellant)

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC)

Applicant.)

Entry of Appearance Form

Name: Danica Higl x [Signature]

PRINTED NAME

SIGNATURE

Mailing Address: PO BOX 776 Anchor Point 99556

Email Address: higldanica@yahoo.com

I agree to service via email: Yes Initials DH

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Kenai Peninsula Borough

Kenai Peninsula Borough

Case No. 2019-01-PCA

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Page 116, Homer Recording District.

Hans Bilben

Appellant

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: LAWRENCE "Rick" Oliver x [Signature]

PRINTED NAME

SIGNATURE

Mailing Address: P. O. Box 1444 Anchor Point, AK 99556

Email Address: ROLIVER8747@ME.COM

I agree to service via email: Yes Initials LO

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: HANS AND JEANNE BILBEN x Hans Bilben AND Jeanne Bilben
PRINTED NAME SIGNATURE

Mailing Address: PO BOX 1176 ANCHOR POINT AK 99556

Email Address: CATCHALASKA@ALASKA.NET

I agree to service via email: Yes Initials AKS

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

SEE ATTACHED PAGE

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Additional Designations of Error

1. In Notice of Decision #29 (A. and B.) the applicant volunteered to operate **his** equipment with multi frequency back-up alarms. KPB Planner Bruce Wall after several site visits and multiple conversations with the applicant is well aware that the applicant does not own **any** equipment, and that the the applicant is not an operator. Prior to the 6/24 PC hearing a request was made via email to Planner Wall to divulge this information to the Commission during deliberations, which he declined. A request was also made to reopen public comment concerning voluntary conditions which were clearly not in the best interests of the borough or of surrounding property owners as required by KPB Code—also denied. Misinformed Commissioners unknowingly accepted this Voluntary Condition which led to faulty decision making as the Record will show.

2. Notice of Decision #17 (Q.) is clearly an admission that this application cannot meet the Mandatory Standards of 21.29.040 utilizing the Conditions (Mandatory and Voluntary) as written. The Code in 21.29.050 states that adjacent, and other properties are to be protected with buffer zones of sufficient height and density to provide visual and noise screening of the proposed use. If Conditions do not meet the Standards the Planning Commission is instructed to Deny or Modify, and **not** to Approve an incomplete application. #17 (Q.) denies protections to many neighboring property owners in violation of the Code as written. No where in the Code does it give the applicant the option of protecting only those properties that are at (or nearly at) the same elevation as the proposed use, as #17(Q.) would imply.

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Kenai Peninsula Borough

Kenai Peninsula Borough

Case No. 2019-01-PCA

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Hans Bilben
Appellant

Emmitt Trimble,
Beachcomber LLC
Applicant.

Entry of Appearance Form

Name: GARY SHERIDAN X *Gary Sheridan*
PRINTED NAME SIGNATURE

Mailing Address: PO BOX 661, ANCHOR POINT, ALASKA 99556

Email Address: TWOSHAR@ALASKA.NET

I agree to service via email: Yes Initials (GS)

Name, Address and Signature of your Agent: NONE.

X _____

Additional Designations of Error (attached additional pages if necessary): I plan to submit further testimony in writing & verbally @ Hearing

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): As above.

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Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: Eileen D. Sheridan x Eileen D. Sheridan
PRINTED NAME SIGNATURE

Mailing Address: PO BOX 661 Anchor Point, AK 99556-0661

Email Address: twoshard@acs.alaska.net

I agree to service via email: Yes Initials ERS

Name, Address and Signature of your Agent: None

X _____

Additional Designations of Error (attached additional pages if necessary): I plan on
test: Sying against pt 5 gravel pit.

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Kenai Peninsula Borough

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Page 116, Homer Recording District.)

Kenai Peninsula Borough

Hans Bilben)
Appellant)

Case No. 2019-01-PCA

Emmitt Trimble,)
Beachcomber LLC)
Applicant.)

Entry of Appearance Form

Name: Steve P. Thompson X Steve P. Thompson
PRINTED NAME SIGNATURE

Mailing Address: P.O. Box 310 Anchor Point, AK 99556

Email Address: stevethompson1961@yahoo.com

I agree to service via email: Yes Initials SP

Name, Address and Signature of your Agent: _____
N/A

X _____

Additional Designations of Error (attached additional pages if necessary): I do not agree with the planning commission's decision to allow the gravel pit. There (as specified) won't be sufficient berms built to cause the sight/noise of this pit in close proximity to our homes.

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

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Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: Philip J. Brna X Philip J. Brna
PRINTED NAME SIGNATURE

Mailing Address: 5601 E. 98th Ave, Anchorage, AK 99507

Email Address: fishyeak@gmail.com

I agree to service via email: Yes Initials (B)

Name, Address and Signature of your Agent: NONE

X _____

Additional Designations of Error (attached additional pages if necessary): Reverse

None. I agree with the appeal by Hans Bilben.

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): Reverse the planning commission decision and deny the permit. The decision does not protect my property rights or ~~my~~ the use and enjoyment of my property.

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019.**

Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternate forms of service.

RECEIVED

AUG 02 2019

Borough Clerk's Office
Kenai Peninsula Borough

Kenai Peninsula Borough

Case No. 2019-01-PCA

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts - Deed of Record Boundary Survey
(Plat 80-104) - Deed recorded in Book 4,
Page 116, Homer Recording District.

Hans Bilben

Appellant

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: LINDA AND Mike Patrick *Linda Patrick / Mike Patrick*
PRINTED NAME SIGNATURE

Mailing Address: PO Box 335 Anchor Point, AK 99556

Email Address: MLPATRICK335@YAHOO.COM

I agree to service via email: Yes Initials _____

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (c
additional pages if necessary): _____

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019.**
Service shall be made by the Borough Clerk either by mail or personal delivery within two bu
of the filing deadline. Service by email or facsimile is permitted when the party to be
affirmed in writing the acceptance of alternate forms of service.

RECEIVED

AUG 02 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
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KPB Parcel 169-010-67; Tract B, McGee
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Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: James Gorman x James Gorman
PRINTED NAME SIGNATURE

Mailing Address: P.O. Box 1239 Anchor Point, AK 99506

Email Address: Captainbeachcomber52@gmail.com

I agree to service via email: Yes Initials JG

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019.**
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AUG 02 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts – Deed of Record Boundary Survey
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Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: MARIE J CARLTON x *Marie J. Carlton*
PRINTED NAME SIGNATURE

Mailing Address: P.O. BOX 29 ANCHOR POINT, AK 99556

Email Address: seaburyroad@live.com

I agree to service via email: Yes Initials MJC

Name, Address and Signature of your Agent: *Erhart, Elsner & Cosley, / Hans Bilben*

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019**.
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In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts – Deed of Record Boundary Survey
(Plat 80-104) – Deed recorded in Book 4,
Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: RICHARD D. CARLTON

PRINTED NAME

x Richard D Carlton

SIGNATURE

Mailing Address: P.O. BOX 29 ANCHOR POINT, AK 99556

Email Address: noregretsrm@live.com

I agree to service via email: Yes Initials RDC

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019.**

Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternate forms of service.

RECEIVED

AUG 02 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts – Deed of Record Boundary Survey
(Plat 80-104) – Deed recorded in Book 4,
Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: Gina DeBardelaben X Gina DeBardelaben
PRINTED NAME SIGNATURE

Mailing Address: McLane Consulting Inc. PO Box 468 SOLDOTNA AK 99669

Email Address: ginadebar@mclanecg.com

I agree to service via email: Yes Initials GMD

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019**.
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of the filing deadline. Service by email or facsimile is permitted when the party to be served has
affirmed in writing the acceptance of alternate forms of service.

AUG 02 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula Borough
Planning Commission's Decision to Approve a
Conditional Land Use Permit for a Material Site
that was Requested for
KPB Parcel 169-010-67; Tract B, McGee Tracts -
Deed of Record Boundary Survey (Plat 80-104) -
Deed Recorded in Book 4, Pg. 116, Homer
Recording District.

Kenai Peninsula Borough
Office of the Borough Clerk

Hans Bilben,

Appellant,

Emmitt Trimble,
Beachcomber, L.L.C.,

Applicant.

Case No. 2019-01 - PCA

Entry of Appearance Form

Name: KENAI PENINSULA BOROUGH
PRINTED NAME

X *SK*
Sean Kelley, Deputy Borough Attorney

X *Max Best*
Max Best, Planning Director

Mailing Address: 144 N. Binkley Street - Soldotna, AK 99669

Email Address: legal@kpb.us

I agree to service via email: (Sean) Yes No Initials SK (Max) Yes No Initials MB

Email Address: SKelley@KPB.us; legal@KPB.us

Email Address: mbest@KPB.us

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019.**

Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternate forms of service.

RECEIVED

AUG 01 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts – Deed of Record Boundary Survey
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Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: JOHN GIRTON x John Gorton

PRINTED NAME

SIGNATURE

Mailing Address: P.O. Box 869 ANCHOR POINT, AK 99556

Email Address: JOHNGIRTON@AOL.COM

I agree to service via email: Yes Initials JS

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019.**

Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternate forms of service.

Postmarked
8-8-19 (13)
RECEIVED

AUG 12 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts - Deed of Record Boundary Survey
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Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben
Appellant

Emmitt Trimble,
Beachcomber LLC
Applicant.

Case No. 2019-01-PCA

Entry of Appearance Form

Name: Joshua and Christina Elmaleh x *Christy Elmaleh*

PRINTED NAME

SIGNATURE

Mailing Address: PO Box 542 Anchor Point, AK 99556

Email Address: christycupp5@hotmail.com + jewish8josh@gmail.com

I agree to service via email: Yes Initials CE

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019**.
Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternate forms of service.

pastmarked on
8/7/19 (13)
RECEIVED

AUG 12 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts – Deed of Record Boundary Survey
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Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben
Appellant

Emmitt Trimble,
Beachcomber LLC
Applicant.

Case No. 2019-01-PCA

Entry of Appearance Form

Name: Donald L. Horton x *Donald L. Horton*
Lori PRINTED NAME L. Horton SIGNATURE *Donald L. Horton*

Mailing Address: 221 Ellen Circle Anchorage, AK 99515

Email Address: hortonsl6@gmail.com

I agree to service via email: Yes Initials DLH

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): see attached letter

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019**.
Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternate forms of service.

8/6/19

My wife and I strongly feel the Planning Commission should reverse their decision on this gravel pit, for all the same reasons you denied it the first time. Berms & Buffers will not stop the noise, dust & visual impact of this pit to our neighborhood. There are hundreds of reasons why we did not buy property next to a gravel pit. How many gravel pits does the Kenai Peninsula need? To develop one in the middle of a Residential/Recreational area is not only unfair to everyone who owns property there, and to everyone who visits the Anchor River Recreational area.

There is only 1 Anchor River
Recreational Area. Why
would you allow this to
proceed ??? If this was
in your back yard I doubt
it would!

Thank you,
Don & Lani
~~Harter~~



Office of the Borough Clerk

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

Johni Blankenship, MMC
Borough Clerk

August 14, 2019

SUPPLEMENTAL Notice of Entries of Appearance filed in Case No. 2019-01-PCA: In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District. *[Enclosed please find a copy of the entries of appearance.]*

The following party filed a late entry of appearance in the afore mentioned case:

- Angela Roland

The reason given for filing late is reasonable and therefore the late entry is accepted.

This notice is being sent to you because our records indicate you filed an entry of appearance and continue to be a party of record in the subject Planning Commission decision appeal.

Johni Blankenship, MMC
Borough Clerk
jblankenship@kpb.us

CERTIFICATE OF SERVICE

I, Johni Blankenship, Clerk of the Kenai Peninsula Borough, do hereby certify that, I served the foregoing notice and copies of Entries of Appearance filed.

X 
Signature

Dated this 12th day of August, 2019.

<p>Appellant Hans and Jeanne Bilben catchalaska@alaska.net</p> <p>Agent Katherine Elsner Ehrhardt, Elsner & Cooley katie@907legal.com</p>	<p>Applicant Emmitt & Mary Trimble dba Beachcomber LLC emmitttrimble@gmail.com margetrimble@gmail.com</p> <p>Agent Holmes Weddle & Barcott, P. C. Stacey Stone: sstone@hwb-law.com Chantal Trinkka: ctrinka@hwb-law.com snichols@hwb-law.com</p>	<p>Allison Trimble Paparoa allisontrimblerealestate@gmail .com</p>	<p>Sean Kelley, Deputy Attorney Max Best, Planner Kenai Peninsula Borough skelley@kpb.us legal@kpb.us mbest@kpb.us</p>
---	--	--	--

Page -2-
 August 12, 2019
 To: Parties of Record
 Re: Case No. 2019-01-PCA

Brna Philip J fisheyeak@gmail.com	Carlton Richard D & Marie seaburyroad@live.com noregretsm@live.com	Cullip Gary L buffycody@msn.com	Danica High highdanica@yahoo.com
G. George Krier geogerewards@gmail.com	Gina M. Debardelaben ginadebar@mclanecg.com	Girton John johnrgirton@aol.com	Gorman James captainboomer525@hotmail.com
Gregory David & Teresa Ann Jacobson davidgregory0754@gmail.com	Isehour Lauren laurentrimble@hotmail.com	Linda R Bruce lrb128@hotmail.com	Linda Stevens illuminataarts@aol.com grizzlysafety@aol.com
Oliver Lawrence "Rick" roliverb747@me.com	Patrick Mike & Linda mlpatrick335@yahoo.com	Pete Kinneen storagecondominiumsofalaska@gmail.com	Sheridan Gary Sheridan Eileen twoshar@acsalaska.net
Shirley Gruber shirleytdx@yahoo.com	Sparkman Joseph J jay1332@att.net	Steve Thompson stevehthompson1961@yahoo.com	Thomas J Brook tbrook@ak.net
Todd Bareman tbareman@gmail.com	Vickey Hodnik vickey@gci.net	Whitmore Lynn lkwhitmore@acsalaska.net	Joshua Elmaleh jewish8josh@gmail.com Christing Elmaleh christycupp5@hotmail.com
Xochitl Lopez-Ayala PO Box 2552 Homer, Ak 99603	Brantley Michael PO Box 950 Anchor Point, Ak 99556	Donald L. & Lori L. Horton hortons6@gmail.com	Angela Roland angelaroland@gmail.com

RECEIVED

AUG 13 2019

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional land use permit
for a material site that was requested for
KPB Parcel 169-010-67; Tract B, McGee
Tracts - Deed of Record Boundary Survey
(Plat 80-104) - Deed recorded in Book 4,
Page 116, Homer Recording District.

Kenai Peninsula Borough

Hans Bilben

Appellant

Case No. 2019-01-PCA

Emmitt Trimble,
Beachcomber LLC

Applicant.

Entry of Appearance Form

Name: Angela Roland x Angela Roland
PRINTED NAME SIGNATURE

Mailing Address: 4014 Ben Walters #6, Homer, AK 99603

Email Address: angela.roland@gmail.com

I agree to service via email: Yes Initials R

Name, Address and Signature of your Agent: _____

X _____

Additional Designations of Error (attached additional pages if necessary): _____

Alternative Requests for Modification or Reversal of Planning Commission Decision (attach additional pages if necessary): _____

This Form Must Be Received by the Borough Clerk on or before **FRIDAY, AUGUST 9, 2019.**

Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternate forms of service.



Office of the Borough Clerk

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2160 • (907) 714-2388

Johni Blankenship, MMC
Borough Clerk

In the matter of the Kenai Peninsula)
Borough Planning Commission's)
decision to approve a conditional land)
use permit for a material site that was)
requested for KPB Parcel 169-010-67;)
Tract B, McGee Tracts – Deed of)
Record Boundary Survey (Plat 80-104) –)
Deed recorded in Book 4, Page 116,)
Homer Recording District.)

Hans Bilben)

Appellant)

Emmitt Trimble,)
Beachcomber LLC)

Applicant.)

Kenai Peninsula
Borough

Case No. 2019-01-PCA

NOTICE OF CERTIFICATION OF THE RECORD AND NOTICE OF HEARING OFFICER AND HEARING DATE

Please be advised that a hearing will convene on **Wednesday, October 30, 2019 at 10:00 a.m. in the Borough Assembly Chambers.** Anmei Goldsmith has been assigned as the hearing officer to hear this appeal.

Written opening statements ("opening statements") shall be filed no later than **5 p.m. on Tuesday, October 1, 2019** in the Office of the Borough Clerk and in accordance with KPB 21.20.280(A). An opening statement **must** be filed by the appellants (Hans Bilben), applicant (Beachcomber, LLC) and Borough staff. **Failure to timely file an opening statement shall result in your dismissal as a party to this appeal.** Multiple parties may preserve their party status by filing a single written statement; however, the written statement must clearly identify all parties filing the single statement. An opening statement may contain the following: 1) a statement of facts as derived from the record on appeal; 2) a statement of the party's perception of the correctness of the planning commission decision; 3) a list of asserted errors; and 4) any citations to applicable statutes, ordinances, regulations or other legal authority for the position taken by the party to the appeal. Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline.

Each party filing an opening statement **may** submit a reply statement which must be limited to response to matters specifically raised in the statement to which the party is responding. A party shall file a single reply statement in response to all opening statements filed. Reply statements must be filed in the Office of the Borough Clerk no later than **5:00 p.m. on Monday, October 21, 2019** and in accordance with KPB 21.20.280(B). Service shall be made by the Borough Clerk either by mail or personal delivery within two business days of the filing deadline.

The indexed record and minutes on appeal, as certified by the planning director, were mailed to the appellants and applicant by the Borough Clerk on September 11, 2019. Any party may request a copy of the record at a cost of .25 cents per page. The total cost of the record is \$190.27 (\$179.50 plus 6% sales tax).

Any party may request an extension of time for filing an opening statement or reply statement before the deadline, which the Hearing Officer may grant, for good cause shown.

CERTIFICATE OF SERVICE

I, John Blankenship, Clerk of the Kenai Peninsula Borough, do hereby certify that, I served the foregoing notice.

X 
Signature

Dated this 11th day of September, 2019.

<p>Appellant Hans and Jeanne Bilben catchalaska@alaska.net</p> <p>Agent Katherine Elsner Ehrhardt, Elsner & Cooley katie@907legal.com</p>	<p>Applicant Emmitt & Mary Trimble dba Beachcomber LLC emmitttrimble@gmail.com margetrimble@gmail.com</p> <p>Agent Holmes Weddle & Barcott, P. C. Stacey Stone: sstone@hwb-law.com Chantal Trink: ctrinka@hwb-law.com snichols@hwb-law.com</p>	<p>Allison Trimble Paparoa allisontrimblerealestate@gmail.com</p>	<p>Sean Kelley, Deputy Attorney Max Best, Planner Kenai Peninsula Borough skelley@kpb.us legal@kpb.us mbest@kpb.us</p>
<p>Brna Philip J fisheyak@gmail.com</p>	<p>Carlton Richard D & Marie seaburyroad@live.com noregretsm@live.com</p>	<p>Cullip Gary L buffycody@msn.com</p>	<p>Danica High highdanica@yahoo.com</p>
<p>G. George Krier georgerewards@gmail.com</p>	<p>Gina M. Debardeleben ginadebar@mclanecg.com</p>	<p>Girton John johnrgirton@aol.com</p>	<p>Gorman James captainboomer525@hotmail.com</p>
<p>Gregory David & Teresa Ann Jacobson davidgregory0754@gmail.com</p>	<p>Isenhour Lauren laurenttrimble@hotmail.com</p>	<p>Linda R Bruce lrb128@hotmail.com</p>	<p>Linda Stevens illuminaartaarts@aol.com grizzlysafety@aol.com</p>
<p>Oliver Lawrence "Rick" roliverb747@me.com</p>	<p>Patrick Mike & Linda mlpatrick335@yahoo.com</p>	<p>Pete Kinneen storagecondominiumsofalaska@gmail.com</p>	<p>Sheridan Gary Sheridan Eileen twoshar@acsalaska.net</p>
<p>Shirley Gruber shirleytdx@yahoo.com</p>	<p>Sparkman Joseph J jay1332@att.net</p>	<p>Steve Thompson stevethompson1961@yahoo.com</p>	<p>Thomas J Brook tbrook@ak.net</p>
<p>Todd Bareman tbareman@gmail.com</p>	<p>Vickey Hodnik vickey@gci.net</p>	<p>Whitmore Lynn lkwhitmore@acsalaska.net</p>	<p>Joshua Elmaleh jewish8josh@gmail.com Christing Elmaleh christycupp5@hotmail.com</p>
<p>Xochitl Lopez-Ayala PO Box 2552 Homer, Ak 99603</p>	<p>Brantley Michael PO Box 950 Anchor Point, Ak 99556</p>	<p>Donald L. & Lori L. Horton hortons6@gmail.com</p>	



Office of the Borough Clerk

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

Johni Blankenship, MMC
Borough Clerk

October 3, 2019

Notice of Opening Statements filed in Case No. 2019-01-PCA: In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District. *[Enclosed please find a copy of the opening statements filed.]*

The following parties filed opening statements in the afore mentioned case:

- Pete Kinneen
- Appellant Hans Bilben by and through counsel, Katherine Elsner
- Kenai Peninsula Borough
- Gina DeBardelaben
- Applicant Emmitt Trimble and Beachcomber LLC by and through counsel of record, Holmes Weddle & Barcott, P.C.
- Emmitt and Mary Trimble
- Lauren Isenhour
- Allison Trimble

This notice is being sent to you because our records indicate you are a party of record in the subject Planning Commission decision appeal.

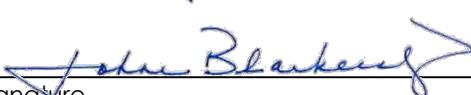
Johni Blankenship, MMC
Borough Clerk
jblankenship@kpb.us

Enclosed

Page -2-
 October 3, 2019
 To: Parties of Record
 Re: Case No. 2019-01-PCA

CERTIFICATE OF SERVICE

I, John Blankenship, Clerk of the Kenai Peninsula Borough, do hereby certify that, I served the foregoing notice and copies of Opening Statements filed.

X 
 Signature

Dated this 3rd day of October, 2019.

Appellant Hans and Jeanne Bilben catchalaska@alaska.net Agent Katherine Elsner Ehrhardt, Elsner & Cooley katie@907legal.com	Applicant Emmitt & Mary Trimble dba Beachcomber LLC emmitttrimble@gmail.com margetrimble@gmail.com Agent Holmes Weddle & Barcott, P. C. Stacey Stone: sstone@hwb-law.com Chantal Trinko: ctrinko@hwb-law.com snichols@hwb-law.com	Allison Trimble Paparao allisontrimblerealestate@gmail.com	Sean Kelley, Deputy Attorney Max Best, Planner Kenai Peninsula Borough skelley@kpb.us legal@kpb.us mbest@kpb.us
Brna Philip J fisheyeak@gmail.com	Carlton Richard D & Marie seaburyroad@live.com noregretsm@live.com	Cullip Gary L buffycody@msn.com	Danica High highdanica@yahoo.com
G. George Krier geogrewards@gmail.com	Gina M. Debardeleben ginadebar@mclanecg.com	Girton John johngirton@aol.com	Gorman James captainboomer525@hotmail.com
Gregory David & Teresa Ann Jacobson davidgregory0754@gmail.com	Isenhour Lauren laurentrimble@hotmail.com	Linda R Bruce lrb128@hotmail.com	Linda Stevens illuminataarts@aol.com grizzlysafety@aol.com
Oliver Lawrence "Rick" roliverb747@me.com	Patrick Mike & Linda mlpatrick335@yahoo.com	Pete Kinneen storagecondominiumsofalaska@gmail.com	Sheridan Gary Sheridan Eileen twoshar@acsalaska.net
Shirley Gruber shirleytdx@yahoo.com	Sparkman Joseph J jay1332@att.net	Steve Thompson stevethompson1961@yahoo.com	Thomas J Brook tbrook@ak.net
Todd Bareman tbareman@gmail.com	Vickey Hodnik vickey@gci.net	Whitmore Lynn lkwhitmore@acsalaska.net	Joshua Elmaleh jewish8josh@gmail.com Christing Elmaleh christycupp5@hotmail.com
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Blankenship, Johni

From: Pete Kinneen <biocharalaska@gmail.com>
Sent: Tuesday, October 01, 2019 4:23 PM
To: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Opening Statement

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.

Opening Statement in CASE NO. 2019-01-PCA

Comes now party Pete Kinneen to file his opening statement.

Elements 1,11,111,1V, and V of the Bilben opening statement filed this 1st day of October, 2019 are hereby concurred with and augmented with the following.

- 1) KPB is guilty of repetitious prosecutorial misconduct.
- 2) Both applicant and KPB agree that instant application fails to meet standards of relevant ordinance. Without attaining the standards, the default position of the ordinance calls for DENIAL.

1-In this quasi-judicial proceeding the KPB is acting in the role of prosecutor, and as such, has rung up a terrible record of forcing decisions to meet their desired outcome which is to grant every application a permit whether it meets the standards necessary, or whether it fails completely, as it does in instant case.

For reasons which remain obscure the KPB administration has consistently steered the lay persons Planning Commission toward granting the application to extract gravel from anywhere at anytime. Whether it meets the standards or whether it does not. The prima facie evidence of this misconduct is the KPB record of public hearings in 97 cases heard before the Planning Commission. Of these hearings some were denied by the Commission even after being told, by the Borough, that they did not have authority to deny. (See Bilben Opening Statement.) In the cases of the Commission voting against instructions of KPB staff the administration opposed the commission and caused the permit to be granted regardless of whether it met standards or not. The current case falls into the category of not meeting the standards, being denied, and followed by KPB arm twisting the Planning Commission into changing their decision.

The sordid record stands at 97-0 in favor of granting applications even when they totally fail to meet conditions of the relevant ordinance. Is 97-0 of contested applications not prima facie evidence of misconduct?

Among issues of misconduct by KPB staff, again as witnessed in Bilben statement, are the conditioning of the laypeople Commissioners to believe that the default position of the ordinance is to Grant when the clear default position is to DENY.

KPB has also falsely mesmerized the Commissioners into believing that land owners with gravel on their land, in excess of one acre, have an as of Right to extract said gravel and that such imaginary Right exceeds the existing neighbors real right to peaceful enjoyment of their lands and homes.

In reality the KPB Assembly deliberated and on August 1, 2006 they codified the extinguishment of those as of rights. This is found at KPB Ord. No. 2006-01(S), Sec 1, 8-1-06.

They were replaced with the lower Privilege of applying for a conditional license, or permit, as found in KPB 21.29.020

Privilege is obviously of lower authority than as of right, as KPB understands, but they have continued to mesmerize the Commissioners into somehow believing the privilege to extract gravel trumps the as of right to protect existing neighbors as codified in relevant ordinance. 97-0

21.29.040 states the INTENT which is to protect neighbors against the negative impacts of gravel mining. It is not intended to protect gravel miners from existing neighbors. The burden of proof falls on gravel extractions, contrary to admonishment Of KPB perverting the ordinance to say the opposite.

Perhaps as a result of this atrocious case in Anchor Point the Planning Commission has awoken to the misconduct of KPB and have openly revolted. They are now demanding clarification of their rights to judge the merits of individual cases on their merits based on ordinance versus instructions of KPB staff. (Again see examples of this in Bilben, et al)

The lower court judges (Planning Commission) whose decision is being appealed here have voluntarily and subsequently admitted in publicly recorded admissions that they have been duped and misled into making decisions based on false understanding of the relevant law. (See Bilben) What stronger basis for repeal and remand could you ask for?

2-KPB Bruce Wall and Beachcomber engineer discuss the falsity of a six foot berm sufficiently minimizing the Yale home on the south end of the proposed open pit mine due to topography. They acknowledge that Yale is at ground zero while virtually all other properties are at higher elevations. If Yale can not be sufficiently minimized, how then is it possible to meet code on any of the higher elevations? See R-19, R-195, R-196
T-2 line 29 of page 3 and line 25.

Conclusion-for all the reasons stated in Bilben, and here, Justice calls for remand to Planning Commission to deliberate in consideration of their independent judgement based on relevant ordinance, not as instructed by KPB.

Submitted this 1st of October, 2019 by
Pete Kinneen

Sent from my iPhone

RECEIVED

OCT 01 2019

Borough Clerk's Office
Kenai Peninsula Borough

KENAI PENINSULA BOROUGH

In the matter of the Kenai Peninsula)
Borough Planning Commission's)
decision to approve a conditional land)
use permit for a material site that was)
requested for KPB Parcel 169-010-67;)
Trace B, McGee Tracts - Deed or)
Record Boundary Survey (Plat 80-104) -)
Deed Recorded in Book 4, Page 116,)
Homer Recording District)

CASE NO. 2019-01-PCA

Hans Bilben)
Appellant)
Emmitt and Mary Trimble)
Beachcomber LLC,)
Applicant.)

OPENING STATEMENT

Comes Now Hans Bilben, by and through counsel, Katherine Elsner, and joined in filing – pursuant to KPB Code 21.20.280(A) – by Philip Brna, George Krier, David Gregory, Theresa Ann Jacobson, Rick Oliver, Shirley Gruber, Todd Bareman, Xochitl Lopez-Ayala, Richard and Marie Carlton, Mike and Linda Patrick, Joseph Sparkman, Vickey Hodnik, Michael Brantley, Gary Cullip, John Girton, Linda R. Bruce, Steve Thompson, Lynn Whitmore, Donald and Lori Horton, James Gorman, Linda Stevens, Gary and Eileen Sheridan, Thomas J. Brook, and Joshua and Christine Elmaleh, hereby files his opening statement.

The question presented in this appeal is whether to uphold the decision of the Planning Commission when it, having been misadvised as to the legal code, having received no compelling new evidence, having committed procedural error, having failed to make necessary findings, and having insufficient facts to support the findings that were made, determined to approve a

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Conditional Land Use Permit sought for KPB Parcel 169-010-67 that it had disapproved a mere year earlier. The 2018 decision of the Planning Commission remains correct, the 2019 decision was incorrect and the Hearing Officer should exercise independent judgment in determining the interpretation of the Code is in error and should determine that there is not substantial evidence to support the findings of the Planning Commission, and, accordingly, find that the decision must be reversed.

I. Statement of Relevant Facts.

On June 4, 2018, Beachcomber LLC applied for a Conditional Land Use Permit (CLUP) under KPB Code 21.29.020 for Parcel 169-010-67. After investigation by the Planning Department, submission of Department recommendations, public notice and public comment from approximately 30 people at a hearing on July 16, 2018, the Planning Commission disapproved Beachcomber's CLUP application. The public comment and evidence submitted established that Parcel 169-010-67 sits in a depressed basin surrounded from above by the neighboring properties. In the shape of an amphitheater, the proposed extraction site is in the bottom, or the bowl, and the surrounding properties are in an elevated position looking down at the location of the proposed site. In disapproving the permit, the Commission made two findings:

1. noise will not be sufficiently reduced with any buffer or berm that could be added;
2. visual impact to the neighboring properties will not be reduced sufficiently.

Beachcomber LLC appealed this decision. KPB staff and its legal department argued that the Planning Commission did not have authority to disapprove a CLUP. The Hearing Officer apparently agreed and remanded the matter for further proceedings and findings of fact in early 2019.

Notice was again posted, and public comments and evidence were again presented. Various hearings were held on March 25, 2019, April 8, 2019, April 22, 2019, June 10, 2019, and June 24, 2019. The underlying factual circumstances surrounding the geographic situs of the proposed extraction site remained unchanged. The elevated position of surrounding property owners remained unchanged. The visual and aural impact of the proposed site remained unchanged. KPB staff and its legal department maintained its legal position that the Commission lacked authority to disallow a CLUP application and advised the Commissioners of the same. At the conclusion of deliberations, unfocused on how the current application and evidence presented in any way differed from the prior evidence that lead them to conclude that visual and aural impact were not minimized by the application, the Commission nevertheless approved Beachcomber's CLUP application. This appeal follows.

II. Statement of Relevant Law Governing the Appeal.

KPB Code 21.20.320 defines the scope of permissible appellate review of the decision of the Planning Commission:

After the hearing the hearing officer shall apply the following rules to its decision:

1. The hearing officer may exercise independent judgment on matters that relate to the interpretation or construction of ordinances or other provisions of law; however, due consideration shall be given to the expertise and experience of the planning commission in its interpretations of KPB titles 20 and 21.
2. The hearing officer shall defer to the judgment of the planning commission regarding findings of fact if they are supported in the record by substantial evidence.
3. The hearing officer may revise and supplement the planning commission's findings of fact. Where the hearing officer decides that a finding of fact made by the planning commission is not supported by substantial evidence, the hearing officer may make a different finding on the factual issue, based upon the evidence in the record developed before the planning commission if it concludes a different finding was supported by substantial evidence, or may remand the matter to the planning commission as provided in KPB 21.20.330(B).

“Substantial evidence” is defined by KPB Code 21.20.210(A)(7) as “relevant evidence a reasonable mind might accept as adequate to support a conclusion.”

Accordingly, the questions presented are: whether KPB Code provisions relating to approval or disapproval of CLUP applications were properly interpreted such that it is correct that the Commission has no authority to disapprove a permit application; whether the Code requires independent consideration of the statutory standards set forth in 21.29.040; whether there were sufficient findings to justify the approval of the CLUP; and whether there was substantial evidence to support those findings. Because, despite KPB’s position, the Commission plainly has the authority to disapprove a CLUP application, because, despite KPB’s position, the Commission must consider the statutory standards set forth in 21.29.040, because there were insufficient findings to justify the approval and because there was not substantial evidence to support the findings that were made, the decision approving the CLUP must be reversed on both procedural and substantive grounds.

III. Argument Relating to Procedural Error.

1. Planning Commission Members Prejudging the Application Outcome Should Have Been Disqualified.

KPB Code provision 21.20.240 governs times at which a hearing officer may not hear or decide a case. 21.20.240(2) disqualifies a Commission Member where it is demonstrated that, “due to factors external to the case, the ability of the hearing officer to make an impartial decision is actually impaired.” Moreover, the Planning Commission Manual created and provided by KPB Staff to advise the individual members on policy and procedure states that:

Bias is prejudging a matter. There is not a borough ordinance prohibiting bias. However, quasi-judicial decisions resulting from prejudice, arbitrary decision making, or improper motives may be invalidated under case law.... The bias test is whether a commissioner has actually made up his mind regardless of any argument

that might have been advanced at the hearing. Indicators of prejudice include a commissioner making a clear statement suggesting that a decision has already been reached. The test is objective and queries whether a disinterested observer would conclude that the commissioner has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.¹

On January 4, 2019, Commissioner Ruffner was interviewed relating to the process of proposing amendments to the KPB Code relating to CLUP applications for material site extraction. Discussed in that interview was the instant application and the current law and procedure for CLUP applications for material site extraction. Commissioner Ruffner was quoted saying:

When an applicant comes in and applies to develop a gravel permit, there's a notification that goes to the surrounding landowners and often times those surrounding landowners will come to the borough with the expectation that if they really rally the troops, that the planning commission may say no to a permit. And I don't think that the borough has done a particularly good job of letting people know when those notices come out, that the planning commission doesn't have the authority to say no. [R. 595]

Commissioner Ruffner's comments clearly indicated that, no matter the facts or arguments presented at the hearing, when a notice has been sent out by the Borough for a material site CLUP hearing, the ultimate decision, in his view, is predetermined. His recusal was sought on this basis and it should have been granted. [R. 594]. Instead, he was permitted to deliberate on this application and voted in its favor. [T. 200].

2. The Planning Commission Improperly Disallowed Public Comments After Additional Testimony was Presented by the Applicant and Additional Voluntary Conditions were Proposed.

At the June 24, 2019 hearing, Borough Staff invited the Applicant to provide additional testimony in support of his application. [T. 192] Through that commentary, the Applicant addressed evidence previously presented² even though he had already taken the opportunity to

¹ Planning Commission Manual at 16-17.

² Mr. Trimble: "I had some rebuttal regarding the presentation that was drawn out over a two-hour period with the – one of the opponents sitting over here with the computer... We've previously rebutted those [drawings and those assertions with the letter from a licensed land surveyor.]" [T. 192]

rebut evidence at the prior hearing at that prior hearing;³ proposed new voluntary conditions that had never previously been discussed;⁴ responded to new evidence that had not previously been presented;⁵ proposed a voluntary condition on back-up alarms after which Staff failed to clarify and the public was not allowed to comment on the ineffectiveness of such a voluntary condition;⁶ and testified relating to an issue that had never before been raised - the lack of aural impact from the use of “jake brakes.”⁷

The public attempted to provide additional comment relating to this additional testimony and proffered voluntary conditions but was prohibited from doing so. [T. 194]. The Planning Commission Manual dictates the hearing procedures to be followed in order to allow a “fair” quasi-judicial hearing and states that at the time the Applicant presents its rebuttal to the Planning Commission during the hearing, “If new evidence or testimony is allowed, the Planning Commission may question staff regarding the same and take additional public comment regarding the new evidence.”⁸ This allowance for additional public commentary would have been

³ Mr. Wall: “the procedures allow for the applicant to give a rebuttal as long as he is not providing any new information, just rebutting the testimony that’s been given.”
 Ms. Stone: “As a matter of procedure, I apologize because I was not making a further public comment but rather rebutting testimony offered.” [T. 150]

⁴ Mr. Trimble agreed to not operate on Labor Day, Memorial Day, and the 4th of July to address concerns raised in a new and not previously provided letter to the Borough by the Alaska Division of Parks and Recreation and on which the public had no opportunity to comment. [T. 192]

⁵ See, e.g., id.

⁶ [R. 594]; Mr. Trimble: “And the – to clarify, Mr. Wall had a question regarding the back-up beepers, and he was clarifying with me that I said I was in agreement with that on my equipment. I can’t govern what happens with a truck that’s maybe one time going to come in there, but I would certainly try to accomplish that.” [T. 193]

⁷ [T. 193-194].

⁸ Planning Commission Manual, at page 22.

particularly important where, in this instance, additional conditions were proposed and discussed. Pursuant to 21.29.050(14) there must be a finding that the “conditions will be in the best interest of the borough and the surrounding property owners.” Accordingly, the Commissioners made determinations as to what was in best interests of the surrounding property owners without giving them the opportunity to be heard on that subject.

The disallowance of additional public commentary was not brought to a vote by members of the Planning Commission and, considering the nature of Mr. Trimble’s comments and the subsequent discussion, the failure to allow further comment created an unfair proceeding.

IV. Argument Relating to Substantive Error.

1. The Planning Commission Can Disallow a Permit.

Chapter 21.25 of the KPB Code provides general regulation of all CLUPs and Chapter 21.29 provides more specific regulations relating to material site permits. Pursuant to Chapter 21.25.010:

Chapter 21.25 applies to all land within the rural district of the Kenai Peninsula Borough, as designated in KPB 21.04.010. This chapter sets forth general provisions applicable to all conditional land use permits (CLUPs) and definitions. The provisions in this chapter are in addition to the chapters set forth in title 21 addressing specific types of CLUPs and where the provisions in this chapter and a CLUP chapter regulating a specific use conflict, the more specific chapter shall control. (emphasis added).

That is, the regulations and requirements in chapter 21.25 are equally controlling across all CLUPs unless and until a specific conflict arises between a provision in 21.25 and a more specific chapter.

Pursuant to the general governance contained in chapter 21.25, KPB Code 21.25.050 sets forth the authority of the Planning Commission in considering CLUPs. 21.25.050(B) both authorizes and mandates the exercise of Planning Commission authority:

When the application is scheduled to be considered, the planning commission shall conduct a public hearing to consider the permit application, and shall either

approve, modify or disapprove the permit application. Those wishing to contest issuance of the permit may submit evidence and be heard at the hearing. Before granting the permit, the commission must find at a minimum that the proposed activity complies with the requirements of this chapter. Planning commission approval of these conditional land use permits shall be by resolution. Permits shall be conditioned upon compliance with this chapter and other applicable code provisions. (emphasis added).

KPB Code 21.25.020 sets forth the purpose of the CLUP chapter: “to require advance notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights.” For that reason, and employing the same language,⁹ KPB Code 21.29.040 sets forth the specific standards that apply to CLUPs for material sites. Indeed, pursuant to KPB Code 21.20.040, while only the conditions authorized in 21.20.050 may be imposed by the Commission, those conditions are imposed in order to “meet” the standards set forth in 21.20.040.

At the time that the 2018 disallowance was remanded to the Commission for further findings and hearing, KPB Staff provided an updated report to the Commission Members. Contained within that Staff report were excerpts from the Hearing Officer’s Decision. Included in those excerpts was a clear message to the Commission Members that they expressly lacked the authority to disallow a permit. [R. 253]. The Commission Members were expressly directed by Staff through the Hearing Officer Decision that the “Code does not provide the Commission discretion to deny such a permit when the application has been properly submitted... While the Commission’s concerns may be valid, the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code. Instead, the Assembly, in adopting the

⁹ See, e.g., KPB Code 1.08.040(T), which requires that, in construing the provisions of the code, “technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.”

Code, only granted the Commission authority to impose these conditions and ensure that any application complied with the application requirements.”¹⁰

To read the KPB Code in a way to conclude that the Commission does not have the authority to disallow an application that the Planning Director has determined is complete is erroneous and necessarily renders the standards set forth in KPB 21.29.040 obsolete. The presumption of statutory interpretation is “that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous.”¹¹ Any other statutory interpretation renders the fundamental underlying intent and purpose of the 21.29.040 standards meaningless because it would require granting a permit under ineffectual conditions even where it cannot be said that the standards are met. *See, e.g., Mech. Contractors of Alaska, Inc. v. State, Dep’t of Pub. Safety*, 91 P.3d 240, 248 (Alaska 2004) (“When we engage in statutory construction we will presume “that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous.”) and *National R.R. Passenger Corp. v. Boston & Me. Corp.*, 503 U.S. 407, 418 (1992) (“a reviewing court need not accept an interpretation which is unreasonable”).

The KPB Code simply does not have a provision that requires mandatory authorization of permit applications. In *Farley v. Utah County*, the Utah Court of Appeals was called upon to interpret the statutory language contained in Utah County’s zoning scheme. There, like here, the Utah applicant asserted that the statutory provisions created a scheme whereby Utah County lacked discretion to do anything more than approve a submitted application. In disagreeing with the

¹⁰ *Id.*

¹¹ *See, e.g., Mech. Contractors of Alaska, Inc. v. State, Dep’t of Pub. Safety*, 91 P.3d 240, 248 (Alaska 2004) (internal citations omitted).

Applicant, the Utah Court of Appeals noted that: “[t]he best evidence of the legislature’s intent is the plain language of the statute itself,” that “[i]f the criteria in section 17-45-305 could be mechanically applied and if approval followed automatically whenever those criteria were met, there would be little need for two agencies to separately review the application and make recommendations, and for the legislative body to hold a public hearing and then decide whether to ‘approve, modify and approve, or reject’ an application,” and that “[b]ecause the Act requires an evaluation of factors beyond those criteria listed in section 17-45-305, the statutory scheme as a whole does not support the conclusion that an application must be approved if those five criteria are “satisfied.” Therefore, the plain language of the Act unambiguously grants Utah County discretion in deciding whether to approve and modify the creation of an agricultural protection area.”¹²

In enacting the KPB Code, the legislature included language on standards for permit applications. The legislature also limited the conditions that the Planning Commission could impose to meet those standards. The legislature provided for investigation into the permit application, recommendations to the Commission and public notice, hearing and deliberation. The legislature required the Commission to consider factors, including the public health, private property rights, safety and public welfare. The legislature explicitly authorized the Commission to disallow permits.

¹² *Farley*, 440 P.3d 856, 860 – 862 (Utah App. 2019). *See also, Da Vinci Investment, Limited Partnership v. City of Arlington, Texas*, 747 F. App’x 223, 226 (5th Cir. 2018) (“Da Vinci argues that the council members had no discretion to deny its development plan because it had met all the guidelines set forth in the ordinances. We again find no such mandatory language....Because there is no ‘explicitly mandatory language’ in the ordinances requiring city officials to approve a development plan, even where a plan meets all required guidelines, the city council had discretion to grant or deny the benefit.”

The clear message given to Commission Members contained an erroneous interpretation of the law which conveyed to them they lacked the discretion to disallow this permit. The Commission Members themselves articulated an identical belief.¹³ The resulting decision must be reversed and remanded for reconsideration in the context of a correct interpretation of the law that explicitly and clearly grants Commission Members the authority to disallow a CLUP application for material site extraction.

2. The Planning Commission Must Independently Find that the Standards in 21.29.040 and Conditions in 21.29.050 Have Been Met.

KPB 21.29.040 sets forth certain standards that *must* be met in order to issue a CLUP. Pursuant to that provision, the standards require that the permit application: “Protects against the lowering of water sources serving other properties; Protects against physical damage to other properties; Minimizes off-site movement of dust; Minimizes noise disturbance to other properties; Minimizes visual impacts; and Provides for alternate post-mining land uses.” Relying on the erroneous interpretation of Chapters 21.25 and 21.29, the only finding relating to compliance with 21.29.040 is Finding of Fact 15: “Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.” As discussed above, to conclude that independent consideration of the standards of 21.29.040 is unnecessary as they are only viewed in the context of compliance with 21.29.050 is erroneous.

The Commission was obligated to determine that the application did sufficiently protect against and minimize lower of water sources, physical damage, off-site dust movement, noise disturbance, and visual impacts. Indeed, 21.25.050 mandates a determination that the requirements

¹³ See, e.g., Commissioner Ruffner’s comments relating to the news report: “if a permit application comes in and it’s complete and it meets the conditions that have been set forth in 21.29, then those – and again, I’ll just repeat, if those conditions are met, then we don’t have the ability to deny the permit.” [T. 190].

of 21.25 are met prior to issuing a permit. 21.25.020 requires the Commission to send “advance notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights.” That is, the Code requires that the standards set forth in the Code are met prior to issuance of a permit.

In 2018, the Planning Commission found that “The noise will not be sufficiently reduced with any buffer or berm that could be added;” and “[t]he visual impact to the neighboring properties will not be reduced sufficiently.” In 2019, no findings of fact relating to either of these standards was provided. Instead, the Commission found that purported compliance with 21.29.050¹⁴ “necessarily means that the application meets the standards contained in KPB 21.29.040” regardless of whether or not the Commission believed that the standards had *actually* been met. These findings are required under the Code and were not made by the Planning Commission before approving this application. The Hearing Officer should exercise independent judgment to determine that independent consideration of the standards set forth in 21.29.040 was required - and that there were insufficient findings relating to 21.29.050(A)(2)(c)’s requirement that the buffer zone be of “sufficient height and density” - prior to granting the permit and that the findings in the resolution approving this permit were insufficient as a matter of law.

3. The Applicant Did Not Present Substantial Evidence to Support the Findings.

In 2018, the Commission heard public comment from more than 30 people and received over 200 pages of documents against this application. After a hearing spanning two and a half hours, the Commission determined that they were unable to find that the application minimized

¹⁴ A contention that is not accepted, as the Finding of Facts are silent as to whether the buffers and berms are 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” as required under 21.29.050(A)(2)(c).

noise and visual impact to surrounding property owners. The Commission then found that the noise will not be sufficiently reduced with any buffer or berm that could be added and that the visual impact to the neighboring properties will not be reduced sufficiently.

Having had the matter remanded in 2019, the Commission again received documentary evidence and heard public commentary. This application came before the Commission on 5 different days and public hearing was heard that spanned over seven hours. 125 people presented written or verbal contributions that were against the application. The vast majority of those people were within the ½ mile notification area immediately surrounding the proposed site. Of the 39 people presenting written or verbal statements in support of the application, the majority of these individuals were outside of the notification zone, were not neighboring property owners and were, instead, other gravel pit owners and/or operators.

Importantly and notably, none of the findings of fact indicate how the evidence presented shifted in such a way that there is now substantial evidence to undermine the Commission’s prior findings and to determine that this site would be sufficiently screened from visual and aural impact. This finding of fact is absent because the evidence did not in fact shift.

Beachcomber presented a voluntary condition that contained a “rolling berm” which purported to solve the visual and noise impact problem. Much attention was focused on the rolling berm, however, the permit condition says nothing more than that the berm will be placed “near” the active excavation area and will be “moved” as excavation progresses. [R. 781]. It does not say how near the berm must be to the active area, within what time the berm needs to be moved, how much progression requires the berm to “roll,” or how the berm will operate in fact. Indeed, as noted by Commissioner Ecklund, the only way the rolling berm would provide screening impact would be for it to start on the west side of Phase 3 and roll back to the east toward the hillside and the affected

properties. [T. 157]. Commissioner Bentz voiced similar thoughts that the rolling berm is more or less effective depending on where and in what direction excavation progressed. [T. 198]. However, even after understanding the utter ineffectiveness of the rolling berm under certain conditions, the Commission did not make any requirements about the order or direction of excavation progression. The voluntary condition imposing a berm “near” the active extraction site, accordingly, provides no assurance that the site will actually be visually or audibly screened to surrounding property owners.

The site location poses the same inability to minimize visual and noise impact in 2019 as it did in 2018. That these problems were not overcome with additional evidence was summarized by Commissioner Ernst:

I’m looking at the findings of fact on page 80, 15Q, and it says – I just need to understand this a little bit, because when I look at the GIS evidence, if you will, it doesn’t seem like there is any way – let’s see, it says ‘each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers.’

Well, in this unique situation, we have a pit that’s in the lowlands surrounded by affected properties. Is there any possible buffer that could be reasonably used to protect the, you know, the noise levels and visual impact of this pit since there are so many parcels around it?

....

So equal protection under the law doesn’t apply?

Indeed, that the proposed buffers and berms do not adequately screen from noise and visual impact is conceded by the Applicant themselves. Mary Trimble submitted an email stating that the

‘opposition’ wants the right to protect their property but are unwilling to consider/accept the fact that they have a responsibility to do what they can to minimize visual and noise, if it is bothersome, by building a fence or berm on their property and/or installing blinds that raise up from the bottom so they still have their Inlet view. They do not have rights to our land, so we should not bear all the responsibility for mitigating their perceived discomfort for how we use it. [R. 378].¹⁵

¹⁵ Emmitt Trimble echoed this sentiment in a recorded statement, played for the Commissioners: “You are looking to the operator or the gravel pit owner to solve the other person’s problem on their property with

On the other hand, surrounding property owners presented objective and compelling evidence that noise and aural impacts will not be screened by the proposed buffers and berms, regardless of whether the berm does in fact move. Using the Borough's own data system, GIS profile drawings were prepared for the properties of Richard Cline, Gary Gordon, Pete Kinneen, Hans Bilben, Steve Thompson and Rick Oliver. [R.598-62, R662-664 726-728]. These profile drawings clearly demonstrate the ineffectiveness of the buffers and berms proposed by the application at reducing any visual and aural impact. Rather than refuting, the vector profile drawings prepared by Stephen Smith only validate the GIS profile drawings and, when read in conjunction with the GIS profiles, only further confirm the ineffectiveness of the berms. [R. 443-444]. This ineffectiveness remains confirmed in real life by Rick Oliver's visual depiction of the effect a 12' berm would have on reducing the sightline from his property into the proposed pit. [R451-453].

The geography of this site remains as it was at the 2018 hearing: a proposed gravel pit in a residential and recreational area that sits lower than surrounding property owners and has a higher propensity to be seen and heard by surrounding neighbors. Nothing presented by the Applicant undermined the conclusion that the Commission reached in 2018, and the Commission did not find otherwise. Substantial evidence does not support the issuance of this application and its allowance must be reversed.

V. Conclusion.

For the foregoing reasons, it is proper for this Hearing Officer to exercise independent judgment in the interpretation of the Code and determine that the Commission does, in fact,

their money instead of them solving their problem. Build a fence, get some blinds, get some ear plugs. So in answer to your question about responsibility if it is an unzoned area no." [R. 697].

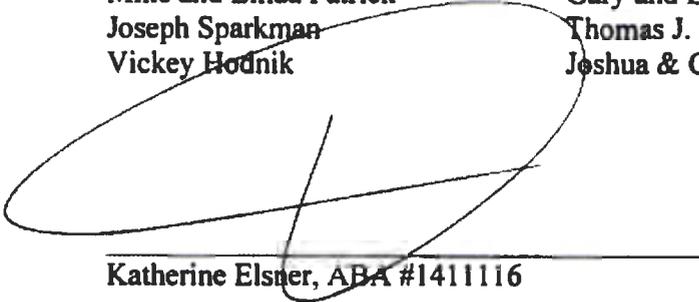
pursuant to the express mandate of the Code, have the authority to disallow material site CLUP applications. The Hearing Officer should determine that those Commissioners who had prejudged this issue should not be permitted to deliberate and decide. The Hearing Officer should determine that independent consideration of the standards set forth in 21.29.040 is essential and that those standards are not necessarily met by the mere submission of conditions set forth in 21.29.050, which were also not met. The Hearing Officer should determine that there is not substantial evidence to support the issuance of this permit but, instead, that the substantial evidence demonstrates that the permit should not be issued.

DATED October 1, 2019.

Respectfully submitted and filed on behalf of Hans Bilben

And joined in filing, pursuant to 21.20.280(A), by:

Philip Brna	Michael Brantley
George Krier	Gary Cullip
David Gregory	John Girton
Theresa Ann Jacobson	Linda R. Bruce
Rick Oliver	Steve Thompson
Shirley Gruber	Lynn Whitmore
Todd Bareman	Donald & Lori Horton
Xochitl Lopez-Ayala	James Gorman
Richard and Marie Carlton	Linda Stevens
Mike and Linda Patrick	Gary and Eileen Sheridan
Joseph Sparkman	Thomas J. Brook
Vickey Hodnik	Joshua & Christine Elmaleh



Katherine Elsner, ABA #1411116

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KENAI PENINSULA BOROUGH
OFFICE OF THE BOROUGH CLERK

APPEAL FROM THE PLANNING COMMISSION DECISION

In the matter of the Kenai Peninsula Borough)
Planning Commission's decision to disapprove)
a conditional land use permit for a material)
site that was requested for KPB Parcel 169-)
010-67; Tract B, McGee Tracts – Deed of)
Record Boundary Survey (Plat 80-104) – Deed)
recorded in Book 4, Page 116, Homer)
Recording District.)

Case No. 2019-01-PCA

Hans Bilben,)
Appellant)
Emmitt Trimble,)
BEACHCOMBER, LLC,)
Applicants.)

KENAI PENINSULA BOROUGH'S OPENING STATEMENT

PROCEDURAL AND FACTUAL BACKGROUND

A material site conditional land use permit (hereinafter "CLUP") application was received and processed pursuant to KPB chapters 21.25 and 21.29. [R.1-4]. The applicant and owner is Beachcomber LLC. [R.1]. The property is located at 74185 Anchor Point Road.¹ [R.19]. The submitted site plan indicated the material site haul route to be Denver Street, which is a borough maintained road. [R.8].

The application indicates that the depth to groundwater is 20 feet and that the depth of the proposed excavation is 18 feet. [R.2]. The site plan indicated that processing of material would take place more than 300 feet from the south, east, and west parcel

¹ Legal Description: Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District.

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boundaries and 200 feet from the north boundary. [R.25]. A waiver to the 300-foot setback requirement for processing was requested in the application. [R.4]. The site plan indicated that there are several wells located within 300 feet of the property but none within 100 feet of the proposed excavation. [R.5]. The site plan indicates a 100-foot setback from the wetlands area located in the northeast corner of the property and that this setback will provide protection via phytoremediation of any site run-off prior to entering the surface water. [R.5]. The site plan also indicates that the Alaska DEC user's manual, *Best Management Practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska*, will be utilized as a guideline to reduce potential impacts to water quality. [R.5]. The applicant estimates a life span of 15 years for the site. [R.2].

Evidence of public notice and publication is in the record. [R.183-186; R.199-200; R.196; R.205-208]. Public notice of the application was mailed on June 22, 2018 to the 200 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Application information was provided to pertinent KPB staff and other agencies on July 6, 2018. Comments were received from Alaska State Department of Environmental Conservation, Alaska State Department of Natural Resources, and the Donald E. Gilman River Center. [R.34; R.36; R.94-95; R.98-100]. The KPB also received comments from Kachemak Bay National Estuarine Research Reserve, Homer Soil and Water Conservation District, Kachemak Bay Conservation Society, and Cook Inletkeeper. [R.60-92; R.109-110; R.129-131; R.160; R.163-165]. Forty-two comment letters in opposition from area residents were received, one of which was inadvertently not provided to the commission. [R.28-165; R.218]. (Agency comments are not separated from area residents' comments in the record.) A petition in opposition was received that was signed by 17 area residents. [R.137-138]. Most of these comments were not available to the planning commission members until the night of the public hearing. At the hearing, an additional petition was submitted as were additional photos from area residents and from the applicant. [R.166-182].²

At the July 16, 2018 meeting, staff recommended that the commission take public comments and then continue the hearing to the next meeting to allow time for the

² 16 of the 20 signatures on this petition participated in the planning commission proceedings with either written or oral testimony.

commission members to read all of the written comments that had been received. [T.3]. At the meeting, 27 people spoke in opposition to the application or expressed concerns about the proposed project and one neighbor spoke in favor of the application. The applicant and the applicant's engineer also addressed the commission.

The primary concerns raised about the proposed material site through the correspondence and testimony were as follows: traffic volume, traffic safety, surface and subsurface water quality, property values, quality of life, visual impacts, noise, dust, wildlife habitat, and hours of operation. [T.3-19].

After close of the public comment period, a motion to continue the public hearing to the following month was made. The motion failed by a vote of four to five. [T.25-26]. Following the failed motion to postpone, a motion was made to approve the requested material site. Following discussion, the motion failed by a vote of three to six. [T.26-28]. The commission then adopted the following findings:

1. The noise will not be sufficiently reduced with any buffer or berm that could be added.
2. The visual impact to the neighboring properties will not be reduced sufficiently.

[T.28]

An appeal was filed with the Borough Clerk by Beachcomber LLC pursuant to KPB 21.20 on August 2, 2018. A hearing on the appeal was held on December 6, 2018. The hearing officer's decision and order was issued on December 26, 2018. [R.276-292]. The decision and order provided instructions for the planning commission:

The Commission shall reevaluate the application with respect to the mandatory conditions listed in KPB 21.29.050, as well as any voluntary conditions that Beachcomber may agree to. The Commission shall conduct a second public hearing at which it shall issue findings of fact, pertaining to the mandatory conditions listed in KPB 21.29.050, and shall reference specific evidence in the record in support of those findings. In issuing its findings, the Commission must comply with both local and common law requirements, which require the Commission to both issue findings supported by substantial evidence and to "articulate the reasons for their decisions."

[R.290-291]

Two parties filed timely motions for reconsideration in the matter and the hearing officer issued a decision denying reconsideration on February 5, 2019. [R.271-275].

The remand hearing was scheduled for March 25, 2019. Evidence of public notice of the hearing is in the record. [R.744-758]. Public notice of the remand hearing was mailed on March 4, 2019 to the 203 landowners or leaseholders of the parcels within one-half mile of the subject parcel. Public notice was sent to the postmaster in Anchor Point requesting that it be posted at the Anchor Point post office. Public notice of the remand hearing on the application was published in the March 14, 2019 and March 21, 2019 issues of the *Homer News*. Sixty-three comment letters and other documents were received from the public, the applicant, and Alaska Department of Transportation and Public Facilities prior to the meeting. [R.293-373, R.375-465]. The planning commission also received a request for a continuance from the applicant's representative. [R.374]. At the hearing, additional comments, documents, and photos were submitted from area residents and from the applicant. [R.466-495]. The public, the applicant, and their legal representatives provided testimony at the hearing. [T.52-103].

Following conclusion of public comments, the planning commission voted to continue the public hearing to May 28, 2019. [T.78]. At the regular meeting of the planning commission on April 8, 2019, the applicant addressed the planning commission during the time period set aside for public comment on items not on the agenda, stating that he had a scheduling conflict on May 28, 2019, and requested that the continuation of the hearing be rescheduled to a different date. The commission then voted to amend after adoption the date of the continuation of the hearing and to publicly notice it for discussion at its next meeting. [T.100-101]. A notice was mailed to landowners or leaseholders of the parcels within one-half mile of the subject parcel informing them of the meeting to take place on April 22, 2019.³

Prior to the April 22, 2019 meeting, 19 written comments were received concerning the continuation date of the hearing. At its April 22, 2019 meeting, the commission received testimony from the applicant and six members of the public. [T.105-108]. Following the testimony, the planning commission scheduled the continuation of the remand hearing for June 10, 2019. [T.108-110].

³ This document was inadvertently omitted from the record.

Notice of the June 10, 2019 planning commission meeting was mailed on April 24, 2019. There were errors with the printing and mailing of this notice and it was resent on April 30, 2019. [R.762-763]. Notice was sent to the Anchor Point post office for posting and was published in the May 30, 2019 and June 6, 2019 editions of the *Homer News*. [R.767]. Prior to the meeting, 33 comment letters were received from the public, the applicant, and from Alaska Department of Natural Resources. [R.584-675].

At the June 10, 2019 hearing on remand, the applicant and his representatives addressed the commission and provided a video presentation. [T.119-122]. The commission also heard testimony from 31 members of the public. [T.122-150]. During the public comments, Lynn Whitmore, a neighboring property owner, displayed a live interactive version of the written evidence that he had submitted that is included in the record. [R.598-602]. At the hearing, the applicant volunteered a condition concerning the placement of the berms (rolling berms) and a condition concerning the use of white noise backup alarms. [T.122, 158]. Following public testimony and rebuttal from the applicant, the planning commission closed the public hearing and began deliberation. [T.159]. After some time spent in deliberation the commission voted to continue the deliberation to its next meeting to be held on June 24, 2019. [T.157-159].

Prior to the meeting on June 24, 2019, planning staff became aware of and obtained a copy of a comment letter from Alaska State Parks, dated May 1, 2019. [R.725]. This letter had not previously been received by the planning department and so it was provided to the planning commission for its June 24, 2019 meeting. There was also a letter sent directly to several of the planning commission members from a neighboring property owner. [R.731-732]. A copy of this letter was provided to all of the commission members. The applicant also submitted an additional volunteered condition that would restrict operations of the material site on certain holidays. The revised resolution staff provided to the planning commission for consideration on remand contained 21 conditions for the proposed material site permit. [R.715-716].

At the June 24, 2019 meeting, at the request of the applicant, staff recommended to the planning commission a revision to proposed condition #2 concerning the buffer along the northern 200 feet of the eastern most boundary. Staff also recommended the addition of the volunteered condition restricting operations on certain holidays. [R.729]. The final

revised resolution provided by staff to the planning commission for consideration contained 30 findings of fact. [R.711-715].

Staff also recommended that, if the volunteered condition concerning holiday restrictions was imposed, the planning commission should also adopt additional findings in support of the volunteered condition. [R.729-730]. At the meeting, the applicant was given the opportunity to rebut the additional information that was presented. [T.192-194]. Following deliberations, the planning commission voted to grant the CLUP via KPB Planning Commission Resolution 2018-23. [T.196-200]. Resolution 2018-23 adopts 30 findings of fact and imposes 22 conditions for the approved CLUP.

DISCUSSION

1. KPB 21.29 ESTABLISHES THE STANDARDS AND THE ONLY CONDITIONS APPLICABLE TO A MATERIAL SITE CLUP

KPB 21.25.020 provides:

It is the purpose of this chapter to require advance public notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights.

KPB 21.29.040 is more specific and explicit: the only conditions that may be placed on a material site CLUP are those set forth in KPB 21.29.050.

KPB 21.29.040 provides:

A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to other properties;
3. Minimizes off-site movement of dust;
4. Minimizes noise disturbance to other properties;
5. Minimizes visual impacts; and
6. Provides for alternate post-mining land uses.

In the rural zoning district of the borough, the assembly has attempted to balance the health, safety, and welfare of the property owners adjacent to material sites by providing a list of mandatory conditions in KPB 21.29.050 that must be applied to each material site permit. It is through these conditions that the assembly has determined the extent to which the health, safety, and welfare will be protected in the material site permitting process.

A superior court decision has upheld the borough assembly's authority to adopt an ordinance that favors material site operations. This order further held that it is the planning commission's responsibility to abide by the legislative standards the assembly has established:

"[P]lanning authorities are 'bound by the terms and standards of the applicable zoning ordinance, and are not at liberty to either grant or deny conditional use permits in derogation of legislative standards.' ...

The assembly has specifically adopted ordinances that are protective of material site operators and rejected proposed ordinances that make it more difficult for the same to receive project approval. In adopting the material site code language, the Borough Task Force rejected language that placed a larger burden on the permit applicant. ...

[T]he Planning Commission would have violated the KPB Code by imposing conditions not authorized by the code. The Assembly could have chosen a policy that favors residential property owners, but instead it chose to adopt a policy that favors material site operators. This court will not disturb a reasonable policy decision of local concern..."⁴

In the present case, the CLUP approved by the planning commission imposes every required and allowed condition under borough code. The authority of the assembly to determine policy decisions should not be disturbed by the hearing officer.

⁴ See, Memorandum Decision and Order, *Warrington v. KPB*, Case No. 3KN-05-206 CI, pgs. 8 -10 (Citing *South Anchorage Coalition v. Coffey*, 862 P.2d 168 (Alaska 1993)).

2. THE MANDATORY AND VOLUNTARY CONDITIONS IMPOSED BY THE PLANNING COMMISSION'S DECISION MEET OR EXCEED THE KPB 21.29.040 STANDARDS

After multiple public hearings and hours of public testimony and deliberation, the planning commission made 30 findings of fact and adopted 22 permit conditions to meet the standards found in KPB 21.29.040. The decision represents the end result of over a yearlong public process. The decision was deliberative and supported by substantial evidence. All the mandatory conditions found in KPB 21.29.050 are addressed and satisfied in the findings and permit conditions. Only the KPB 21.29.050 conditions may be imposed by the planning commission. The permit satisfied all code requirements and the approval of the permit was the correct decision in accordance with borough code.

The mandatory KPB 21.29.050 conditions and the corresponding finding of fact adopted and condition(s) imposed by the permit, set forth in Resolution 2018-23, are as follows:

1. *Parcel boundaries* – KPB 21.29.050(A)(1)
 - i. Finding 16: All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - a. The submitted site plan indicates the location of each of the parcel boundary stakes.
 - b. Planning staff has visited the site several times and has observed that the boundary stakes are in place.
 - ii. Condition #1: The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - ii. Sufficiency: Meets or exceeds code requirement.
2. *Buffer zone* – KPB 21.29.050(A)(2)
 - i. Finding 17: A buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - a. The applicant has proposed to maintain a six-foot high berm along all excavation boundaries except the western most boundary and along the east 400 feet of the northern boundary, where a 50-foot vegetated buffer is proposed.
 - b. There are 16 parcels adjacent to the proposed material site (adjoining or separated only by a roadway).
 - c. Eight of the adjacent parcels are vacant; one of the vacant parcels is a Prior Existing Use material site. Six of the adjacent properties have a dwelling. One of the adjacent properties has a recreational vehicle that

is used as a seasonal dwelling. One of the adjacent properties contains commercial recreational cabins.

- d. The elevation of the commercial recreational cabins is at a lower elevation than the proposed excavation area. Three of the adjacent residences are at about the same elevation as the proposed excavation area. Four of the adjacent residences are at a higher elevation than the material site parcel.
- e. Farther away, there are additional residences in the vicinity that are at higher elevations than the adjacent properties. These parcels are less impacted by the material site than the parcels adjacent to the material site as sound dissipates over distance.
- f. Per the site plan there is a greater than 50-foot native vegetated buffer along the western most boundary of the material site.
- g. Along the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm, staff recommends a 50-foot vegetated buffer along the property boundary with a 12-foot high berm between the extraction area and the vegetated buffer.
- h. Over 40 percent of the southern and eastern property boundaries, where the applicant has proposed a six-foot high berm as the buffer, contains vegetation that can provide visual and noise screening of the material site for some of the adjacent uses.
- i. For the remaining southern and eastern property boundaries, where the vegetation was previously removed, a 50-foot buffer will reduce the sound level for the adjacent properties.
- j. A 12-foot high berm between the excavation perimeter and the vegetated buffer along the southern and eastern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
- k. The total buffer width, as recommended by staff, along the southern and eastern property boundaries is 98-feet.
- l. As the excavation extends deeper, the visual and noise impacts will decrease because the height of the berm relative to the excavation will increase.
- m. A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain will provide additional visual and noise screening of the material site. The berm will also provide additional surface water protection.
- n. A 12-foot high berm along the remaining northern property boundaries will increase visual and noise screening of the proposed use beyond that of a six-foot berm along those boundaries.
- o. Borough staff will regularly monitor the material site to ensure that the required buffer will not cause surface water diversion that negatively affects adjacent properties or water bodies.
- p. There has been testimony that the material site will mar the view of

Mount Iliamna and Mount Redoubt. Condition 21.29.050(A)(2) is written to provide screening from the material site, not protect view sheds beyond the material site.

- q. Each piece of real estate is uniquely situated and a material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers. The different elevations of the parcels, varying vegetation on the surrounding parcels and the proposed material site, and distance of the material site from the various surrounding parcels necessarily means the surrounding parcels will not be equally impacted nor can they be equally screened from the material site.
 - r. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.
- ii. Condition #2: The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries:
- A 50-foot vegetated buffer adjacent to the south boundary of Parcel 169-022-03 (Brantley) with a six-foot high berm placed near the active extraction area.
 - A six-foot high berm between the extraction area and the 100-foot setback from the riparian wetland and floodplain
 - A 12-foot high berm along the rest of the northern boundary.
 - A 50-foot vegetated buffer adjacent to the southern parcel boundaries with a 12-foot high berm placed near the active extraction area.
 - A 50-foot vegetated buffer adjacent to the eastern most parcel boundary; and a 12-foot high berm placed near the active extraction area except along the northern 200 feet of the proposed excavation.
 - A greater than 50-foot vegetated buffer along the western most parcel boundary.
- These buffers shall not overlap an easement.
- iii. Condition #3: The permittee shall maintain a 2:1 slope between the buffer zone and pit 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.
- iv. Condition #4: The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
- v. Sufficiency: Meets or exceeds code requirement.

3. *Processing* – KPB 21.29.050(A)(3)

- i. Finding 18: Any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
 - a. The site plan indicates that the proposed processing area is 300 feet from the south and east property lines, and greater than 300 feet from the west property line. A processing distance waiver is being requested from the

north property line.

- b. The applicant proposed the following justifications for waiving the processing setback: “Although it is a large parcel, the configuration has limited potential process area. The waiver is requested to the north as 169-022-04 is owned by the applicant’s daughter & 169-022-08 is not developed.”
 - c. The 300-foot processing distance from the property lines is a mandatory condition imposed to decrease the visual and noise impact to adjacent properties.
 - d. The portion of the proposed processing area greater than 300 feet from the property line is very small, ranging from just a few feet wide to about 30 feet wide at the eastern edge of the proposed location.
 - e. There is a larger area in proposed phase III of the project that meets the requirement for a 300-foot processing distance setback, as such, there is adequate room to accommodate processing on the parcel while complying with 300-foot processing setback.
- ii. Condition #5: The permittee shall operate all equipment which conditions or processes material at least 300 feet from the parcel boundaries.
 - iii. Sufficiency: Meets or exceeds code requirement.

4. *Water source separation* – KPB 21.29.050(A)(4)

- i. Finding 19: All permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. All CLUPs shall be issued with a condition that requires that a two-foot vertical separation from the seasonal high water table be maintained. There shall be no dewatering by either pumping, ditching or some other form of draining.
 - a. The submitted site plan and application indicates that there are not any wells within 100 feet of the proposed excavation. The 100-foot radius line on the site plan for the nearest well indicates that the proposed extraction is greater than 100 feet from this well.
 - b. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation requirement.
 - c. Borough staff will regularly monitor the material site to ensure that dewatering does not take place in the material site.
- ii. Condition #6: The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- iii. Condition #7: The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- iv. Condition #8: The permittee shall not dewater either by pumping, ditching or any other form of draining.
- v. Sufficiency: Meets or exceeds code requirement.

5. *Excavation in the water table* – KPB 21.29.050(A)(5)
- i. Finding 20: Excavation in the water table is not permitted; meets or exceeds code requirements.
6. *Waterbodies* – KPB 21.29.050(A)(6)
- i. Finding 21: An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. 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.
 - a. The Cook Inlet lies about 600 feet west of the proposed material extraction.
 - b. The Anchor River, which is an anadromous stream, is located about 1,000 feet north of the proposed material extraction.
 - c. The "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps, created by the Kenai Watershed Forum, show a riparian wetland in the northeast corner of the property.
 - d. The FEMA maps adopted by KPB 21.06 indicates a mapped floodplain in the northeast corner of the property. This mapped floodplain approximately matches the mapped riparian wetland.
 - e. The site plan indicates that the proposed extraction is 104 feet from the mapped riparian wetland. There is approximately two feet difference between the mapped riparian wetland and the floodplain boundary. This places the proposed excavation at about 102 feet from the floodplain.
 - f. A portion of the required 100-foot buffer adjacent to the riparian wetlands and the floodplain is an existing stripped area.
 - g. Prior to permit issuance the applicant is required to restore the 100-foot buffer adjacent to the riparian wetlands and the floodplain to an undisturbed state.
 - h. As stated on the site plan the buffer will provide protection via phytoremediation of any site run-off prior to entering the surface water. The site plan also indicates that the Alaska DEC user's manual, "Best Management practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska" will be utilized as a guideline to reduce potential impacts to water quality.
 - i. Borough staff will work with the applicant and regularly monitor the material site to ensure that excavation does not take place within 100 feet of the mapped floodplain, riparian wetland, or other water body and that the restored buffer remains undisturbed.
 - ii. Condition #9: The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
 - iii. Sufficiency: Meets or exceeds code requirement.

7. *Fuel storage* – KPB 21.20.050(A)(7)
- i. Finding 22: 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.
 - a. Borough staff will regularly monitor the material site to ensure compliance with mandatory condition KPB 21.29.050(A)(7).
 - ii. Condition #10: The permittee shall ensure that fuel storage 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.
 - iii. Sufficiency: Meets or exceeds code requirement.
8. *Roads* – KPB 21.29.050(A)(8)
- i. Finding 23: Operations shall be conducted in a manner so as not to damage borough roads.
 - a. The submitted site plan indicates that the material site haul route will be Danver Road, which is maintained by the Borough, and then to Anchor River Road, which is maintained by the state.
 - b. There was a significant number of public comments concerning the condition of Anchor Point Road. Anchor Point Road is a paved State of Alaska maintained road for which this condition is not applicable.
 - c. If operations associated with the proposed material site damages borough roads, the remedies set forth in KPB 14.40 will be used to ensure compliance with this requirement imposing the condition that operations not damage borough roads.
 - ii. Condition #11: The permittee shall conduct operations 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.
 - iii. Sufficiency: Meets or exceeds code requirement.
9. *Subdivision* – KPB 21.29.050(A)(9)
- i. Finding 24: 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.
 - i. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
 - ii. Condition #12: The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
 - iii. Sufficiency: Meets or exceeds code requirement.

10. *Dust control* – KPB 21.29.050(A)(10)

- i. Finding 25: Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - a. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
- ii. Condition #13: The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- iii. Sufficiency: Meets or exceeds code requirement.

11. *Hours of operation* – KPB 21.29.050(A)(11)

- i. Finding 26: Rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - a. If Borough staff becomes aware of a violation of this requirement action will be taken to ensure compliance.
 - b. This condition reduces off-site noise impacts of the material site.
- ii. Condition #14: The permittee shall not operate rock crushing equipment between the hours of 10:00 p.m. and 6:00 a.m.
- iii. Sufficiency: Meets or exceeds code requirement.

12. *Reclamation* – KPB 21.29.050(A)(12)

- i. Finding 27: Reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall 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.
 - a. The submitted application contains a reclamation plan as required by KPB 21.29.060.
 - b. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C)(3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project. The inclusion of the requirements contained in KPB 21.29.060(C)(3) is necessary to meet this material site condition.
 - c. Permit condition number 15 requires that the permittee reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission
- ii. Condition #15: The permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C)(3) and as approved by the planning commission.
- iii. Sufficiency: Meets or exceeds code requirement.

13. *Other permits* – KPB 21.29.050(A)(13)

- i. Finding 28: Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
 - a. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
- ii. Condition #16: The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
- iii. Sufficiency: Meets or exceeds code requirement

14. *Voluntary conditions* – KPB 21.29.050(A)(14)

- i. Finding 29: Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - a. The applicant has volunteered to operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
 - b. The volunteered condition concerning back-up alarms is in the best interest of the Borough and the surrounding property owners because the multi-frequency alarms better minimizes the noise impacts of the material site.
 - c. The applicant has volunteered a condition requiring the berm be placed near the active excavation area, dampening the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.
 - d. The volunteered condition to place the berm near the active excavation area is in the best interest of the Borough and the surrounding property owners because this placement of the berm will better minimize the visual impacts of the material site.
 - e. The applicant has volunteered a condition a condition that prohibits material site operations on holiday weekends during the summer months.
 - f. The volunteered condition, to not operate on holidays, is consistent with the standard to reduce noise disturbance to adjacent properties.
 - g. The volunteered condition, to not operate on holidays, is in the best

interest of the Borough and the surrounding property owners because the Anchor River State Recreational Area has a significantly greater number of visitors on holidays and several of the neighbors and Alaska State Parks has expressed concern about the noise impacts to the recreational area.

- ii. Condition #21: The permittee shall operate his equipment onsite with multi-frequency (white noise) back-up alarms rather than traditional (beep beep) back-up alarms.
- iii. Condition #22: The permittee shall not operate the material site or haul material from the site on Memorial Day weekend (Saturday through Monday), Labor Day weekend (Saturday through Monday), and the 4th of July holiday to also include:
 - Saturday and Sunday if July 4th is on a Saturday, Sunday, Monday, or Friday
 - Saturday, Sunday, and Monday if July 4th is on a Tuesday
 - Saturday, Sunday, and Friday if July 4th is on a Thursday
- iv. Sufficiency: Meets or exceeds code requirement

15. *Other Signage* – KPB 21.29.050(A)(15)

- i. Finding 28: 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.
 - a. If Borough staff determines that operations have not commenced after one year, action will be taken to ensure compliance
- ii. Condition #17: The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit. 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.
- iii. Sufficiency: Meets or exceeds code requirement

Other conditions imposed on the subject CLUP:

Condition #18: The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.

Condition #19: This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.

Condition #20: Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

3. APPELLANT'S POINTS ON APPEAL

For purposes of this opening statement the Appellant's points on appeal have been grouped as follows:

Group #1: 'the buffers do not sufficiently minimize noise and visual impacts'
Appellant points on appeal A, B, D, E, L, N, and O

The appellant's points on appeal at paragraph "N" states that, "KPB 21.29.050 mandates buffer/berm to be of sufficient height and density." The appellant's statement is not entirely accurate. KPB 21.29.050(2)(c) provides, "[t]he 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." (Emphasis added). Per KPB 21.29.040 the material site regulations "are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts." (Emphasis added).

Minimization of impacts may only be accomplished through the imposition of KPB 21.29.050 mandatory conditions. A point of contention in this case is whether the term "minimize" should be read to mean "eliminate" or whether it should be read to mean "reduce". The borough interprets "minimize" to mean reduce. Elimination of all impacts of a gravel pit is impossible. The 22 conditions imposed by the planning commission satisfy the intent of the material site regulations by protecting against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. The approved permit imposes all conditions allowed or required under borough code.

Group #2: 'staff and planning commission interpreted the code and evidence wrong'
Appellant points on appeal B, C, F, G, H, K, L, and P

Appellant's points on appeal B, C, F, G, H, K, L and P are related to the idea that "minimize" should be interpreted to mean "eliminate" and that a CLUP should be a denial process under borough code. In other words, the Appellant advocates an interpretation of KPB Chapters 21.25 and 21.29 to mean that if an applicant cannot eliminate perceived negative impacts to surrounding properties then the permit should be denied. The borough

does not agree with such a restrictive reading. The borough's position is that the borough assembly did not intend the CLUP process to prohibit uses on private land within the largely unregulated rural zoning district of the borough. The purpose of the CLUP process, under borough code, is to allow uses to occur with reasonable project specific conditions that reduce, not eliminate, impact on surrounding uses.

There will always be at least some noise and visual impacts to adjacent properties from a material site operation. Many material sites could be denied based on "insufficient" screening. In the history of the material site ordinance there has never been an interpretation that all surrounding properties must not be able to see or hear the material site at all. Instead, the interpretation applied consistently to all 96 material sites permits issued since 1996 is that the goal of the material site regulations is to reduce certain negative impacts. Full elimination of negative secondary impacts has never been discussed or required, nor is it feasible. Attempting to judge whether a permit should be denied based on how many people claim they are not sufficiently protected ultimately will lead to arbitrary decision making. Rather than relying on evidence this approach relies on surrounding property owners stacking the hall—whether a permit is approved or denied becomes a numbers game. If a large number of people oppose the material site it will be denied, regardless of whether other material sites that may have similar attributes have been approved. Such "negative community sentiment" is not a valid reason to deny a permit.⁵

KPB 21.25 houses the general notice and hearing requirements for conditional uses but the more specific language regulating material sites (KPB 21.29) governs interpretation issues.⁶ Given the mandate from the assembly that material sites be subject only to certain mandatory conditions a denial based on a conclusory statement that the buffers are insufficient to protect against noise and visual impacts cuts against the grain of the code. The planning commission supported its decision with extensive findings. The buffer conditions imposed by the planning commission pursuant to KPB 21.29.050(A)(2) sufficiently meet the standards found in KPB 21.29.040.

The planning commission's findings are required to be supported by the substantial evidence in the record. The "substantial evidence" in the record required to support the

⁵ *South Anchorage Coalition v. Coffey*, 862 P.2d 168, 172 n.11 (Alaska 1993)

⁶ *Nelson v. Municipality of Anchorage*, 267 P.3d 636, 642 (Alaska 2011)

planning commission's findings is not the same as a substantial number of people opposing the material site. Substantial evidence is defined as relevant evidence that a reasonable mind might accept to support a conclusion.⁷ While the record contains a substantial number of people testifying in opposition to the material site, unsupported conclusory statements about damage to property values and insufficiency of noise and visual impacts should not be considered substantial evidence. The borough will concede that the conditions will not eliminate all impacts of the proposed material site. Yet elimination is not the standard that must be met under borough code in order for the planning commission to approve a material site CLUP. The planning commission made specific findings regarding buffers that were supported by substantial evidence and imposed buffer conditions to protect against and minimize impacts of the proposed material site to the fullest extent allowed by code.

Group 3: 'procedural errors'
Appellant points on appeal I, J, M, O, P, and Q

Appellant's paragraph I. 'One or more commissioner should have recused'

Included in the desk packet for the meeting of March 25, 2019, was a memo from planning director, Max Best, and deputy borough attorney, Holly Montague, to the planning commission. [R.367-373]. The memo addresses two issues regarding planning commissioner conflict or bias. Prior to the opening of the hearing on March 25, 2019, Commissioner Brantley indicated that he had an appearance of a conflict of interest and asked to be recused and the chairman then recused him. [T.51]. Commissioner Venuti then indicated that he did not feel that he had a conflict of interest and felt that he could make a fair decision on the matter. He was not recused. [T.51].

Prior to the June 10, 2019 hearing, a comment letter was received alleging a bias on the part of Commissioner Ruffner, ex-parte communication on the part of Commissioner Foster, and the previously alleged bias or a conflict of interest on the part of commissioner Venuti. [R.594]. The allegation concerning commissioner Ruffner and Commissioner Foster was addressed at the Jun 24, 2019 meeting. [R.190]. Without more specifics from the Appellant, there is no indication that any planning commission member who voted on

⁷ KPB 21.20.210(A)(7).

Resolution 2018-23 should have been recused due to an impermissible conflict of interest or bias.

Appellant's paragraph J. 'Addition of last minute voluntary condition'

Throughout the public hearing process, many of the area residents expressed concerns about the impact of the proposed material site on the area campgrounds and RV parks. A comment letter was received from Alaska State Parks expressing concerns about the impact of the proposed material site on the nearby recreation area. [R.725]. The volunteered condition was in response to the concerns that had been expressed. It is a common practice of the planning commission to accept volunteered conditions, after close of public comments, which are offered as part of the rebuttal process to public comments. In this case, the applicant had not previously had an opportunity to rebut the comment letter from Alaska State Parks. [T.189-190]. The planning commission found that this volunteered condition was in the best interest of the borough and the surrounding property owners. [R.250-251].

Appellant's paragraph M. 'Absent commissioners did not see relevant evidence'

Slides of the presentation prepared by those opposed to the permit were provided to the planning commission. [R.598-601, 662-664, 726-728].

Appellant's paragraph O. 'failure to define rolling berm'

The applicant proposed the volunteered condition for the 'rolling berm' at the June 10, 2019 hearing. [T.121-122]. To reflect this volunteered condition, Resolution 2018-13 was changed to require that the berms be placed near the active extraction area rather than between the vegetated buffer and the extraction area. This change was discussed and explained at the June 24, 2019 meeting. [T.195]. Finding 17 contains the findings of fact concerning the adequacy of the buffers. [R.248-249].

Appellant's paragraph P. 'Commissioners did not understand code when voting'

Without specifics, it is not possible to respond to this point on appeal.

Appellant's paragraph Q. 'During deliberations there was confusing or conflicting page numbers in the record'

There was confusion concerning page numbering at the June 24, 2019 meeting. [T.197]. There is no reason to believe that the confusion was not quickly cleared up. [T.197].

4. HEARING OFFICER'S SCOPE OF APPELLATE REVIEW.

The hearing officer may remand, affirm, or reverse, or modify the planning commission's decision.⁸ Pursuant to KPB 21.20.320(A)(2), the hearing officer shall defer to the planning commission regarding findings of fact when they are supported by substantial evidence in the record. The hearing officer may exercise independent judgment on matters that relate to the interpretation or construction of ordinances; yet, due consideration will be given to the expertise and experience of the planning commission in its interpretations of KPB titles 20 and 21.⁹ If the hearing officer determines that a finding by the planning commission is not supported by substantial evidence in the record, the hearing officer may make a different finding on the factual issues or may remand to the planning commission, as provided in KPB 21.20.330(B).¹⁰

In the present appeal the planning commission's findings of fact are supported by substantial evidence in the record. Therefore, with due consideration given to the expertise and experience of the planning commission in its interpretation of the code it is charged with administering, the hearing officer should affirm the planning commission's decision in this case.

5. THE RURAL ZONING DISTRICT

The proposed material site subject of this case sits within the rural zoning district of the borough. Subject to the limited restrictions found in borough code, the borough assembly made a policy decision to allow unrestricted use of property within the rural zoning district.¹¹ Landowners may operate a dog kennel, hair salon, day care, a material site under one acre,

⁸ KPB 21.20.330.

⁹ KPB 21.20.320(A)(1).

¹⁰ KPB 21.20.320(A)(3)

¹¹ KPB 21.04.010(B).

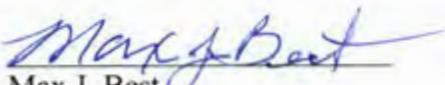
and many other uses without notifying the borough or applying for a permit. In addition, building permits are not required in the rural district of the borough. Thus, there are very few restrictions placed on a landowner within the rural zoning district desiring to put his or her real property to its highest and best use. The requirement that under certain situations landowners must obtain a permit for material extraction is one of the few restrictions that apply to property within the rural zoning district.

Since the CLUP process imposes greater restrictions on the use of a landowner's property than that of surrounding properties, it is imperative that the restrictions imposed are objective, fair, and justified. A key component of the fairness element is the fact that the borough's planning commission possesses limited discretion in denying a CLUP and no discretion to add conditions beyond the conditions listed in KPB 21.29.050. The fact that the Appellant may want more zoning or may want the code to allow for broader discretion to deny a CLUP is not relevant to this appeal. Policy decisions are made by the borough assembly. The planning commission must enforce the borough code as written. The planning commission would have violated the code if it required permit conditions not found in code or if it read code to require elimination of all impacts of a material site.

CONCLUSION

The planning commission's approval of the material site should be upheld. Only the conditions found in KPB 21.29.050 may be imposed to meet the standards set forth in 21.29.040. All the protections afforded through the mandatory conditions found in KPB 21.29.050 have been imposed. In total, the planning commission adopted 30 findings of fact and imposed 22 conditions on the permit. Issuance of the permit complies with borough code.

Dated this 1st day of October, 2019.


Max J. Best
Planning Director


Sean Kelley
Deputy Borough Attorney

MCLANE

CONSULTING, INC.

October 1, 2019

Kenai Peninsula Borough Office of the Borough Clerk
144 N. Binkley Street
Soldotna, Alaska 99669

RECEIVED

OCT 01 2019

Borough Clerk's Office
Kenai Peninsula Borough

SUBJECT: PC Decision to Disapprove Conditional Use Permit for KPB Parcel 169-010-67
Case 2019-01-PCA

RE: Opening Statement

Dear Hearing Officer Anmei Goldsmith:

McLane Consulting, Inc. was hired by the appellant, Beachcomber, LLC, to survey the parcel and prepare the CLUP permit documents and exhibits.

McLane Consulting concurs with the Planning Commission's decision to approve the Conditional Land Use Permit. The proposed application meets the permit conditions required by KPB 21.29.050 which according to KPB 21.29.040 are the only conditions set forth that may be imposed to minimize noise and visual impacts. The Planning Commission decision should be upheld.

McLane Consulting will respond to any technical surveying and engineering questions regarding the permit preparation and the site conditions raised in opening statements in a response statement.

Sincerely,



Gina M. DeBardelaben, PE
Principle
McLane Consulting, Inc.

RECEIVED

OCT 01 2019

Borough Clerk's Office
Kenai Peninsula Borough

**Kenai Peninsula Borough
Office of the Borough Clerk
Kenai Peninsula Borough, Alaska
144 North Binkley Street
Soldotna, Alaska 99669**

In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) - Deed recorded in Book 4, Page 116, Homer Recording District.

Hans Bilben,

Appellant,

Emmitt Trimble,
Beachcomber LLC,

Applicant.

Case No. 2019-01-PCA

APPLICANT'S OPENING STATEMENT

COMES NOW the Applicants Emmitt Trimble and Beachcomber LLC, by and through counsel of record, Holmes Weddle & Barcott, P.C. and hereby submits their Opening Statement.

I. STATEMENT OF FACTS

Applicant Beachcomber LLC ("Beachcomber") owns real property located at 74185 Anchor Point Road, with the legal description Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District. Beachcomber applied for a Conditional Land Use Permit through the Kenai Peninsula Borough to conduct a sand, gravel, and peat extraction operation at the site of the real property, which was submitted on June 4, 2018. The Planning Commission held a public meeting and heard from community

APPLICANT'S OPENING STATEMENT
KPB Planning Commission Appeal

Case No. 2019-01-PCA
Page 1 of 5

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, AK 99501-3408
TELEPHONE (907) 274-0666
FACSIMILE (907) 277-4657

members as to the application. Planning staff and Director stated that the application was appropriately completed and complied with all required conditions, and recommended approval. After a lengthy public hearing the Planning Commission hastily defeated a motion to extend hearing, and voted to deny the permit without any discussion, or establishment of legitimate Findings of Fact.¹

Following the Commission's denial, Beachcomber appealed in order to seek review of the decision. On January 8, 2019, the hearing officer issued a decision denying Beachcomber's request for issuance of the permit but remanded the permit application back to the Commission for further proceedings in accordance with its order. The basis for the remand was that the Commission exceeded its authority by finding that the permit conditions were insufficient to reduce noise and visual impact – rather that the Commission's role is only to determine whether the application complied with the requirements stated in the code, not to determine the effectiveness of those conditions. The Commission conducted a public hearing on June 10, 2019 to consider the issue on remand. The hearing was continued to June 24, 2019, wherein the Commission approved the permit.

II. PLANNING COMMISSION APPROVAL

Beachcomber asserts that the Kenai Peninsula Borough Planning Commission properly granted the Conditional Land Use Permit authorizing its material extraction at the proposed site.

¹ Beachcomber subsequently sought another application for extraction under the counter permit provision on July 30, 2018 for a smaller parcel on its property, which does not require public notice or approval by the Commission – this application was granted on August 15, 2018. Beachcomber has not taken any substantive action upon this permit to date, pending ongoing litigation.

III. ASSERTED ERRORS

Applicant asserts that the Planning Commission properly decided the matter before it and no errors were made.

IV. LEGAL AUTHORITY

a. The Kenai Peninsula Borough Code 21.01.010 Allows for the Commission to Approve Applicant's Conditional Land Use Permit Application.

KPB 21.01.010 provides authority for the Borough to exercise all zoning powers on an areawide basis. As such, all zoning requests are submitted to the Borough Planning Commission for review, and the permit application filed by Beachcomber was properly considered by law by the Commission. The Commission approved the Conditional Land Use Permit on remand after the hearing officer found that the Commission had exceeded its authority by denying the permit based on two standards which it believed would not be adequately met. Applicant Beachcomber properly submitted the application and properly detailed how it would abide by the mandatory codes in accordance with KPB 21.29.040. Each condition was acknowledged by the Commission at its June 24, 2019 meeting.

Appellants appear to have the expectation that any proposed use of Beachcomber's property should be done so in a way that has no visual or noise impact on their property. The code does not require a complete prohibition on such impact. The Borough has established its desired means of regulating the activity occurring on its land areas, and is engaged in only "minimal zoning."² As such, it has no specified areas specifically zoned for strictly residential or strictly

² KPB Planning Commission Manual, at 7 (April 2019).

commercial use. It has only the code by which to govern its permitting procedure and regulations, limiting the Commission's authority only to ensuring the application procedure is fully followed.

Appellant's attempt to circumvent the Code and to persuade the Commission to act in a role beyond the scope designated by the Code must be denied. Appellant may have valid concerns for opposing the proposed use of the site; however, it is not the Commission's place to determine the effectiveness of the standards set forth; only that the standards mandated are sufficiently addressed in their application.

b. Appellants' Case Should Be Dismissed Upon Summary Judgment

Appellant no longer has a viable case available upon which to appeal. Appellant has made no argument that the Commission's decision upon remand was made inconsistent with the Code requirements of abiding by the permitting process. Summary judgment shall be granted when there is no genuine factual dispute and the moving party is entitled to judgment as a matter of law.³ Applicant Beachcomber argues that no genuine factual disputes exist and that as such, this matter should be dismissed.

Appellants' dispute is based upon its assertion that the Commission improperly granted the permit without substantial evidence that the standards under KPB 21.29.040 could not be met. Again, the Commission's role is not to determine whether Beachcomber's measures could adequately reduce noise and visual disturbance and dust, only that it has properly submitted a valid

³ *Parson v. State, Dep't of Rev., Alaska Housing Fin. Corp.*, 189 P.3d 1032, 1036 (Alaska 2008) citing *Parker v. Tomera*, 89 P.3d 761, 765 (Alaska 2004).

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application. The Commission does not have the capacity or duty to determine the effectiveness of Applicant's abatement measures.

III. CONCLUSION

Applicants Emmitt Trimble and Beachcomber, LLC maintain that the Kenai Peninsula Borough Planning Commission has properly approved its permit application. Beachcomber has submitted viable plans for its site to meet the required standards, as well as proposed voluntary standards to reduce the impact of its operations on neighboring properties. Beachcomber respectfully asserts that it has met all the standards set forth in the Kenai Peninsula Borough code such that Conditional Land Use Permit granted by the Commission should be upheld and Appellant's case dismissed summarily.

DATED this 18th day of October, 2019, at Anchorage, Alaska.

HOLMES WEDDLE and BARCOTT, P.C.
Attorneys for Applicant

By: _____



Stacey C. Stone
Alaska Bar No. 1005030
Chantal Trinko
Alaska Bar No. 1505034

Blankenship, Johni

From: Emmitt Trimble <emmitttrimble@gmail.com>
Sent: Tuesday, October 01, 2019 9:54 AM
To: Blankenship, Johni
Cc: Mary
Subject: <EXTERNAL-SENDER>Appeal of Planning Commission decision re: Beachcomber LLC

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.

Applicant's Opening Statement regarding Kenai Peninsula Borough Planning Commission decision approving the issuance of the CLUP applied for by Beachcomber LLC:

Beachcomber finds no errors or omissions in the decision made by the Kenai Peninsula Borough Planning Commission to approve and issue the CLUP applied for by Beachcomber for extraction of material from Tract B McGee Tracts - Deed of Record Boundary Survey (Plat 80-104) KPB Parcel 169-010-67.

Furthermore, as the Planning Staff and Commission determined, all conditions required by the application and ordinance have been met and complied with, including voluntary conditions. The Appellant has not provided any Substantial Evidence supporting Findings of Fact that would lead to a reversal of the Planning Commission's Findings and Decision, therefore the decision to issue the CLUP must be upheld.

--

Emmitt and Mary Trimble
907-299-1459

emmitttrimble@gmail.com

Blankenship, Johni

From: Lauren Isenhour <homegrownconstructionak@gmail.com>
Sent: Monday, September 30, 2019 1:32 PM
To: Blankenship, Johni
Subject: <EXTERNAL-SENDER> Beachcomber CLUP

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 want to send this email to, once again, show my support for the CLUP approved for Beachcomber LLC. I hope to see the planning commission's decision to approve the permit reinforced at the appeal hearing.

Thank you,

Lauren Isenhour

--

Lauren Isenhour
Home Grown Construction LLC
(907)435-7822

Blankenship, Johni

From: Allison Trimble <allisontrimblerealestate@gmail.com>
Sent: Monday, September 30, 2019 1:13 PM
To: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Beachcomber LLC

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 am writing in support of the decision of the Planning Commission, approving the CLUP for Beachcomber LLC.

Thank you.

--

Warmly,



1873 Main Street Suite #7
Ferndale, WA 98248
Phone: 360-961-5537

www.allisontrimble.com

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KENAI PENINSULA BOROUGH

In the matter of the Kenai Peninsula)
 Borough Planning Commission's)
 decision to approve a conditional land)
 use permit for a material site that was)
 requested for KPB Parcel 169-010-67;)
 Trace B, McGee Tracts – Deed or)
 Record Boundary Survey (Plat 80-104) –)
 Deed Recorded in Book 4, Page 116,)
 Homer Recording District)
)
 Hans Bilben)
)
 Appellant)
)
 Emmitt and Mary Trimble)
 Beachcomber LLC,)
)
 Applicant.)
)

CASE NO. 2019-01-PCA

MOTION TO EXPAND THE RECORD

Comes Now Applicant Hans Bilben, by and through counsel, Katherine Elsner, and pursuant to KPB 21.20.300, hereby requests that the Hearing Officer expand the record on appeal to include the following additional items:

1. Kenai Peninsula Borough Planning Commission Manual.¹
2. Transcript of the Commissioner Comments at the conclusion of the June 24, 2019 Planning Commission Meeting.²

¹ A true and correct copy of the Manual is attached hereto and available at https://www.kpb.us/images/KPB/PLN/Plan_Comm/2019_PC_Manual.pdf

² A true and correct copy of the relevant portion of the Minutes reflecting this exchange is attached hereto and can be found at https://www.kpb.us/components/com_papyruslist/document.php?d=2397690

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3. Letter referenced by Commissioner Ecklund at the September 9, 2019 Planning Commission Meeting and Testimony of Commissioner Ecklund relating to that Letter.³

Central to procedural and substantive complaints of error raised by the applicant in this case is the question of whether Planning Commission members held erroneous views of the legal interpretation of the KPB Code relating to the disapproval of Conditional Land Use Permits for material site extractions and what affect that erroneous legal interpretation had on the outcome in this case.

At the conclusion of the June 24, 2019 hearing, additional comments were made relating to this CLUP application process that are not included in the verbatim transcript of the record.

Pursuant to the Minutes of that meeting the following occurred:

Commissioner Ecklund wanted to note that the Commission has denied material site extraction permits. Maybe they will have valid balanced reasons that can be used to represent all sides.

Commissioner Carluccio noted that several months ago she drove by the site that was reviewed earlier in the evening. She thinks it is a travesty that the Commission feels like it has to approve everything and that there does not seem to be anything that they can use to deny a gravel permit. She is disappointed that it was approved and the process. She agrees with some of the comments of the homeowners and it seems like that when there are so many people coming to try and protect their property that there should be a way to give them that protection.

Commissioner Foster noted he would be traveling but will be putting in his time on the Plat Committee. He noted that when they research the beginning of zoning, whether it is a community, as a city, or a borough, the bottom line was to preserve property rights and yet people don't want zoning. In the City where there are zoning powers there is a conditional use permit, it is a permitted use. Conditions are just put on it that help lessen the impact it might have. When there is no zoning the Commission's hands are tied. These are personal property rights that the individual wants to use his property. When he first got on the Commission it wasn't until he read through the entire Ordinance that he realized what conditions can be added to try to mitigate. It is an attempt to mitigate. He doesn't know if they can ever really say no. They have said no but the decision has been overturned. He would like to

³ A true and correct copy of the relevant portion of the Minutes referring to this Letter are attached hereto and can be found at https://www.kpb.us/components/com_papyruslist/document.php?d=2469557

see how Local Option Zoning, where some people are zoned and others are not and how that would work together.

These comments bear directly on a primary point on appeal: namely that the PC Members' held an erroneous belief on the limitations of the code and that this erroneous belief impacted the decision made. Moreover, these comments related specifically to this site application and were made at the same hearing where the CLUP application was approved. The transcript of this additional discussion must be included pursuant to 21.20.270(A)(8).

Subsequent to the June 24, 2019 decision, additional Planning Commission hearings have been held to address the amendment to the CLUP material site extraction codes. In addressing the Planning Commission's position on proposed amendments – not yet enacted nor submitted to the Assembly for consideration – Planning Commissioner Ecklund stated:

[S]he had issues with a long letter from a member of the borough staff that said the Planning Commission does not have the ability to disapprove a permit. The way it reads is that the Commission shall approve a permit that meets the mandatory conditions. That is what it said before and that is why staff said if it meets the conditions, they had to approve it.

As discussed above, KPB advisements to the Planning Commission members lack of authority to disapprove a CLUP for material site extraction were legally incorrect and apparently impacted PC Members determinations relating to this application. This letter is relevant and material to the question of what Commissioners received from Borough Staff in reaching their decision and the subsequent impact those submissions had on the Commissioners decision on this application. It must be included in the record pursuant to 21.20.270(A)(5). Similarly, the Planning Commission Manual is provided to individual members to instruct them on the procedure and policy to follow during this proceeding and is relevant to procedural errors raised by the Appellant. It is assumed that the Manual is expected to apply to all applications before the Commission. It should be included in the record on appeal.

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Accordingly, the Applicant respectfully requests that the Record be expanded to include these additional items.

DATED October 1, 2019.

Respectfully submitted and filed on behalf of Hans Bilben



Katherine Elsner, ABA #1411116

Planning Commission Manual

April 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION

MANUAL

APRIL 2019



Max Best, Director of Planning
Holly Montague, Deputy Borough Attorney
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A. Planning Commission Responsibilities and Functions

1. Under state statute and borough code, what are the functions and responsibilities of the Planning Commission?

The Planning Commission serves in a quasi-judicial capacity regarding numerous petitions concerning individual land use and development. The Planning Commission also acts in an advisory role to the mayor and assembly for both administrative and legislative decisions regarding land use issues. (The distinction between the quasi-judicial and advisory roles of the Planning Commission are discussed in section A-2 of this manual.)

Under state statute the Planning Commission has the following responsibilities:

- A. The Planning Commission prepares and submits to the assembly a proposed comprehensive plan in accordance with AS 29.40.030 for the systematic and organized development of the borough. AS 29.40.030 provides that the comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the borough and may include, but is not limited, to the following:
 - statements of policies, goals, and standards;
 - a land use plan;
 - a community facilities plan;
 - a transportation plan;
 - recommendations for implementation of the comprehensive plan;

- B. The Planning Commission reviews, recommends, and administers measures necessary to implement the comprehensive plan, including measures provided under AS 29.40.040. Under AS 29.40.040 these measures include, but are not limited to the following:
 - zoning regulations restricting the use of land and improvements by geographic districts;
 - land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

- measures to further the goals and objectives of the comprehensive plan;
 - grant variances from land use regulations where the condition from which the applicant seeks relief was not caused by the applicant; where a use will not be permitted in a district where prohibited, the variance is not sought to solely relieve pecuniary hardship or inconvenience;
- C. The Plat Committee, as authorized by KPB 2.40.080 and AS 29.40.070, hears and decides cases involving platting. Four members of the Planning Commission must be present for the Plat Committee to meet.
- D. Pursuant to AS 29.40.170, the Planning Commission (or platting authority) where authorized by ordinance may delegate powers to hear and decide cases, including but not limited to:
- one or more members of the Planning Commission or platting authority;
 - other boards or commissions;
 - a hearing officer designated by the Planning Commission or platting authority.

Under the borough code, the Planning Commission has the following responsibilities:

- recommends school names (KPB 1.20.010);
- a Planning Commission member serves on the trails commission (KPB 2.75.020) (note: the trails commission is currently dormant);
- provides advice on solid waste disposal sites (KPB 10.04.020);
- names and renames streets outside cities (KPB 14.10.010);
- makes recommendations to the borough prior to acquisition of an interest in lands (KPB 17.10.040) and disposals (KPB 17.10.070(B));
- recommends the classification of borough lands to the borough assembly (KPB 17.10.080);
- makes recommendations to the assembly regarding petitions to modify deed restrictions (KPB 17.10.130(F)(3));
- recommends forest management plans to the assembly annually (KPB 17.50.010);

- holds public hearings and make recommendations to the assembly on forest management sale reports prepared by the administration (KPB 17.50.035(B));
- approves or rejects all plans, plats, or replats of land laid out in lots or plats, and the streets, alleys, or other dedications (KPB 2.40.070);
- may delegate authority to hear and decide plat cases by a committee composed of at least four Planning Commission members (KPB 2.40.080);
- the Planning Commission reviews decisions of the Plat Committee de novo (KPB 2.40.080(B));
- prepares plans for the systematic development and betterment of the borough as a place of residence or for business (KPB 2.40.040);
- may consider and investigate subject matter regarding the development and betterment of the borough and make recommendations as it considers advisable to borough departments and to the assembly; may make or have made surveys, maps or plans (KPB 2.40.050);
- investigate and report before final action is taken by the borough (or a borough department) on the location and design of any public building, dock, beach, ski ground, statue, memorial park, parkway, boulevard, street or alley, playground, public street, alley or the grade thereof (KPB 2.40.060);
- may by majority vote agree to serve as an incorporating sponsor and as a member of the Resource Conservation & Development District board with a Planning Commission member representative elected by the Planning Commission (KPB 2.40.100);
- hears and decides reconsiderations of the Planning Director's seizure of abandoned vehicles on borough or private property (KPB 12.06.020(C));
- hears appeals from Planning Director determinations regarding utility right-of-way permits (KPB 14.08.090);
- approves final plats where so requested by the Planning Director, a major redesign was a condition of preliminary approval, or final approval by the Planning Commission was a condition of preliminary plat approval (KPB 20.60.210-220);
- hears and decides exceptions to the platting regulations (KPB 20.50);

- denies vacation petitions or recommends approval of vacation petitions to the assembly (KPB 20.70.100);
- exercises jurisdiction within the rural and municipal districts regarding planning, platting, subdivision approval, siting of borough schools, buildings and other borough facilities, the planning and development of transportation networks and related facilities, the overall economic development of the borough, and regarding borough lands and natural resources taking into consideration any affected municipalities;
- grants variances to land use regulations in KPB Title 21 in accord with AS 29.40.040 and KPB 21.05;
- establishes a fee by resolution for rezoning applications in the municipal district (KPB 21.10.010(F));
- hold a public hearing and make recommendations regarding zoning amendments within the municipal district limited to the issue of whether the proposed amendment has a significant impact on land use and transportation in the area outside the municipal district. If there is significant impact, the Planning Commission shall recommend approval, denial, or modification of the amendment. If there is no significant impact outside the municipal district, the Planning Commission shall recommend to the assembly the action recommended by the city advisory Planning Commission. (KPB 21.10.020);
- initiate changes to rural district zoning, hold public hearings regarding the same, and make recommendations to the assembly (KPB 21.10.030);
- make recommendations to the assembly regarding changes to the comprehensive plans within the municipal districts (KPB 21.01.025);
- grants conditional use permits under KPB 21.18, anadromous habitat protection ordinance;
- hears and decides applications for conditional land use permits under KPB 21.25 (currently material site, and correctional community residential center permits);
- make recommendations to the assembly regarding the establishment or rezoning of local option zoning districts (KPB 21.44);
- hears appeals from nonconforming use determinations for local option zoning districts made by the Planning Director (KPB 21.44.110(B)).

2. What types of decisions does the Planning Commission make?

Most of the decisions the Planning Commission makes are classified as either advisory or quasi-judicial, although sometimes they may make legislative decisions. Advisory decisions are recommendations which are generally made to the mayor and/or assembly. The most common type of advisory decision is when the Planning Commission makes recommendations regarding ordinances pending before the assembly that affect land use issues. Other examples of advisory decisions include recommendations to the assembly regarding the acquisition and conveyances of land or recommendations regarding the approval of comprehensive plans. In these cases, another body (the assembly) is the final-decision maker; however, the advice and expertise of the Planning Commission is sought as part of that decision-making process.

Quasi-judicial decisions are those decisions where an adopted law or policy is applied to a specific person or property. The Planning Commission has decision-making authority and is not advisory on the quasi-judicial matters that come before it. Examples of quasi-judicial actions are plat applications and conditional use permits where the provisions of Titles 20 and 21 of the borough code are being applied to an individual's application.

The Planning Commission also occasionally makes quasi-legislative decisions. Examples of quasi-legislative decisions are when the Planning Commission has adopted resolutions that clarify and interpret the ordinances that govern the Planning Commission. Such resolutions, once adopted, should be consistently followed. Planning Commission Resolution 89-08 clarifying setback provisions under Title 20 is an example of such a quasi-legislative act.

Sometimes Planning Commission resolutions are more administrative in nature setting forth procedural rules for the conduct of the Planning Commission business that come before the Planning Commission. Resolution 96-12 establishing the meeting adjournment time and Resolution 89-04 (Sub) establishing a policy regarding Planning Commission absences are examples of such resolutions.

3. What is the purpose of the comprehensive plan and the Planning Commission's role in development of the plan?

The comprehensive plan serves as a long-range policy guide for development of the borough as a whole. Borough land use regulations are to be in accordance with the comprehensive plan. AS 29.40.040(a). Requiring zoning decisions to be in accord with the comprehensive plan helps to guard against prejudice, arbitrary decision making, and improper motives by providing substantive standards against which to measure individual zoning decisions. A comprehensive plan must be in place before borough zoning regulations can be implemented. This requirement is not a barrier to preexisting zoning regulations so long as they comply with the comprehensive plan.

AS 29.40.020(b)(1) mandates that the Planning Commission shall prepare and submit to the assembly a proposed comprehensive plan in accordance with AS 29.40.030 for the systematic and organized development of the borough. AS 29.40.030 provides that the

"comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the . . . second class borough, and may include, but is not limited to, the following:

- (1) statements of policies, goals, and standards;
- (2) a land use plan;
- (3) a community facilities plan;
- (4) a transportation plan; and
- (5) recommendations for implementation of the comprehensive plan."

AS 29.40.030(a).

AS 29.40.030(b) provides that "[w]ith the recommendations of the Planning Commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the Planning Commission, periodically undertake an overall review of the comprehensive plan and update the plan as necessary."

AS 29.40.030(b).

The Planning Commission and staff can reference the comprehensive plan in making recommendations and decisions on issues and applications that come before them. The

comprehensive plan can also be used for guidance and support in drafting legislation for the borough.

4. What is the Planning Commission's role in land use regulation and what is zoning?

AS 29.40.040(a) authorizes both geographical zones and the specific use approach to land use regulation. All land use regulation, whether it be by zoning or specific use regulation must be consistent with the comprehensive plan. AS 29.40.020 specifically delegates to the Planning Commission the tasks of reviewing, recommending, and administering 1) measures necessary to implement the comprehensive plan including zoning regulations, 2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures or to minimize unfavorable effects of uses and structures, and 3) measures to further the goals of the comprehensive plan. The role of the Planning Commission is critical and it cannot be ignored or truncated by attempting to submit land use regulations to a popular vote for approval thus bypassing the Planning Commission's input.

Zoning is a form of land use regulation. Zoning is governmental regulation within a community of land, buildings and structures in accordance with a general plan and for the purposes set forth in the state enabling statute. AS 29.40.040 provides for restricting the use of land by geographic districts. It is typical under zoning by geographic districts for land to be divided into districts for the purpose of promoting or protecting certain uses within the district-- a community may have residential, commercial, industrial and other types of districts designated by use. Zoning is a prevalent form of governmental land use regulation but it is not the only form. Specific use regulation places restrictions on a particular land use regardless of location. Often these uses are the type that may create negative secondary impacts such as odors, noise, unsightliness, excessive traffic, or dangerous situations. Slaughterhouses, alcohol establishments and junkyards are activities that have been subject to specific use regulation. The borough's material site ordinance (KPB 21.29) is a specific use regulation.

The borough has engaged only in minimal zoning. The borough is divided into two districts, the rural district and the municipal district. The rural district is comprised of all areas outside the cities which have been delegated land use powers; land use is

unregulated unless either an overlay district within the rural district is created or a specific use regulation is adopted. The municipal district is comprised of the six organized cities in the borough that have been delegated land use powers. The borough retains the comprehensive planning powers for all six cities, but has delegated land use regulation to five of the cities. Platting powers have also been partially delegated to the extent that the cities may adopt their own platting standards. KPB 20.25.050-060. The borough retains jurisdiction over the subdivision approval process in all cities.

Within the rural district the borough has created several other districts that do not encompass the entire rural district but regulate uses within a specific geographic area. These districts include KPB 21.18 anadromous waters habitat protection district and several local option zoning districts.

5. What are variances and exceptions and when can they be granted?

A variance is a departure from the underlying land use regulation without changing the zoning of the parcel or the land use regulation. There are two types of variances: use variances and area variances. Use variances allow a use in a district that is otherwise prohibited by the zoning ordinance. Area variances address issues like building height, dimensions, and setbacks. Alaska law prohibits the granting of use variances. Under AS 29.40.040 variances may not be granted if 1) special conditions that require the variance are caused by the person seeking the variance; 2) the variance will permit a land use in a district in which that use is prohibited, or 3) the variance is sought solely to relieve pecuniary hardship or inconvenience. If any of these three factors exist, the variance cannot be granted.

The Planning Commission also grants exceptions to subdivision requirements pursuant to KPB Chapter 20.50. This exception process was created by the borough code and does not have the strict statutory standards that need to be met for a variance from a Title 21 land use regulation authorized by AS 29.40.040. In order to obtain an exception 1) there must be special circumstances or conditions affecting the property; 2) the exception must be necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of Title 20; and 3) that granting the exception will not be detrimental to the public welfare or injurious to other nearby

property. All three factors must be met in order to qualify for an exception. If there is a design requirement addressed by a land use regulation then the variance procedures will need to be followed rather than the exception process, i.e., the more flexible exception process in Title 20 cannot be used to avoid or circumvent the stricter variance standards applicable to Title 21 applications. The burden is on the applicant to justify the exception, although it is appropriate for staff to suggest a subdivision applicant apply for an exception if staff's review finds such an exception would be supportable.

If exceptions or variances are frequently granted for the same type of situation it is best to seek a legislative change to allow for the variation in the routine application of the ordinance.

B. Planning Commission Procedural Matters

1. How should motions be made for quasi-judicial questions?

The best practice is to make the motion in the positive, e.g., to approve a material site application. Under Roberts Rules of Order, if there is a tie vote the motion fails; therefore, a motion made in the negative could have the result of approving an action that a majority does not favor. While not always necessary in straightforward cases, a second motion should be made to specifically adopt the findings. If the commission is in total agreement with staff's recommended findings, then the motion may be as simple as one to approve staff's findings. This motion can be amended to modify staff's proposed findings based on the evidence the Planning Commission reviewed and their discussion of the matter. If the Planning Commission disagrees with staff's recommendation, then it is necessary for the Planning Commission to state findings supporting the Planning Commission's decision. For particularly complicated or controversial matters, it may be advisable for the Planning Commission to call a recess or even postpone the matter to another date in order that commissioners may work on findings and present them at a later time for approval.

2. What are "findings of fact" and why must they be made?

Put simply, findings are the commission's reasons for a particular decision. Findings need to be in writing and distributed to the parties who participated before the commission so that parties can determine why an application was approved or denied. Findings must be based on the evidence presented to the commission and the findings must support the ultimate decision reached. Additionally, findings must be based on the standards found in applicable statutes, borough ordinances, or other planning documents; otherwise, the decision may be viewed as arbitrary or without foundation. Without findings, parties cannot determine the reasons for the Planning Commission's decision or the grounds for an appeal. A reviewing body, such as the administrative hearing officer ("hearing officer") or court, also has difficulty determining which pieces of a Planning Commission discussion and evidence presented formed the basis for the commission's decision if the decisional document is void of findings. When findings are made by the Planning Commission, it

means the hearing officer will not have to fumble through the record in search of the reasons for the commission's decision; likewise, when the hearing officer makes findings of fact, the reviewing court, if any, will not have to glean support for the hearing officer's decision from the evidence spread across a voluminous record.

The most frequent failures in making findings are making conclusory findings, not making findings at all, or making findings that are unrelated to the applicable standards. A conclusory finding typically states that a standard in the code has or has not been met without explaining how. When denying an application, the findings should specifically reference the code sections that are not being met by the application. Staff should include citations to these code sections in the staff report to assist the Planning Commission with its analysis of the application. Evidence and testimony submitted by citizens should be considered to the extent that information is related to the standards applicable to the particular matter before the board. However, it is not appropriate to deny or condition a permit based on negative community sentiment alone when the applicable standards do not address the concerns being raised by the testimony. Planning Commission decisions are not based on the principles of the majority rules. The citizenry stacking the hall against or in favor of a particular application should not determine whether the application is approved or denied; rather, the application must be consistent with the goals and standards of the applicable statute or ordinance. The Planning Commission's decision must be supported by the substantial evidence in the record. "Substantial evidence" is defined as that relevant evidence which a reasonable mind would accept as adequate to support a conclusion.

3. What is the purpose of permit conditions and when are they appropriate?

Conditions are placed on a permit in order to aid compliance with the spirit and letter of the law (i.e., the borough code.) The conditions must be authorized by statute or local law or policy and further the goals of the regulation. Conditions should not be unrelated or excessive to meet the goals of the ordinance. As an example, it would be inappropriate to require a material site applicant to test his water source for contaminants since the material site ordinance only addresses water quantity not quality issues. It is also not defensible for a condition or exaction to be placed upon a subdivider which is not related to the burden his subdivision might place on the community. For example, it is reasonable

to require dedication (and construction if authorized by ordinance) of streets to support the traffic a subdivision will create, but it would not likely be defensible to require a subdivider to construct roads to a much higher standard than that required by the traffic generated by his subdivision plan.

4. Who are parties before the Planning Commission in quasi-judicial proceedings?

The answer of who is an appropriate party before the Planning Commission is found in statute, borough ordinances, and case law. AS 29.40.060(a) eliminates taxpayer-citizen standing in land use cases. The Alaska Supreme Court has held that a business competitor is not an appropriate party to an appeal from a nonconforming use (grandfather rights) appeal; the purpose of zoning with reference to land use is the preservation of the public interest in certain neighborhoods against uses believed to be deleterious to neighborhoods, i.e., zoning ordinances may protect residences against business, but not business against business. Additionally, the Alaska Supreme Court has specifically held that the borough itself has standing to appeal a Planning Commission decision. The Alaska Supreme Court upheld a local ordinance that defines an "aggrieved person" as one who potentially suffers an adverse effect on the use, enjoyment, or value of real property owned by the person seeking to appeal the Planning Commission's action. The general law has long favored limiting standing in land use cases to those personally affected by a Planning Commission decision in order to prevent excessive litigation and undue delay of final dispositions which could work against the welfare of the community.

AS 29.40.130 addressing notice in platting actions requires that "each affected property owner who did not sign the petition" receive notice of a replat or alteration. KPB 20.25.090(A) defines "affected party" for platting purposes as property owners within a proposed subdivision and persons who own property within 600 feet of the boundaries of a proposed subdivision. The Planning Director has the discretion to determine whether there are additional affected property owners based on population, density, ownership data, topography, and facilities in the area of the subdivision. Pursuant to KPB 20.25.090(D), the borough also provides notice to beneficial interest holders in platted property. Only those affected property owners who commented in writing or in person

may appeal a Planning Commission decision on a plat to the hearing officer. KPB 20.25.120 and 20.90.010.

AS 29.40.060 provides that the assembly defines the proper parties to an appeal from an administrative decision related to the enforcement, administration, or application of a land use regulation. There appears to be flexibility in how the borough defines an "aggrieved party". The borough's practice has been to define a notification radius (for example, 1/2 mile for material site applications) and property owners within that radius will receive written notice. Anyone can comment or give testimony in writing or verbally to the Planning Commission even if they are not in the 1/2 mile notice radius. This allows for a maximum amount of evidence and participation at the Planning Commission level. Anyone who participates by either written or personal testimony before the Planning Commission is given the opportunity to appeal to the hearing officer. However, at the hearing officer level a party must be an affected property owner to maintain the appeal before the hearing officer. This rule limits participation to those individuals who have a genuine and unique concern based on their property ownership in close proximity to the applicant parcel. A party must then participate at the hearing officer level in order to preserve their right to appeal to superior court as an aggrieved party.

5. What is staff's role before the Planning Commission?

Staff's functions vary depending on the matter that is before the commission. On all matters before the commission it is staff who will assemble the packet of information and make recommendations regarding the matter. However, staff's role somewhat varies depending on whether the issue before the Planning Commission is advisory or quasi-judicial. For example, on land classifications and conveyances, the Planning Commission is advisory to the assembly. Staff will prepare a report and a recommendation on how land should be classified incorporating a discussion of the standards set forth in KPB 17.10. Staff will then inform the assembly of the Planning Commission's recommendations as the assembly has the final authority over these matters. On quasi-judicial matters such as plats and conditional use permit applications staff will prepare a report with findings based on the standards in Title 20 or 21 of the borough code applicable to the application pending before the Planning Commission. The Planning Commission sits as a judge on these matters and a further appeal of their decision may

be taken to the hearing officer or court depending on the type of application. Staff's role is the equivalent of a party before the commission advocating for the findings and recommendations in the staff report. Just as any other aggrieved party may appeal a quasi-judicial Planning Commission decision, so may staff.

A related question that arises is whether staff must support the Planning Commission decision where the Planning Commission has taken a different position from the staff recommendation. Is staff obligated to pursue their original position or are they obligated to support the Planning Commission's decision? Neither course of action is required. If staff made a strong recommendation and still believes that its position is correct and consistent with the code, and the Planning Commission's decision is not, then staff should defend its original recommendation and can even appeal the Planning Commission's decision. In the interest of warding against unproductive appeals and maintaining a harmonious relationship between staff and the commission the latter course of action should probably only be pursued where there is no other party available to appeal the decision and the decision may set a trend for future erroneous decisions. However, where the decision is fact dependent and the Planning Commission hears additional facts to those that were submitted to staff or where the commission can reasonably interpret the facts or applicable standards differently than staff, staff may change its position and support the commission if the matter is further appealed.

6. What is the legal department's relationship to staff and the Planning Commission?

Similar to staff the legal department's role varies with the matter that is before the commission. If it's a legislative matter (or an advisory matter upon which the assembly will ultimately act in its legislative capacity) the lawyer may give advice to the commission regarding the matter, and has often drafted or reviewed and revised the resolution or ordinance subject to Planning Commission approval or recommendation.

In specific quasi-judicial cases before the commission the lawyer may have assisted staff in the preparation of its recommendation for the commission; this is most likely to occur in the Planning Commission's review of a Plat Committee decision or in an adversarial multi-meeting proceeding. At the Planning Commission hearing the lawyer may assist

staff by clarifying the rationale for staff's position and answering legal questions. Ethics rules governing lawyers prohibits a lawyer advocating staff's position and also advising the judge in the matter (in this case the Planning Commission). Therefore, if the Planning Commission convenes in a closed adjudicative session to consider its decision the lawyer should not enter private session. Also if staff has strongly advocated a position with a lawyers help ethics rules would prohibit the lawyer from changing sides and assisting the Planning Commission in a decision contrary to staff's recommendation without first consulting staff. When such a situation occurs it is best to postpone the decision to allow staff to consult the attorney to clarify if it is reasonable to take a position different from the one originally taken by staff so that both the lawyer and staff can assist the commission in reaching the most defensible position possible by proposing supplemental findings to support the commission's position. (It would be important in such a case to publicly copy all parties of record with the changed staff recommendation, again to avoid ex parte contact between staff and the commission and to promote transparency in the decision making process.) The commission itself, however, would not have to meet in public to deliberate the findings and decision, although it is required that the final decision be issued in writing with supporting findings so that all parties can understand the basis for the Planning Commission's decision.

Also with regards to various matters before the Planning Commission it is not unusual for the commission or staff to seek a verbal or written legal opinion on issues involving the interpretation of applicable borough code and statutes as well as procedural issues.

Reasonable minds can differ on the interpretation of code. However, if the Planning Commission or staff chose to make a recommendation or decision that is clearly contrary to the borough code, a statute, or applicable case law it is the lawyer's responsibility to recommend against such course of action. Ultimately the legal department's role is to assist in the issuance of fair and defensible Planning Commission decisions that comply with the standards set forth in borough code or other planning documents.

7. When should a Planning Commission member be recused from voting due to bias?

Bias is prejudging a matter. There is not a borough ordinance prohibiting bias. However, quasi-judicial decisions resulting from prejudice, arbitrary decision making, or improper motives may be invalidated under case law. The integrity required of public office-holders demands that even an "appearance of impropriety" be avoided. Whether bias requires recusal may vary depending on whether the Planning Commission is performing a quasi-judicial function as opposed to a quasi-legislative function.

Not all prejudgment eliminates a commissioner's ability to debate and decide issues. Often the Planning Commission serves in an advisory capacity on legislative issues, e.g., recommending the passage of a code ordinance which the commission helps administer. For this advisory and quasi-legislative role, it is expected that commissioners have preconceived notions regarding issues of law and policy. For example, planning commissioners are often selected by region because of their familiarity with local conditions and concern regarding land use issues. This type of familiarity is likely to result in the formation of opinions on the ordinances, resolutions, and policies that will be placed before the board or commission, and it is not generally grounds for recusal, but is rather seen as an advantage as the commissioner can educate his colleagues about issues in his district.

The Planning Commission is acting in a quasi-judicial capacity when it applies adopted laws and policy to an individual's application. When acting in a quasi-judicial capacity, it is analogous to a judge who must fairly hear and weigh the evidence received and objectively apply the established standards to the facts of the case. Commissioners who have prejudged the facts of an individual case pending before it to the extent that they can no longer be impartial are biased, and their participation in decisions may invalidate the commission's decision. A commissioner voicing a general opinion regarding certain types of issues does not necessarily mean he will judge a particular application regarding that type of issue without regard to the applicable standards. However, land use decisions are particularly prone to bias because commissioners are drawn from the immediate geographical area and because of the legislative, adjudicative, and political nature of the land use and zoning process.

The bias test is whether a commissioner has actually made up his mind regardless of any argument that might have been advanced at the hearing. Indicators of prejudgment include a commissioner making a clear statement suggesting that a decision has already been reached. The test is objective and queries whether a disinterested observer would conclude that the commissioner has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it. Some cases indicate that the *appearance* of bias, rather than actual bias, disqualifies the board member or commissioner.

Following are types of acts that have been found to constitute bias: (1) ex parte contact with board or commission members;¹ (2) making public statements or authoring letters regarding a particular case prior to the case coming before the board or commission;² (3) paying expenses of board member to make a site visit; (4) vote-trading; (5) soliciting persons to testify for or against a permit or application and (6) gifts given to influence a vote.

It is recommended that commissioners keep an open mind. Commissioners should judge the permit or application based on whether it meets the standards in the borough code or other applicable law or policy which the board or commission is expected to apply. Commissioners should not make conclusory statements on or off the record about someone's application or permit before the close of hearing and the matter being turned over to the board for discussion and decision. Commissioners should ask the applicant, interested parties, and staff questions about the permit application and how it relates to the applicable standards. Planning commissioners should explain their reasons on the record for voting for or against an application. The reasons should relate to the applicable standards.

If a commissioner feels strongly about an individual permit one way or another so that the commissioner cannot keep an open mind and apply the general standards to the individual application, the commissioner should recuse himself from voting.

¹ Ex parte contact occurs when a commissioner has discussions or correspondence with a party interested in a matter pending before the board outside the application and hearing process. While such private contacts are appropriate and even encouraged in advisory and legislative matters, such contact can fatally undermine a fair hearing process in a quasi-judicial matter.

² Please note that even when the remarks were made prior to the commissioner or board member's appointment, they may still constitute bias. Also, a letter written or statement made in an individual capacity, rather than as a commissioner or board member, showing prejudgment of a particular case may still result in disqualifying bias.

If a commissioner has made statements that indicate prejudgment of an individual permit or application, those statements should be declared on the record and the commissioner should indicate that he has an open mind and will still apply the applicable standards to the permit or application. Caution: Whether this will cleanse the bias will depend on how strong the statements made were, when and where they were made, and how controversial the particular permit or application is. Since even the “appearance of impropriety” should be avoided if statements indicating bias have been made it may be in the best interest of the decision-making process for a commissioner to recuse himself even if he thinks he can still be fair and impartial. Recusal will best protect the decision’s credibility and avoid reversal on appeal based on bias.

8. When should a Planning Commission member recuse themselves due to a conflict of interest?

Conflict of interest differs from bias. Bias is prejudgment of an issue pending before the Planning Commission, i.e., the potential inability to keep an open mind. Bias is not governed by any statute or ordinance. The borough has an ordinance governing conflict of interest which occurs when a Planning Commission member or an immediate family member has a financial interest in a matter pending before the Planning Commission. KPBA Chapter 2.58 disallows a planning commissioner from entering a contract with the borough unless certain code requirements are met which involve filing a “notice of intent to do business” form with the borough clerk ten days before entering the contract disclosing the conflict, the nature of the business relationship, and specifying the department involved in the contract. Filing a notice of intent to do business, however, does not allow the affected member to vote on a matter where the member has a substantial direct or indirect financial interest in a matter pending before the board. A substantial financial interest is a pecuniary or material benefit accruing as a result of a private, business, or professional transaction with the borough. A planning commissioner is deemed to have an interest in the business affairs of your spouse, spousal equivalent, minor children or dependents, certain companies of which you are a member, employee, officer or director, or if you own more than 5 percent of the stock of a corporation. There are exceptions to the “substantial financial interest” provision including (1) where the Planning Commission member is only deemed to have an interest because they are an officer or employee of the contracting entity but their pay will not be directly affected by

the contract and their duties do not directly involve obtaining, preparing for, or performing the contract duties; (2) where the contract was entered before the Planning Commission member's appointment, but this would not authorize renewing the contract; (3) where the only interest is stockholdings and the stock is listed on the NY or American stock exchanges or less than 5 percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the official; and (4) a contract or sale where the total amount paid during the fiscal year does not exceed \$100.00.

Conflict issues are often not crystal clear. There are times where a conflict issue may be raised either by a commissioner about himself or by someone else about a commissioner. The chair can rule on whether the Planning Commission member has a substantial financial interest or refer the question of the commissioner's participation to the Planning Commission for a determination. If it is ruled that a commissioner has a conflict because of a substantial financial interest he must not vote on the issue.

9. When is a motion for reconsideration or a motion to rescind (amend after adoption) appropriate?

The motion for reconsideration under Robert's Rules may only be brought by a commissioner (or Plat Committee member) who voted on the prevailing side of a motion. It may be used when a member believes a decision was too hastily reached. The motion can fail for lack of a second. It must be made at the meeting in which the motion which is being reconsidered is approved. A committee of the whole (Planning Commission) would not reconsider a decision of a subcommittee (Plat Committee) under Robert's Rules. However, both Plat Committee and Planning Commission decisions are subject to this type of motion for reconsideration. If the motion to reconsider is adopted, then there is further consideration of the main motion.

A motion to rescind or to amend after adoption does not have to be brought by someone who voted on the prevailing side of the original motion, nor is it subject to the restrictive time frames of a motion to reconsider. The motion to rescind or amend after adoption may be made at any time prior to the meeting where the rescission will be considered. The motion to rescind or amend after adoption is not merely procedural as is the motion to reconsider; rather, the motion to rescind or amend after adoption directly gets to the

merits of the original motion. It may be amended and is debatable. If notice is given of the motion at the meeting where it will be considered, a 2/3 supermajority vote is required for it to pass. If prior notice is given, i.e., at a prior meeting or in the agenda for the meeting where the motion to rescind will be considered, then only a simple majority is required to adopt the motion. A motion to rescind or amend after adoption is not appropriate in any of the four instances: (1) when a motion for reconsideration has been made and the question can be reached by calling up the motion to reconsider; (2) when something has been done that would be impossible to undo as a result of the adoption of the main motion; (3) when the matter is of a contractual nature and the other party to the contract has been informed of the vote; (4) when a resignation, election, or expulsion of a member has been acted upon and the member was present or has been informed of the vote.³ Generally, unless the member wishes to rescind an action in its entirety, it is better to make a motion to amend after adoption because it provides the commission more flexibility to amend the original action rather than simply voting up or down to negate the original motion.

10. How does the Open Meetings Act apply to Planning Commission meetings?

The Open Meetings Act ("OMA") requires meetings of governmental bodies to be publicly noticed and open to the public. The OMA applies to the borough Planning Commission, although the applicability of the OMA may vary depending on the type of decision-making the Planning Commission is engaged in (i.e., quasi-judicial, legislative, or advisory). If more than three members are discussing an issue upon which the body is empowered to make a decision, the act applies, and the meeting must be noticed and open to the public. This is true even if the members involved did not plan to meet but just happen to bump into each other at the coffee shop. However, if the decision involved is merely advisory to another body, e.g. the assembly, then a violation only occurs if over three commissioners meet and the meeting was prearranged. However, if such an impromptu meeting occurs it should be terminated as soon as commissioners realize they are discussing business that should be conducted at a scheduled Planning Commission

³ Due to the nature of municipal government, it is unlikely that either the third or fourth instance would arise. With regard to Item 3, the mayor is the final contracting authority for the borough, so the Planning Commission's vote in such a case would most often be a recommendation to the mayor and or assembly. With regard to Item 4, the mayor appoints members of the Planning Commission, and, if necessary, removes members with assembly approval.

meeting. The best course of conduct is to not engage in “mini meetings” before or after regularly scheduled Planning Commission meetings. Also do not engage in serial meetings or play “telephone” by speaking to one after another of your fellow commissioners as it could lead to the deliberative process taking place outside the public process. It is likewise not appropriate to use someone who is not on the commission to poll or speak to other individual commissioners on your behalf.

The quasi-judicial deliberations the board enters are exempt from the act; the board’s deliberations are considered adjudicatory sessions and such deliberative sessions by commission members acting as judges do not have to be public. However, since quasi-judicial matters such as plats and conditional use permits still are subject to public hearings and notice requirements under AS 29 and/or provisions of the borough code, the actual hearing of such issues must be publicly held. These public notice and hearing requirements, of course, allow the Planning Commission to gather as much relevant information from the public as possible. Further, discussions of quasi-judicial matters should not be informally or privately held prior to the close of the public hearing process because of potential claims that due process was violated by some commissioners having more information or discussions to which other commissioners were not privy. Please note while quasi-judicial or adjudicatory decision-making allows Planning Commission members to deliberate with each other outside of a public meeting, it does not allow a member to discuss the issues with an individual party outside of a public meeting. This is known as *ex parte* contact and as discussed in section B-7 of this manual can lead to claims that the hearing process was unfair. While not required to be publicly held, it is recommended that the deliberative portion of a quasi-judicial process still be public because there are times where questions arise for participants before the board after the close of public hearing and all participants need to be aware of any questions or responses from the other participants. Additionally, the openness of deliberations assists the participants, including staff, in knowing the basis of the Planning Commission’s decision although the reasons for the decision should also be contained in written findings as discussed in Section B-2 of this manual.

Executive sessions, which exclude the public, are also exempt from the Open Meetings Act. However, it is rare that the Planning Commission would need to hold an executive session because of the advisory nature of the decisions they make which are not quasi-judicial. Executive sessions are allowed for (1) matters the immediate knowledge of which

would clearly have an adverse effect upon the finances of the borough; (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion; (3) matters which are required by law to be confidential; and (4) matters involving consideration of government records that by law are confidential. Since the assembly is the ultimate decision-maker regarding financial matters, the Planning Commission does not supervise any employees, and most matters that come before the commission are by their nature subject to public participation, the need for an executive session is rare. If possible, the borough attorney's office should be consulted if an executive session is being contemplated in order that any such session be in compliance with the OMA.

11. What hearing procedures should be followed for quasi-judicial hearings?

The following guidelines allow a fair quasi-judicial hearing format:

- 1) The chair introduces the agenda item.
- 2) Staff presents a report and staff recommendation.
- 3) Presentation by the applicant and their representatives.
- 4) Testimony by members of the public.
- 5) Response by staff to any testimony that was given and an opportunity for the Commission to ask questions of the staff.
- 6) Rebuttal by applicant. The applicant can rebut evidence or testimony but should not present new testimony or evidence. (If new evidence or testimony is allowed, the Planning Commission may question staff regarding the same and take additional public comment regarding the new evidence.)
- 7) The chairperson closes the hearing and then entertains a motion. The Commission deliberates and makes a decision.

Following are the rules by which the Planning Commission conducts a public hearing:

- 1) Persons wishing to testify must wait for recognition by the Chair and state their name and address for the record at the microphone provided for public comment.
- 2) Each speaker is limited to five minutes unless they have a prepared statement in which case they may request additional time.
- 3) All questions will be directed to the Chair. All questions and comments will be kept to the subject at hand and shall not deal with personalities.
- 4) The public shall maintain decorum at all times and treat all testifiers with respect. No applause or verbal outburst will be allowed.

12. What is the Planning Commission's decision making authority when reviewing quasi-judicial applications?

The answer to this question varies based on the type of application being reviewed. The most common applications the Planning Commission reviews are discussed below:

A. Preliminary Plats - KPB Title 20: The approval of preliminary plats is pursuant to authority granted by AS 29.40 and AS 40.15. The purpose of the platting provisions is to promote an adequate and efficient street and road system, provide necessary easements, provide minimum standards of survey accuracy and proper preparation of plats and protect and improve the health safety and general welfare of the people. KPB 20.10.010. It is through the adoption of the remaining provisions of KPB title 20 that the assembly has chosen to what extent to protect public health, safety and welfare. KPB 20.25.100 grants the Planning Commission authority to approve, conditionally approve, or deny a plat. It is rare, that a plat can be denied because the standards for plat approval that must be met are minimal. Unlike many municipalities the borough does not require roads be constructed prior to final plat approval nor does it require installation agreements for utilities. It is generally not difficult to meet the boroughs basic standards regarding lot size, legal access to the subdivision, internal dedications, and the form and content requirements for a preliminary plat. The Planning Commission also has discretion to grant or deny exceptions pursuant to KPB 20.50. Exceptions from the building setback

requirements under KPB 20.30.240 are one of the more common type of exception requests; however, exceptions to other provisions of the code may be requested as well. For example, the exception process has been used to allow private tracts to be used as roads, rather than dedication of rights-of-way. In using its discretion to grant exceptions the Planning Commission still must ensure the public welfare is not undermined by granting the exception. Exceptions are further addressed in Section A-5 of the Planning Commission manual.

B. Anadromous Habitat Protection - KPB 21.18: The Planning Commission has discretion to approve or deny and condition permits within the anadromous habitat protection district under KPB 21.18.081. There is a list of 12 types of conditional uses that may be granted. There are five standards set forth in KPB 21.8.081(D) that must be met in order to grant a permit. However, the Planning Commission may condition the permit in order to meet those standards, for example, by approving mitigation measures that would further protection of anadromous habitat. KPB 21.28.081(E)

C. Material Site Permits: Material sites are subject to a set list of mandatory conditions. KPB 21.19.050. Only those mandatory conditions may be placed on a permit. KPB 21.29.040. KPB 21.25.050 which is the general procedural ordinance for all conditional land permits that are now adopted authorizes the Planning Commission to approve, deny, or condition a permit. However, KPB 21.25.010 requires that the more specific CLUP ordinances, such as KPB 21.29 to apply. Thus, the general language providing for denial or modification of a permit application is only allowed to the extent KPB 21.29 would allow such denial or modification. The only discretion in the material site code is to enhance or waive buffers, grant variances if the applicant meets the statutory standards of AS 29.40 and KPB 21.05, and deny a permit if the application doesn't meet the mandatory conditions. An incomplete application should not reach the commission as staff is authorized to not process an application until it is deemed complete. KPB 21.25.050(A). However, the Planning Commission serves as a check and balance in this instance in the event an incomplete application is processed by staff and makes it to the commission level. In such a case postponement to allow the applicant to complete the application is recommended. If the applicant refuses to submit a complete application denial may be warranted.

D. Variances - AS 29.40(a)(3)(b); KPB 21.05: A variance proceeding is required by state statute. The variance process is addressed at Section A-5 of the Planning Commission manual. The Planning Commission has the discretion to approve, deny, or condition a variance consistent with the standards set forth in KPB 29.40 and KPB 21.05. The Planning Commission may grant a lesser variance than requested by the applicant in order that the variance be as consistent with the applicable code as possible.

**Excerpt
Planning Commission
Minutes**

June 24, 2019

on the why would help. Commissioner Morgan felt that working with the group will help her understand it better.

Commissioner Bentz felt that a work session might be nice before the July meeting. If people did have alternate recommendations for the Ordinance they could review the memo on page 137. It goes through each change and shows the verbiage of the change but also the description. If someone is thinking about additional items such as safety they could come to the work session with some draft language and justifications to get it moving and have staff help.

Commissioner Brantley asked if the work session would be allowed. Mr. Best answered that it would be a public meeting with recordings and notice to the public.

Commissioner Ecklund wanted to clarify that the only Planning Commission meeting in July is July 15, 2019. She wanted to know if there was much scheduled yet. Ms. Hindman let her know that at this point there is a few things such as the Hazard Mitigation Plan and a street name change. Commissioner Ecklund asked if a work session could be scheduled at 4 prior to the plat committee. Mr. Best said it would be ideal for staff. Commissioner Ecklund asked how many could make a meeting at that time and by show of hands it appeared everyone could.

Commissioner Ecklund recommended that a work session be scheduled for 4:00 p.m. on July 15, 2019 to discuss the Material Site Ordinance.

SUBDIVISION PLAT PUBLIC HEARINGS

1. Commissioner Carluccio reported that the Plat Committee heard and approved 7 preliminary plats.

OTHER/NEW BUSINESS

K. OTHER/NEW BUSINESS

1. New Plat Committee (July, August, September 2019) – 5 Members / 2 Alternates

Ms. Hindman asked for 5 members and 2 alternates. Commissioner Whitney said he could attend all meeting but one in August.

New Plat Committee for July, August, September 2019 will be Commissioners Carluccio, Morgan, Foster, and Whitney. Commissioner Brantley is an alternate. Chairman Martin noted that all Commissioners may be called to sit as an alternate if needed.

DIRECTOR'S COMMENTS

Mr. Best noted that this was Ms. Montague's last meeting. He thanked her for her years of service and all the input she has given through the years.

COMMISSIONER COMMENTS

Commissioner Ecklund wanted to note that the Commission has denied material site extraction permits. Maybe they will have valid balanced reasons that can be used and represent all sides.

Commissioner Carluccio noted that several months ago she drove by the site that was reviewed earlier in the evening. She thinks that it is a travesty that the Commission feels like they have to approve everything and that there does not seem to be anything that they can use to deny a gravel pit. She is disappointed that it was approved and the process. She agrees with some of the comments from homeowners and it seems like that when there are so many people coming to try and protect their property that there should be a way to be give them that protection.

Commissioner Foster noted he would be traveling but will be putting in his time on the Plat Committee. He noted that when they research the beginning of zoning, whether it is a community, as a city, or a borough,

the bottom line was to preserve property rights and yet people don't want zoning. In the City where there are zoning powers there is a conditional use permit, it is a permitted use. Conditions are just put on it that help lessen the impact it might have. When there is no zoning the Commission's hands are tied. These are personal property rights that the individual wants to use his property. When he first got on the Commission it wasn't until he read through the entire Ordinance that he realized what conditions can be added to try to mitigate. It is an attempt to mitigate. He doesn't know if they can ever really say no. They have said no but the decision has been overturned. He would like to see how Local Option Zoning, where some people are zoned and others are not and how that could work together.

Commissioner Ruffner thanked Ms. Montague and said he learned a lot from her.

Chairman Martin also thanked Ms. Montague for her dedication and service to the borough.

ADJOURNMENT

MOTION: Commissioner Carluccio moved to adjourn the meeting at 11:08 p.m.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

Julie Hindman
Administrative Assistant

**Excerpt
Planning Commission
Minutes**

September 9, 2019

15	21.29.050 (A)(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.
15b	21.25.030	Assisted living home is 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 services regardless 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 47.32.010—47.60.900, as currently written or hereafter amended.

Mr. Wall noted that items 16a and 16b would be an either / or situation. They are two different wordings to accomplish the same thing. These are in regards to language that was a concern to the Planning Commission. The language proposed by the working group is that the Planning Commission shall approve permit applications meeting the mandatory conditions. These two proposals will change the language. Item 16a it will add the additional wording "or shall disapprove permit applications that do not meet the mandatory conditions." Item 16b is drafted differently. The first sentence would be eliminated and replaced with "In order for a material site or counter permit to be approved the planning commission or planning director must conclude that the application meets the mandatory permit conditions." The table does not have it but it should say "as applicable" after planning director.

AMENDMENT 19 MOTION: Commissioner Ecklund moved, seconded by Commission Morgan, to approve item 16a, column 3.

Commissioner Bentz felt that the word disapprove was not the best choice and that maybe the word deny would be better. She thought that 16b read better. She asked legal if either of the options would be appropriate. Mr. Wall noted that "disapprove" was chosen because it mirrors the language in 21.25. that sets out the standards for conditional land use permits.

Commissioner Ruffner liked the language in 16b better but does not have strong feelings about either.

Commissioner Ecklund felt the difference between the two was that 16b was not strong enough in saying that the Planning Commission has the ability to deny or disapprove. It reads similar to how it has been read all along. If it meets the mandatory conditions then it needs to be approved. She wants something that says if the Planning Commission finds that the mandatory conditions are not meet, a permit can be disapproved.

Commissioner Bentz said she could see how that language sounds stronger but materially she did not see a lot of difference between the two options. It does not change the Planning Commission or Planning Directors powers. Chairman Martin noted that one is in the affirmative and the other is negative. The syntax is the same.

Commissioner Ecklund said she had issues with a long letter from a member of the borough staff that said the Planning Commission does not have the ability to disapprove a permit. The way it reads is that the Commission shall approve a permit that meets the mandatory conditions. That is what it said before and that is why staff said if it meets the conditions, they had to approve it. She wants the words included that say the Planning Commission has the power to disapprove a permit.

AMENDMENT 19 PASSED BY MAJORITY VOTE: 10 Yes, 1 No, 1 Absent
 Yes: Bentz, Brantley, Carluccio, Ecklund, Ernst, Fikes, Morgan, Ruffner, Venuti, Whitney
 No: Martin
 Absent: Foster

**Kenai Peninsula Borough, Alaska
144 North Binkley Street
Soldotna, Alaska 99669**

In the matter of the Kenai Peninsula)
Borough Planning Commission's decision)
to disapprove a conditional use permit)
for a material site that was requested for)
KPB Parcel 169-010-67; Tract B, McGee)
Tracts - Deed of Record Boundary Survey)
(Plat 80-104) - Deed Recorded in Book 4,)
Page 116, Homer Recording District)
)
Hans Bilben,)
)
Appellant)
)
Emmitt and Mary Trimble / Beachcomber LLC,)
)
Applicant.)
)

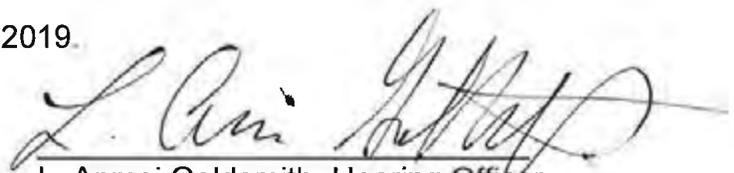
Case No. 2019-01-PCA

HEARING OFFICER'S DECISION ON MOTION TO EXPAND RECORD

Appellant Hans Bilben motioned the hearing officer to expand, or supplement, the record in this matter through a motion dated October 1, 2019. A copy of the motion is attached to this decision. Kenai Peninsula Borough Code (KPBC) 21.20.300 requires that the hearing officer shall allow a time for response to a motion by the nonmoving parties, within a time frame set by the hearing officer, after which the hearing officer shall render a decision.

The hearing in this matter is set for October 30. In order to prevent the parties from having to await the outcome of this motion before preparing their reply statements, the hearing officer shall provisionally accept the three documents put forth in Mr. Bilben's motion as additions to the record. Any party objecting to adding any of these three documents may make their objections in their reply statement, or in a stand alone response filed on or before the reply statement due date. After reviewing any objections, the hearing officer will make a final decision on whether each document shall be added to the record.

Dated this 2nd day of October, 2019.


L. Anmei Goldsmith, Hearing Officer

CERTIFICATE OF SERVICE

I, John Blankenship, Clerk of the Kenai Peninsula Borough, do hereby certify that, I served the Hearing Officer's Decision on Appellant's Motion to Expand the Record.

X 
Signature

Dated this 3rd day of October, 2019.

<p>Appellant Hans and Jeanne Bilben catchalaska@alaska.net</p> <p>Agent Katherine Elsner Ehrhardt, Elsner & Cooley katie@907legal.com</p>	<p>Applicant Emmitt & Mary Trimble dba Beachcomber LLC emmitttrimble@gmail.com margetrimble@gmail.com</p> <p>Agent Holmes Weddle & Barcott, P. C. Stacey Stone: sstone@hwb-law.com Chantal Trinko: ctrinka@hwb-law.com snichols@hwb-law.com</p>	<p>Allison Trimble Paparoa allisontrimblerealestate@gmail .com</p>	<p>Sean Kelley, Deputy Attorney Max Best, Planner Kenai Peninsula Borough skelley@kpb.us legal@kpb.us mbest@kpb.us</p>
<p>Brna Philip J fisheyeak@gmail.com</p>	<p>Carlton Richard D & Marie seaburyroad@live.com noregretsrmlive.com</p>	<p>Cullip Gary L buffycody@msn.com</p>	<p>Danica High highdanica@yahoo.com</p>
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<p>Gregory David & Teresa Ann Jacobson davidgregory0754@gmail.c om</p>	<p>Isehour Lauren laurenttrimble@hotmail.com</p>	<p>Linda R Bruce lrb128@hotmail.com</p>	<p>Linda Stevens illuminaartaarts@aol.com grizzlysafety@aol.com</p>
<p>Oliver Lawrence "Rick" roliverb747@me.com</p>	<p>Patrick Mike & Linda mlpatrick335@yahoo.com</p>	<p>Pete Kinneen storagecondominiumsofalaska @gmail.com</p>	<p>Sheridan Gary Sheridan Eileen twoshar@acsalaska.net</p>
<p>Shirley Gruber shirleytdx@yahoo.com</p>	<p>Sparkman Joseph J jay1332@att.net</p>	<p>Steve Thompson stevethompson1961@yahoo.c om</p>	<p>Thomas J Brook tbrook@ak.net</p>
<p>Todd Bareman tbareman@gmail.com</p>	<p>Vickey Hodnik vickey@gci.net</p>	<p>Whitmore Lynn lkwhitmore@acsalaska.net</p>	<p>Joshua Elmaleh jewish8josh@gmail.com Christing Elmaleh christycupp5@hotmail.com</p>
<p>Xochitl Lopez-Ayala PO Box 2552 Homer, Ak 99603</p>	<p>Brantley Michael PO Box 950 Anchor Point, Ak 99556</p>	<p>Donald L. & Lori L. Horton hortons6@gmail.com</p>	<p>Angela Roland angelaroland@gmail.com</p>



Office of the Borough Clerk

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

Johni Blankenship, MMC
Borough Clerk

October 23, 2019

Notice of Reply Statements filed in Case No. 2019-01-PCA: In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District. *[Enclosed please find a copy of the reply statements filed.]*

The following parties filed reply statements in the afore mentioned case:

- Pete Kinneen
- Hans Bilben, et al by and through counsel, Katherine Elsner
- Kenai Peninsula Borough
- Emmitt Trimble and Beachcomber LLC by and through counsel of record, Holmes Weddle & Barcott, P.C.
- Rick Oliver

This notice is being sent to you because our records indicate you are a party of record in the subject Planning Commission decision appeal.

Johni Blankenship, MMC
Borough Clerk
jblankenship@kpb.us

Enclosed

Page -2-
 October 23, 2019
 To: Parties of Record
 Re: Case No. 2019-01-PCA

CERTIFICATE OF SERVICE

I, John Blankenship, Clerk of the Kenai Peninsula Borough, do hereby certify that, I served the foregoing notice and copies of Reply Statements filed.

X 
 Signature

Dated this 23rd day of October, 2019.

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Blankenship, Johni

From: Pete Kinneen <biocharalaska@gmail.com>
Sent: Monday, October 21, 2019 4:47 PM
To: Blankenship, Johni
Subject: <EXTERNAL-SENDER> Kinneen Reply Statement

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.

Reply Statement in Case No. 2019-01-PCA

Comes now Pete Kinneen who hereby files his reply statement.

Kinneen is aware of the elements of the Bilben reply statement. Rather than repeat those elements he affirms each and conceptually incorporates each into his reply statement.

In addition, he adds the following elements.

Warrington case citation is deceitful

As in the first administrative hearing in this matter, KPB tosses in the Warrington case and erroneously represents it as saying something it does not. In that instance the Girton reply statement brilliantly dismissed the KPB assertion. With never a rebuttal to Girton, KPB again drags out this dead rat.

One of the falsities of KPB misuse of Warrington is their assumedly deliberate failure to update the historical context.

Warrington is a 2005 case resulting in formal conclusion and decision relayed to KPB in first half of 2006.

During the same time frame there was widespread public and legislative debate over the very subject of gravel extraction and the rights of existing neighborhoods.

KPB fails in their Opening Statement to tell the result of that lengthy public struggle.

After Warrington, the people's legislators enacted the withdrawal of landowner's rights to extract more than a single acre of gravel from their land. As cited in Kinneen Opening Statement, the Assembly codified the withdrawal of landowner's Rights to extract more than a single acre of gravel from their land. During the second half of 2006 KPB Assembly (August 1, 2006) clarified in 21.29.010 the conditions under which the Right to mine gravel was exercisable.

All other attempts to extract gravel, whether on one's own land or on land of others, was reduced from an as-of-Right to a mere Privilege.

If the distinction between Right and Privilege is not addressed this entire issue is a case of who can yell the loudest. Once distinguished, everything within subject ordinance falls into place. Resulting in the proper decision being remand or reversal of latest decision.

To illustrate graphically the hierarchy of rights you might envision a standing person raising their right hand level out from their shoulder. And their left hand as straight out, as they can, from their knees.

In above graphic, the right hand illustrates the RIGHT of a person.

The left hand illustrates mere PRIVILEGE.

On August 1, 2006 KPB Assembly relegated the rights of existing neighbors to be as-of-rights while the aspirations to mine gravel in excess of a single acre are to be merely privilege. Legally, as opposed to everything KPB planning administration misstates, the as of rights trump the privilege of those wishing to obtain the privilege of a permit.

No one is born with the right to drive an automobile on public roads. Or to engage in the authorized practice of law. Or medicine.

Those wishing to do so must ask for the Privilege of doing so through earning or qualifying for the permit or license. With evenly regulated requirements to be met first. If requirements are not met, the permit is withheld.

Incredibly, KPB says the Privilege of a gravel permit is held Higher than the Rights of existing neighbors. And if the application is insufficient, you waive the failings and issue regardless. KPB shameful record is 97-0.

This is in clear contradiction to the plain meaning of the legislative words in the relevant ordinances. Indeed, the ordinance plainly states that if you fail to meet the standards you do not receive the Gravel extraction permit. The INTENT is the umbrella under which the rest of the ordinance is hung. Or framed.

21.29.050 A. "These material site regulations are INTENDED to protect against" and "only conditions set forth in ...may be imposed."

Plain reading says the INTENT is to protect "adjacent properties". Not to protect prospective miners.

KPB falsely says next that only these certain conditions may be imposed and even if the conditions do not meet the sufficiently minimized standards, you issue the permit regardless.

Proper reading of the plain words says if you fail your driver's test you do not get your driver's license. Or bar license. Or medical license. Etc. including gravel extraction license or permit.

KPB Assembly has spoken. KPB administration has misspoken. The correct and plain reading of the history of subject case is to remand the latest coerced Planning Commission decision. Or reverse per Bilben.

Respectfully submitted and filed on this 21st day of October, 2019 by Pete Kinneen.

Sent from my iPhone

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OCT 21 2019

KENAI PENINSULA BOROUGH

Borough Clerk's Office
Kenai Peninsula Borough

In the matter of the Kenai Peninsula)
Borough Planning Commission's)
decision to approve a conditional land)
use permit for a material site that was)
requested for KPB Parcel 169-010-67;)
Trace B, McGee Tracts – Deed or)
Record Boundary Survey (Plat 80-104) –)
Deed Recorded in Book 4, Page 116,)
Homer Recording District)
Hans Bilben)
Appellant)
Emmitt and Mary Trimble)
Beachcomber LLC,)
Applicant.)

CASE NO. 2019-01-PCA

REPLY STATEMENT

Comes Now Hans Bilben, by and through counsel, Katherine Elsner, and joined in filing – pursuant to KPB Code 21.20.280(A) – by Philip Brna, George Krier, David Gregory, Theresa Ann Jacobson, Rick Oliver, Shirley Gruber, Todd Bareman, Xochitl Lopez-Ayala, Richard and Marie Carlton, Mike and Linda Patrick, Joseph Sparkman, Vickey Hodnik, Michael Brantley, Gary Cullip, John Girton, Linda R. Bruce, Steve Thompson, Lynn Whitmore, Donald and Lori Horton, James Gorman, Linda Stevens, Gary and Eileen Sheridan, Thomas J. Brook, and Joshua and Christine Elmaleh, hereby files his reply statement.

Beachcomber and the Borough continue to promote their argument that the Commission is disallowed from granting a permit application. They furthermore misconstrue Appellant's argument by reframing it as somehow reading into the Code a requirement that all visual and aural impact be eliminated prior to the Commission having authority to grant a material site CLUP. Both

Reply Statement

1

the legal argument set forth by the Borough and Beachcomber, and the inaccurate reframing of Appellant's argument, are in error.

The argument that the 21.29.040 language that "only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards" prohibits the Commission from disapproving a permit necessarily requires a "disapproval" be equated as a "condition." Otherwise the language plainly does not restrict the authority otherwise granted to the Commission to disapprove any CLUP application. This argument ignores the plain meaning of the words employed as well as the treatment of "conditions" throughout the rest of the Code.

The Code is replete with examples of how it is incongruous and illogical to read disapproval of a permit as a condition imposed upon the permit. For example, in discussing permit extensions, 21.29.07(c) allows a requested extension of a previously approved CLUP to be *denied* if "the permittee is otherwise in noncompliance with the original permit *conditions*." (emphasis added). In discussing permit termination, 21.29.080 directs that 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." (emphasis added).

Moreover, this clear distinction between conditions to be imposed and the authority to approve, modify or disapprove an application for activity potentially permitted by the Code extends beyond just the material site permitting and conditional land use chapters. For example, 14.40.060 establishes a clear distinction between "conditions" and whether a permit should be *granted*: "A right-of-way construction permit may be *denied* if *conditions* cannot be placed on it to prevent damage to the rights-of-way, adjacent public or private property, or water bodies." (emphasis added).

Instead of requiring approval of the permit merely because the conditions are satisfied, the Code establishes and limits the box of tools available to the Commission to condition a permit. The Code does not allow the Commission to impose an infinite universe of conditions on a permit application. However, nowhere does the Code state that a permit application that is not capable of meeting the standards in 21.29.040 through employing the conditions in 21.29.050 must nevertheless be approved.

To the contrary, 21.25.050 specifically authorizes the Commission to disapprove a permit application. It requires that the proposed activity comply with the minimum requirements of 21.25. Through 21.25.010, the Chapter 21.25 requirements are applied to all CLUP applications, including those sought under Chapter 21.29. The clearly delineated purpose of the Code under 21.25.020 is to “require” that “minimum standards” are met prior to the issuance of any CLUP.

Although 21.25.010 provides that, if a conflict arises between the provisions of Chapter 21.25 and a CLUP chapter regulating a specific use, the more specific code provision applies, there is no conflict created between the language in 21.25.050 and 21.29.040. The provisions in 21.25.050 regulate the authority of the Commission to approve, disapprove and modify a permit application after measuring the application against the standards of the Code. The provisions in 21.29.040 limit the conditions that the Commission is allowed to impose on a material site application. There is no conflict in these provisions and they are clearly capable of being read in harmony.

By contrast, the provisions in 21.25.020 and 21.29.040 both address the “standards” and policy imposed by the Chapters. 21.25.050 generally imposes “minimum standards for certain land uses which may be potentially damaging to the public, health, safety and welfare....” By contrast, 21.29.040 more specifically imposes “regulations [which] are intended to protect against aquifer

disturbance, road damage, physical damage to adjacent properties, dust, noise and visual impacts.” As a result of this actual conflict in the purpose and standards created between application of 21.25.010 and 21.29.040, the requirements of 21.29.040 control. Because disapproval is simply not a condition imposed on a permit and because 21.25.050 and 21.29.040 are not in conflict, nothing in 21.29.040 supersedes 21.25.050 and disapproval is still a result the Commission is authorized reach.

It is also incorrect that Appellant’s position is that the impacts considered by 21.29.040 need to be eradicated completely before a permit can be approved. What the Code clearly and plainly requires is that the Commission determine whether the imposed conditions meet the standards set forth in 21.29.040 prior to approving a permit: that is, whether the impacts have been sufficiently *minimized*, as determined by the Commission. The Commission was improperly advised on the requirements of the Code when it was told that, no matter the decision it makes on the ability of the conditions to meet the standards, it completely lacks the authority to disapprove a permit once conditions are imposed. This erroneous interpretation of the Code led the Commission to grant this permit when it would not have done so if told it had the authority to disapprove— as it did in 2018 when presented with the same site plan and application.

Being unable to adequately explain how this permit and the associated conditions sufficiently minimize the visual and noise impact required by the Code, the Borough and Beachcomber reform Appellant’s argument into one that they can readily refute: that Appellant argues the Code mandates complete elimination of perceived negative impacts prior to approval. Instead, Appellant advocates a position that the Commission is both authorized and required to determine whether, after applying the 21.29.050 conditions to a permit application, such application is able to meet the 21.29.040 standards such that it should, under 21.25.050 be

approved. While the findings of fact recited by the Borough may set forth how the different permit conditions could result in some degree of reduction in the variably impactful and variably protected noise and visual repercussions to surrounding property, neither the Borough, Beachcomber, nor the adopted findings, are able to indicate how those impacts are *sufficiently* reduced so as to meet the standards imposed by 21.29.040 and to set forth a valid condition as required by 21.29.050(2)(c).

While the surrounding property owners submitted the greater quantity and volume of the evidence and testimony presented to the Commission, it is not urged that disapproval should have been decided based on numbers alone. It is the quality of that evidence - the documentary, visual and data-driven evidence - that supports the Commissions 2018 finding that the impact cannot be sufficiently minimized and is insubstantial to support the Commissions 2019 finding that the conditions imposed necessarily meet the standards set forth.

Finally, while accurate that the proposed material site sits within the rural zoning district, the Borough Assembly made a specific policy decision to explicitly limit a private property owner's ability to engage in material site extraction greater than 2.5 acres without public notice, comment and the approval of a quasi-judicial body *before* that extraction is allowed. Beachcomber acquired this property knowing that this restriction existed and knowing the geographic and topographical realities made this a location from which visual and aural impact to surrounding property owners could not possibly be sufficiently minimized or screened. When the Borough Assembly enacted regulations to support its policy decision to restrict free use of private property in this manner, it adopted code provisions specifically requiring the quasi-judicial body to ensure that the standards adopted by the Assembly and set forth in 21.29.040 are actually met and to disapprove any application where they are not.

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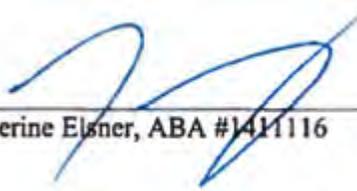
As stated by the Commission in 2018, the noise from this site “will not be sufficiently reduced with any buffer or berm that could be added” and the “visual impact to the neighboring properties will not be reduced sufficiently.” Beachcomber’s application should be disapproved.

DATED October 15, 2019.

Respectfully submitted and filed on behalf of Hans Bilben

And joined in filing, pursuant to 21.20.280(A), by:

Philip Brna	Michael Brantley
George Krier	Gary Cullip
David Gregory	John Girton
Theresa Ann Jacobson	Linda R. Bruce
Rick Oliver	Steve Thompson
Shirley Gruber	Lynn Whitmore
Todd Bareman	Donald & Lori Horton
Xochitl Lopez-Ayala	James Gorman
Richard and Marie Carlton	Linda Stevens
Mike and Linda Patrick	Gary and Eileen Sheridan
Joseph Sparkman	Thomas J. Brook
Vickey Hodnik	Joshua & Christine Elmalch


Katherine Elsner, ABA #1411116

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OCT 21 2019

Borough Clerk's Office
Kenai Peninsula Borough

KENAI PENINSULA BOROUGH
OFFICE OF THE BOROUGH CLERK

APPEAL FROM THE PLANNING COMMISSION DECISION

In the matter of the Kenai Peninsula Borough)
Planning Commission's decision to disapprove)
a conditional land use permit for a material)
site that was requested for KPB Parcel 169-)
010-67; Tract B, McGee Tracts – Deed of)
Record Boundary Survey (Plat 80-104) – Deed)
recorded in Book 4, Page 116, Homer)
Recording District.)

Case No. 2019-01-PCA

Hans Bilben,)
Appellant)

Emmitt Trimble,)
BEACHCOMBER, LLC,)

Applicants.)

**KPB's PARTIAL OPPOSITION TO MOTION TO EXPAND RECORD AND
REPLY**

The Kenai Peninsula Borough (KPB) hereby files this reply statement and partial opposition, or request for clarification, of the Appellant's Motion to Expand the Record and provisional acceptance decision by the hearing officer.

I. Appellant's Motion to Expand Record

The Appellant requested the hearing officer expand the record on appeal to include the following additional items:

1. Kenai Peninsula Borough Planning Commission Manual

KPB response: No objection to inclusion of the manual, which is also available online.

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2. Transcript of the Commission Comments at the conclusion of the June 24, 2019 Planning Commission Meeting.

KPB response: KPB would not object to inclusion of the comments. However, if the request is for a full transcript of the June 24, 2019 meeting, or even just the complete transcript of the commissioner's comments made near the conclusion of the meeting, the KPB requests that the Applicant pay for the cost of the transcript. The transcript of any comments made after public hearing, deliberation, and vote by the planning commission falls outside of KPB 21.20.270(8).

3. Letter referenced by Commission Ecklund at the September 9, 2019 Planning Commission Meeting and Testimony of Commissioner Ecklund relating to that Letter.

KPB response: It is unclear what is being added to the record by way of the hearing officer's provisional decision. The motion and provisional decision included a one page excerpt, at page 39 of 39 of the PDF, of the September 9, 2019 Planning Commission meeting. In the last paragraph of the excerpt provided by the Appellant, Commission Ecklund references a "long letter". The letter was not included as part of the motion or decision. It is the KPB's understanding that the Appellant seeks to include the referenced "letter" not the excerpt page but clarification is required.

The borough is not aware of any letter sent from borough staff to the planning commissioners. The "letter" referenced by Commission Ecklund likely refers to either the KPB's Opening Statement in Case No. 2018-02 or the statement provided by Mr. Trimble at the March 25, 2019 planning commission meeting quoting the KPB's Opening Statement in Case No. 2018-02. [T52-T55].

Further the KPB objects to inclusion of the "letter" if the "letter" is in fact the KPB's opening statement in Case No. 2018-02. That document is a matter of public record and available online. The opening statement in Case No. 2018-02 would not constitute part of the record pursuant to KPB 21.20.270. Multiple KPB opening statements in the same appeal may only lead to confusion. That said, Mr. Trimble did read a portion of the opening statement into the record at the March 25, 2019 Planning Commission meeting, which is included in the record for this appeal. [T52-55].

II. Reply to Appellant's Opening Statement

A. Appellant's Argument Relating to Procedural Error

1. Alleged bias

The Appellant cites KPB 21.20.240(2) as code authority for disqualification of a Planning Commission member. This is not correct. KPB 21.20.240 is specific to the hearing officer. It does not regulate alleged bias or conflicts of interest of a planning commission member. The Appellant also cites the Planning Commission Manual which was identified by the Appellant as a manual created by KPB Staff for the benefit of the Planning Commission – essentially a training manual. The manual is not codified in borough code.

Specific to Commission Ruffner's comments to the news outlet, the comments related to the material site work group process and not any specific permit. In addition, Commission Ruffner clarified his comments at the June 24, 2019 Planning Commission meeting as part of the following exchange:

Mr. Wall: ... Can you state for the record the context of that statement [to KBBJ]?

Commissioner Ruffner: Sure. Through the chair. Yeah, I don't know what I recall verbatim what the comments or the context, but in general I would say that a number of times when material sites have come before this body, since I've been on the commission, it's been pretty clear to me that our job as commissioners is to interpret what the code is that has been laid forward from the Assembly.

And with respect to a denial, if a permit application comes in and it's complete and it meets conditions that have been set forth in 21.29, then those – and again, I'll just repeat, if those conditions are met, then we don't have the ability to deny the permit.

So that's my understating of how that is, because those elements that address the conditions are pretty specific in 21.29.050 I believe. That would be my address back to staff and to the public for clarification on those comments.

Mr. Wall: So it's my understanding that was in the context of your role as the chair of the material site work group?

Commission Ruffner: Yeah. I mean, I know they called me and asked about – KBBJ that is called and asked to do an interview on that. And it wasn't specific to any one gravel pit, it was the entire suite of code that we address right now.

[T. 190].

Whether misquoted or taken out of context, it appears Commissioner Ruffner's full understanding and what he attempted to convey to the news outlet, is that a complete application that demonstrates the ability to comply with all mandatory code conditions set

forth in KPB 21.29.050 cannot be denied by the Planning Commission. Borough code, as it relates to uses in the rural zoning district of the borough, generally does not grant the Planning Commission discretion to deny a complete material site permit application that meets or exceeds all the conditions found in KPB 21.29.050.¹ Commission Ruffner's clarification provided at the July 24, 2019 meeting shows that he understands applicable code. The clarification also makes it clear that the comments were made in relation to his role on the material site work group and unrelated to any specific gravel pit.

2. Failure to re-open public hearing

The Appellant cites no authority for this alleged procedural error beyond a manual that does not in fact dictate Planning Commission members' roles and responsibilities. The manual is a guide, used for training and refresher purposes. It is not code or adopted policy. In addition, the portion of the manual cited to by the Appellant states that the Planning Commission *may* take additional public comment.

Throughout this process the Planning Commission heard hours upon hours of public testimony over multiple meetings. Many of the same speakers, including the Appellant, participated at every step of the process. The Planning Commission also received many letters and comments from the public and from other agencies on this issue. The record in this appeal is more than 700 pages. The objections and concerns of the landowners in the area of the subject material site were articulated and well-known. The statement that the failure to re-open public testimony after the Applicant was provided a rebuttal opportunity somehow created an unfair proceeding is without merit. At the July 24, 2019, the applicant was provided time to respond to prior testimony and offer clarification on the volunteered, or extra, conditions pertaining to not operating on holidays and clarification that the white noise sounds (in lieu of standard back-up beepers) would be on equipment owned by the Applicant. It is highly unlikely that after a yearlong process the Planning Commission's decision was swayed or changed by a brief discussion about the holiday hours condition and clarification that the white noise back-up beepers would be on the applicant's equipment but not third parties' equipment.

¹ This is not an absolute however. For example, if an applicant has other outstanding violations of borough code than the Commission could and should deny the permit due to outstanding violations of borough code even if the application meets or exceeds all KPB 21.29.050 conditions.

No provision of borough code or state law requires the Planning Commission open public testimony following the Applicant's rebuttal. If there was any error, it was de minimis and harmless. Importantly, a review on the merits of the decision, including whether the adopted findings were supported by substantial evidence, will cure any alleged procedural error.²

B. Argument Relating to Substantive Error

1. Planning Commission can disallow a permit

A complete application that demonstrates the ability to comply with or exceed all the conditions set forth in KP.B 21.29.050 should be approved *with conditions* by the Planning Commission.

AS 29.40.040 provides, in part:

- (a) In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,
 - (1) zoning regulations restricting the use of land and improvements by geographic districts;
 - (2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;
 - (3) measures to further the goals and objectives of the comprehensive plan.

In the rural zoning district, the borough assembly chose not to adopt zoning regulations restricting the use of land by geographic districts. Rather, the assembly made the purposeful decision to allow all uses and only require a permit for specified uses to minimize potential unfavorable effects of those specified uses. AS 29.40.040(a)(2). Thus, the borough's code is not written in a way, or intended to be interpreted in a way, that restricts or prohibits a land use in the rural zoning district. The material site permit code requires CLUP applicants meet code specified conditions intended to reduce, not eliminate, potential undesirable impacts of the material site. The Borough Assembly determined that if the specified conditions are met, and the applicant is otherwise in compliance with borough code, then the use should be permitted. The Borough Assembly did not grant the Planning Commission discretion to deny a complete application that demonstrates the ability to

² See generally, *Brooks v. Brooks*, 2000 WL 34545824, page 2 (Alaska 2000) (citing to *Sanuita v. Common Laborer's and Hod Carriers Union of America*, 402 P.2d 199 (Alaska 1965)).

comply with all KPB 21.29.050 conditions, so long as the applicant is otherwise in compliance with all other provisions of borough code.

The Applicant's reply provides, "[t]o read KPB Code in a way to conclude that the Commission does not have the authority to disallow an application that the Planning Director has determined is complete is erroneous and necessarily renders the standards set forth in KPB 21.29.040 obsolete."³ While it is true that a complete application does not automatically equal approval, a complete application that demonstrates the ability to comply all KPB 21.29.050 conditions and other legal requirements should be approved.

2. The Planning Commission must independently find KPB 21.29.040 standards are met

It is the borough's position that a permit that meets or exceeds all the conditions in KPB 21.29.050 necessarily meets the standards and the legislative intent of KPB 21.29.040. If the borough assembly desired to impose additional conditions to meet the KPB 21.29.040 standards and intent, then that would be accomplished through legislative action.

No language in KPB 21.29 grants the Planning Commission discretion to deny a material site permit that meets or exceeds all the KPB 21.29.050 conditions.⁴ Read together the provisions of KPB 21.29 are clear: (1) **Only** the conditions set forth in KPB 21.29.050 may be imposed to meet the KPB 21.29.040 standards, and; (2) permits that imposes all KPB 21.29.050 conditions, including a requirement to comply with all applicable law, should be *approved with conditions*.

The Appellant's opening statement seems to indicate that KPB 21.25.050 requires the Commission make a specific finding that the standards of KPB 21.29.040 are met. KPB 21.25 is a procedural chapter that is applicable to all permits. KPB 21.29 is the more specific chapter relating to material sites. KPB 21.29 would control to the extent there are conflicts between the two chapters. However, there is no code conflict applicable to this case.

The Appellant argues that KPB 21.25.050(B) authorizes denial and that the planning commission was incorrectly instructed by borough staff on this point. As an initial matter, the Appellant's opening statement at page 8-9, footnote 10, provides an "Id." cite that

³ Appellant's Reply at page 9.

⁴ Assuming, again, that the applicant is compliance with all other provisions of borough code.

appears to be a mistake.⁵ The quote that begins on page 8 of the Appellant's opening statement comes from pages 10 and 13 of the hearing officer's remand decision in Case No. 2018-02. The quote is not from borough staff. In the transcript of the March 25, 2019 meeting, the KPB Planner, Bruce Wall, refers to the staff report and the hearing officer decision but does not direct or admonish the Commissioners in any way. [T.51-52].

Substantively, the Appellant's opening statement misinterprets KPB 21.25. KPB 21.25.020 provides: "It is the purpose of this chapter to require advance public notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights." KPB 21.25 then provides the procedural requirements: application/permit, notice, hearing, and appeal rights. KPB 21.29 provides the requirements specific to material sites and conditions that may be placed on a permit application.

The Appellant's opening provides KPB 21.25.050(B) which includes the following language: "...Before granting the permit, the commission must find at a minimum the proposed activity complies with the requirements of this chapter." (Emphasis added by the Appellant.) "*This chapter*" refers to Chapter 25. The permit application and process in this case complied with KPB 21.25 and Resolution 2018-23 contains findings noting compliance. The Appellant has not argued on appeal that the borough failed to comply with KPB 21.25 procedural requirements. Rather, the Appellant appears to argue that KPB 21.25 should be read to mean: (i) the Commission has broad discretion to deny a permit that otherwise meets all requirements of KPB 21.29 and borough code, and that (ii) the Commission must make a specific finding pursuant to KPB 21.25.050 that the requirements of *Chapter 29* are met. That interpretation conflicts with a plain reading of KPB 21.25.050 and is logically flawed when Title 21 is read as a whole. Within Chapter 29, KPB 21.29.040 provides the purpose statement for material site permits.⁶ **Only** the conditions set forth in **KPB 21.29.050** may be imposed to meet the standards provided in KPB 21.29.040. No provision in KPB 21.29 provides the Commission unfettered denial authority.

⁵ The previous footnote in Appellant's opening statement cites to KPB 1.08.040(T) so the "Id" cite in footnote 10 would appear to incorrectly point to KPB 1.08.040(T).

⁶ KPB 21.29.040(A): "These material site regulations are intended to protect against..."

While the Appellant(s) may be unsatisfied with code protections against noise and visual impacts, neither the Commission nor the hearing officer have authority to change the code requirements for material site permits. The borough assembly chose to adopt a material site permit process that only limits material sites in the unzoned district of the borough to the extent provide for in KPB 21.29.050. Disagreement with that policy decision should be addressed before the assembly.

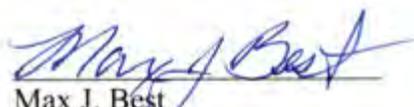
3. Applicant did not present substantial evidence to support findings

The Applicant is the proper party to defend the evidence it presented. As a preliminary matter, the Applicant provided a complete application and plan [R. 1-10]. The Planning Commission adopted 30 findings and attached them to the approval of the subject CLUP as the factual basis for the 22 conditions imposed on the permit. The findings are supported by substantial evidence in the record and speak for themselves. The hearing officer shall defer to the judgment of the planning commission regarding findings of fact if they are supported in the record by substantial evidence. KPB 21.20.320(2).

III. Conclusion

Planning authorities are “bound by the terms and standards of the applicable zoning ordinance, and are not at liberty to either grant or deny conditional use permits in derogation of legislative standards.”⁷ KPB 21.29.040 bars the Commission from imposing conditions in CLUPs that are not contained in KPB 21.29.050. The conditions set forth in KPB 21.29.050 are the exclusive conditions that may be applied. No additional conditions are required of the applicant by borough code and the Commission lacks the authority to impose additional conditions, unless voluntary conditions are offered by the applicant. Thus, compliance with KPB 21.29.050 necessarily means the applicant is in compliance with KPB 21.29.040.

Dated this 21 day of October, 2019.


Max J. Best
Planning Director


Sean Kelley
Deputy Borough Attorney

⁷ *S. Anchorage Concerned Coal, Inc. v. Coffey*, 862 P.2d 168, 174 (Alaska 1993).

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**Kenai Peninsula Borough
Office of the Borough Clerk
Kenai Peninsula Borough, Alaska
144 North Binkley Street
Soldotna, Alaska 99669**

In the matter of the Kenai Peninsula
Borough Planning Commission's decision
to approve a conditional use permit for
a material site that was requested for KPB
Parcel 169-010-67; Tract B, McGee Tracts
– Deed of Record Boundary Survey
(Plat 80-104) - Deed recorded in Book 4,
Page 116, Homer Recording District.

Hans Bilben,

Appellant,

Emmitt Trimble,
Beachcomber LLC,

Applicants.

Case No. 2019-01-PCA

**APPLICANT'S REPLY STATEMENT
AND OPPOSITION TO MOTION TO EXPAND THE RECORD**

COMES NOW the Applicants Emmitt Trimble and Beachcomber LLC (hereinafter
"Beachcomber"), by and through their counsel of record, Holmes Weddle & Barcott, P.C. and
hereby submits their Reply Statement and Opposition to Motion to Expand the Record.¹

I. STANDARD OF REVIEW

In appealing the Commission's decision, the hearing officer's review is limited to the
following:

1. The hearing officer may exercise independent judgment on matters that relate to the
interpretation or construction of ordinances or other provisions of law; however, due

¹ Beachcomber notes that of the eight opening statements filed, only two were adverse to the Planning Commission's
decision to grant the conditional land use permit. Therefore, this reply responds to the arguments raised in the
referenced two statements.

APPLICANT'S REPLY BRIEF AND OPPOSITION
TO MOTION TO EXPAND RECORD
KPB Planning Commission Appeal

Case No. 2019-01-PCA
Page 1 of 13

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consideration shall be given to the expertise and experience of the planning commission in its interpretations of KPB titles 20 and 21.

2. The hearing officer shall defer to the judgment of the planning commission regarding findings of fact if they are supported in the record by substantial evidence.
3. The hearing officer may revise and supplement the planning commission's findings of fact. Where the hearing officer decides that a finding of fact made by the planning commission is not supported by substantial evidence, the hearing officer may make a different finding on the factual issue, based upon the evidence, or may remand the matter to the planning commission as provided in KPB 21.20.330(B).²

II. REPLY STATEMENT

a. Planning Commission Members Overcame the Bias Test.

Appellant asserts that certain Planning Commission members should have been disqualified from voting on the application, but fails to demonstrate the bias upon which it makes its claim. Applicant does not dispute the manual's policy and procedure as to how bias is defined and treated;³ however, it does take issue with the quoted statement by Commissioner Ruffner as rising to a level of demonstrating bias. Commissioner Ruffner's statement appears to be a broad, blanket observation, without any implications as to Applicant's permit application. Appellant fails to add context to this comment, which, in the cited interview, is specific to the Commission's authority to deny a permit for extraction as long as it fits certain criteria surrounding noise, the

² KPB 21.20.320.

³ Planning Commission Manual – Rule 7 – The following acts are found to constitute bias: “(1) ex parte contact with board or commission members; (2) making public statements or authoring letters *regarding a particular case* prior to the case coming before the board or commission (emphasis added); (3) paying expenses of board member to make a site visit; (4) vote-trading; (5) soliciting persons to testify for or against a permit or applications, and (6) gifts given to influence a vote.”

visibility of the site and basic buffer zones among other standards.⁴ Further, Commissioner Ruffner was noted as having made inquiries at prior meetings regarding criteria which may result in a denial.

Appellant attempts to make the stretch to hold a Commissioner as biased on a particular permit based upon a statement which has no reference to Applicant; further, it does not demonstrate any prejudgment on the permit. When taken in its context, as it applies to the ordinance's requirements of the Planning Commission, it cannot be construed to amount to any particular bias in favor of Beachcomber, and certainly not to the level which would meet the bias test as laid forth in the Planning Commission Manual. Therefore, this argument has no merit and it was proper for Commissioner Ruffner to participate.

b. The Planning Commission Allowed Sufficient Public Comment.

Appellant posits that because public comment was not extended to address voluntary conditions discussed during Applicant's testimony, that the proceeding was unfair. Appellant appears to misunderstand the record cited in the transcript, as counsel for Beachcomber was rebutting evidence provided at that hearing – *not* submitting additional evidence. Additionally, the rebuttal offered by Applicant's counsel introduced absolutely no new voluntary conditions.⁵ No new facts or conditions came to light which would have invited further public comment. Applicant regards this attempt at misdirecting the hearing officer to new evidence that does not exist as a disingenuous effort to distract from the matter at hand.

Of greater consequence is the plain fact that the voluntary conditions mentioned were made during Applicant's rebuttal to the public comments made over the course of the meeting. Opening

⁴ Resolution 28-23 at 595.

⁵ Transcript 150 – 151.

public comment to every rebuttal would result in a never-ending loop of comment and rebuttal. The Planning Commission Manual at subpoint 11 lays out guidelines for a fair “quasi-judicial hearing format,”⁶ which does not provide for public comment at every occasion or mention of new evidence.

The Commission proceeded properly with regard to the hearing guidelines as to testimony and rebuttal.

c. The Planning Commission Can Disallow a Permit – and Has Determined in the Present Matter That the Permit is Authorized.

Appellant appears to believe that because the Commission did not find in its favor by denying the permit, that the Commission is acting in lockstep with the KPB Staff out of obligation. It was already found that the Commission’s denial of the permit in 2019 was improper, due to the Commission’s role as gatekeeper to ensure that the minimum standards are met. Appellant concludes that the Commission’s decision to approve the permit is based on a mandate from the Board telling it to decide in a particular way. This is inaccurate. The Commission made numerous findings of fact explaining its reasoning for voting in favor of the extraction site – none of the findings of fact cite to a directive from the Board to approve the permit. Appellant dismisses the

⁶ The guidelines state:

- 1) The chair introduces the agenda item.
- 2) Staff presents a report and staff recommendation.
- 3) Presentation by the applicant and their representatives.
- 4) Testimony by members of the public.
- 5) Response by staff to any testimony that was given and an opportunity for the Commission to ask questions of the staff.
- 6) Rebuttal by applicant. The applicant can rebut evidence or testimony but should not present new testimony or evidence. (If new evidence or testimony is allowed, the Planning Commission may question staff regarding the same and take additional public comment regarding the new evidence.)
- 7) The chairperson closes the hearing and then entertains a motion. The Commission deliberates and makes a decision.

Notably, these guidelines do in fact allow introduction of new testimony or evidence upon allowance by the Planning Commission, but it does not make allowances for new public comment to the rebuttal.

findings of fact and instead jumps straight to the conclusion that the Commission's reasons were illusory.

Appellant cites to *Mech. Contractors of Alaska, Inc. v. State, Dep't of Pub. Safety*, 91 P.3d 240 (Alaska 2004) and *Nat'l R.R. Passenger Corp. v. Boston & Me. Corp.*, 503 U.S. 407 (1992) in support of their argument that the legislative intent is that a precise and literal meaning be given to each word, sentence, or provision. This is undisputed. However, Appellant inflates that finding to encompass the KPB Code, claiming that the Commission finds itself bound to authorize permit applications. Appellant's argument lacks relevance, as there is no evidence to demonstrate that any Commissioners felt compelled to approve any and all permits. Appellant appears to disregard the core of the Commission's role, which is to determine whether the application is complete, and to authorize permits based upon the completion and compliance in the application. The quotes taken from individual Commission members and cited to within Appellant's opening statement are taken out of context and fail to point out that when a permit meets all of the requirements designated within the Code, the Commission does not, indeed, have blanket authority to deny it without reason.

It is notable that Appellant cited to *Farley v. Utah County*, 440 P.3d 856 (Utah App. 2019), which states that the County is given statutory discretion to approve, modify and approve, or reject an application based on the evaluation of certain factors in addition to listed criteria. Appellant also implicates *Da Vinci Investment, Ltd. P'ship v. City of Arlington, Texas*, 747 F. Appx. 223 (5th Cir. 2018)⁷ as supportive of its argument, quoting "there is no 'explicitly mandatory language' in the ordinances requiring city officials to approve a development plan,

⁷ *Da Vinci* is an unpublished decision and is from a different jurisdiction. Therefore, it is not binding on this tribunal and may only be considered as persuasive authority.

even where a plan meets all required guidelines, the city council had discretion to grant or deny the benefit.”

In the present matter, the Commission has undertaken precisely that burden of determining whether to grant or deny the permit application when reviewing Beachcomber’s application – in addition to the mandatory standards imposed, the Commission considered Applicant’s voluntary conditions as well, in an effort to creatively devise methods to further reduce any impact on surrounding properties. *Farley* specifically states that a decision is valid unless it is either illegal, or arbitrary and capricious.⁸ An illegal decision is one that is either “based on an incorrect interpretation of a land use regulation, or contrary to law.”⁹ Borrowing this definition from *Farley* and applying it to the Beachcomber permit authorization, any claim that the Commission incorrectly interpreted a land use regulation can be swiftly put to rest with a review of the relevant regulation and the legal procedure the Commission undertook throughout the course of this matter thus far: KPB Code 21.25.040(A)(2)

It shall be unlawful for any person to use land, or to assist another to use land, within the rural district of the Kenai Peninsula Borough for the following uses without first obtaining a permit from the Kenai Peninsula Borough in accordance with the terms of this ordinance. . . commercial sand, gravel, or material site pursuant to KPB 21.26.

Additionally, land use in the rural district is unrestricted unless otherwise provided in KPB Title 21. Clearly the Commission proceeded through the proper regulation in reviewing the permit by operating within its jurisdiction; holding the requisite public hearings; ensuring adequate notice was given; and proceeding with findings of fact in support its decision.

⁸ *Farley*, 440 P.3d 856, 860 (Utah App. 2019).

⁹ *Id.*

There are no plausible arguments that the Commission's decision is contrary to law, which leads the conclusion that Appellants deem the Commission's decision arbitrary and capricious. The only evidence Appellant provides in support of this argument is the volume of residents who wrote the Commission or appeared at the hearing in opposition of the material extraction site. As Appellant noted in bold and underlined text in its opening brief, the Commission in fact did find it within its authority in its July 16, 2018 decision to disapprove the permit. Only after appeal and remand, and a revisiting of all notice and public comment requirements, with additional voluntary conditions offered by Beachcomber to minimize impact on its neighbors, did the Commission then approve the permit. The Commission's findings of fact explicitly state in point 10 that "the Planning Commission in reviewing the application are not authorized by the code to consider those issues such as property values, water quality, wildlife preservation, a material site quota, and traffic safety." Applicant finds it incredulous that the Commission should be accused of arbitrary and capricious decision-making after it held numerous public hearings after remand, considered hours of testimony and large volumes of documentary evidence both in support of and against the proposed material extraction operation, and held a vote which was not even unanimously in favor of the permit.

Appellant's reference to *Da Vinci* in support of its argument that the Commission has the authority to deny a permit is also flawed – *Da Vinci* finds its genesis in a substantive due process argument, such that the appellants in that case claimed they had a constitutionally protected property right in an approval of a development plan.¹⁰ The court held that *Da Vinci*'s argument stating the council members had no discretion to deny a development plan because it met all

¹⁰ *Da Vinci* at 226.

ordinance guidelines was immaterial, as Appellants did not have a protected property right in the approval of its development plan.¹¹ Additionally, the appellants in *Da Vinci* sought to develop land specifically in a zoned area – in contrast to the property at issue in the present matter.¹² Because zoned land is subject to zoning regulations and restrictions, the governing body has far greater reach in determining what activity the subject parcel is exposed to. The property upon which Beachcomber sits is squarely within the unzoned area designated by the Kenai Peninsula Borough. As such, governmental reach is limited to what the ordinance requires and no more. Beachcomber has met the threshold of what the code requires, and no valid reason exists to deny the permit.

In considering the record, based on the evidence and testimony set forth in the record the application has met the standards required within the Code, and Appellant’s argument lacks any merit.

d. The Planning Commission Independently Found the Standards in the Application to Have Been Met.

The Planning Commission is tasked by the KPB Code with determining that the standards set forth for issuance of Conditional Land Use Permits are sufficiently met as described within the Code.¹³ It charges the Commission with finding at a minimum that “the proposed activity complies with the requirements of [the] chapter.”¹⁴ As discussed in Beachcomber’s Opening Statement, there is no requirement that the Commission guarantee the standards eliminate any impact to surrounding areas; rather, the Code mandates that the CLUP *minimize* impact. In parcels where the land’s composition may inhibit any measures taken to eliminate visual and auditory impact,

¹¹ *Id.*

¹² *Da Vinci* at 225.

¹³ KPB Code 21.25.050 – Permit considerations – public hearing required.

¹⁴ *Id.*

the applicant has a limited ability to change the topography but can nonetheless take measures to reduce any impact it may have. In fact, KPB Code 21.29.050(A)(2)(e) authorizes the Commission to waive buffer requirements if the land's topography makes those buffer permit conditions unnecessary or not feasible.¹⁵ The code as applied to Applicant's land may fall short of what the surrounding property owners would desire – but that is an issue which has no bearing on Beachcomber or its CLUP application. To further address the community's concerns, Beachcomber voluntarily imposed upon itself additional voluntary standards meant to reduce any impact it has on its neighbors, thus exceeding those standards set forth in the code.

Government restriction upon private property must be done in compliance with law in order to meet with constitutionally protected rights. Therefore, when considering permitting of developments upon privately owned land the Commission must carefully follow the law in order to ensure these rights are protected. Particularly the case wherein the code is written in an unzoned area to promote development and protect private property rights. Beachcomber has complied with the Code's standards and should be found to have met and even exceeded those minimum requirements.

e. Applicant Presented Substantial Evidence to Support the Findings

The Commission is responsible for determining whether the applicant has produced sufficient evidence to demonstrate that the proposed activity complies with the requirements of the Code in order to approve the permit application.¹⁶ Substantial evidence is defined as relevant evidence that a reasonable mind might accept to support a conclusion.¹⁷ The substantial evidence

¹⁵ KPB Code 21.29.050(A)(2)(e) states "Buffer requirements shall be made in consideration of and in accordance with existing adjacent property at the time of the approval of the permit."

¹⁶ KPB Code 21.25.050(B).

¹⁷ *Button v. Haines Borough*, 208 P.3d 194 (Alaska 2009).

test for administrative factual findings considers the “scope of review” to be findings supported by (1) the weight of the evidence, or (2) substantial evidence in light of the whole record.¹⁸

Applicant Beachcomber at the March 25, 2019 proceeding reminded the Commission that it presented substantial evidence to support approval of the permit;¹⁹ and this was reiterated in the KPB’s Opening Brief. The sheer number of opponents to development of a material extraction site is not substantial evidence against approving the permit if the basis of the opposition is emotionally fueled or speculation. Speculation does not rise to the level of evidence, least of all substantial evidence.

In the present case, Applicant has demonstrated the material extraction site is located in a rural, unzoned district of the borough. The extraction site proposal includes numerous measures attempting to minimize the impact on surrounding properties. The Commission has also acknowledged the challenge in reducing impact on neighboring and surrounding areas, however, in response to the same Applicant has included additional voluntary measures that exceed code requirements in order to further reduce any impact.

f. Allegations of Prosecutorial Misconduct Fall outside the Scope.

This argument is irrelevant to the present case and as such, has no reply beyond stating that this argument falls outside the scope of what the hearing officer is considering. Without further information, this point cannot be adequately addressed.

III. OPPOSITION TO MOTION TO EXPAND THE RECORD

Applicant opposes the request to expand the record beyond what was included in the hearing which occurred following the hearing officer’s remand. The motion asks the hearing

¹⁸ *State, Dep’t of Commerce, Community & Economic Development, Div. of Corp., Business & Prof. Licensing v. Wold*, 278 P.3d 266 (Alaska 2012).

¹⁹ T53.

officer to consider the Kenai Peninsula Borough Planning Commission Manual, the Transcript of the Commissioner Comments at the conclusion of the June 24, 2019 Planning Commission Meeting, and the Letter referenced by Commissioner Ecklund at the September 9, 2019 Planning Commission Meeting and Testimony of Commissioner Ecklund relating to that Letter.

The record is thorough insofar as it covers the facts and plans pertaining to Applicant's property and the surrounding the property, and community members' commentary. Appellants, had they found such records necessary and relevant to the proceedings while they occurred, had the opportunity to mention and bring such records into the proceeds. KPB Code 21.20.270 allows for particular materials to become a part of a record before the hearing officer.²⁰ Anything outside of that scope is not to be included. Specifically, the code cites to "all informational materials which were entered into the record or minutes of the proceeding before the commission." It should be noted that the Kenai Peninsula Borough Planning Commission Manual was not entered into the record or the minutes on the days referenced.

The hearing officer in the present matter is tasked with the duty of hearing and deciding appeals from quasi-judicial planning commission decisions.²¹ Appellants argue that the record should be expanded to include the comments made at the conclusion of the record. These

²⁰ KPB Code 21.20.270 - *Record; contents*. For the purposes of appeal, the record shall include:

1. The filed application or complaint which initiated the proceedings before the planning commission;
2. All informational materials supplied to the commission or relied upon by the planning director or staff in making its report or recommendations to the planning commission;
3. All informational materials which were entered into the record or minutes of the proceeding before the commission;
4. The report of the initial investigation by the planning department, and where applicable the enforcement order or decision of the planning director;
5. All testimony and all documents or other evidence received by the planning commission from the parties or other witnesses during the proceedings;
6. The decision of the planning commission;
7. The planning commission's findings of fact; and
8. The minutes of the planning commission and a verbatim transcript of the planning commission hearing.

²¹ KPB 21.20.220.

comments are not part of the record. Further, the comments which Appellant quotes in its motion cannot be considered anything more noteworthy than musings, none of which would be relevant to the vote that had just occurred. It appears these Commissioners are expressing personal opinion on the application and opinions on how the process should be altered, rather than statements reflecting the vote's legitimacy.

As to the letter referenced by Commissioner Ecklund, the letter itself does not appear to be submitted as part of the requested record expansion – without proper context, Applicant cannot adequately respond to the motion, and for that reason it should be denied. The link Appellant Bilben provided in its motion resolves to only the meeting minutes, without the letter.

For the foregoing reasons, Applicant objects to expanding the record beyond what is authorized by KPB 21.20.070.

IV. CONCLUSION

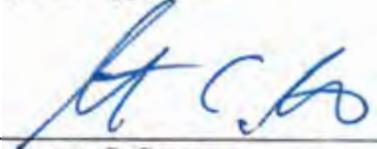
Applicant maintains that the Kenai Peninsula Borough Code authorizes not only the counter permit granted by the Kenai Peninsula Planning Department, but also the greater Conditional Land Use Permit which Beachcomber initially applied for. Beachcomber has submitted viable plans for its site to meet the required standards, as well as proposed voluntary standards to reduce the impact of its operations on neighboring properties. Appellant has failed to raise any argument that would defeat the determination by the Commission. Therefore, Beachcomber respectfully asserts that it has met all the standards set forth in the Kenai Peninsula Borough code such that Conditional Land Use Permit granted by the Commission should be upheld.

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DATED this 21st day of October, 2019, at Anchorage, Alaska.

HOLMES WEDDLE and BARCOTT, P.C.
Attorneys for Applicant

By: _____



Stacey C. Stone
Alaska Bar No. 1005030
Chantal Trinka
Alaska Bar No. 1505034

APPLICANT'S REPLY BRIEF AND OPPOSITION
TO MOTION TO EXPAND RECORD
KPB Planning Commission Appeal

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Reply to Opening Statements, Case # 2019-01 PCA

Submitted by Rick Oliver

KPB and Trimble both claim that no substantial evidence was submitted by the neighboring property owners.

This picture is in the Record (R451), and was submitted as evidence during the July 16th 2108 Planning Commission Hearing. The picture is taken from my bedroom window. Grade level for my property is approximately 20 feet above grade level for the mine, and my house is classed as a 1 1/2 story with a basement—this would put the view from my bedroom window at approximately 28 feet above the proposed 12 foot earthen berm! I believe that the Borough must consider my bedroom to be “property” as evidenced by the fact that the assessed valuation of my “property” is based in part on the number of levels in the structure.

Bruce Wall has been to my property, and he has seen this picture. My property is located directly east and **adjacent** to the proposed gravel mine. We are located on Danver Street (which shows at the bottom of the photo). I am six feet tall +or- an inch, and I am holding a 10 foot board while standing about fifty feet inside the proposed mine. Planning Staff has concluded that a 50 foot vegetated buffer and a 12 foot berm (where I'm standing) will sufficiently minimize the dust, noise, and visual impact from my property. **All trees** behind me are in the mine area and **will be gone**—that leaves **one tree in the 50 foot vegetated buffer**, and a twelve foot berm to protect me! I am also standing on what would become the primary access road to the mine and the potential 10,000 dump trucks that would travel it annually for fifteen years. 250 feet behind me is the proposed location for the rock crusher.

The proposed buffering is neither in “consideration of existing use”, or of “sufficient height and density to provide visual and noise screening” as required by Code. (KPB 21.29.050)

My property is at a substantially lower elevation than all other and adjacent properties east of Danver Street, and at a substantially lower elevation than two or more impacted properties that are west of Danver Street (south of mine site). All properties that are at higher elevation in the neighborhood are even more affected by the visual and noise impact that this mine will inflict because of the fact that berms and buffers proposed in the application are well below their line of site, and their line of earshot. Standards 21.29.040 (A4) & (A5) which are required by Code can not be met as proposed, and the Planning Commissions Findings of Fact are incorrect.

All of this begs the question, where is the substantial evidence to support granting this permit? The answer, there is none, except Bruce Wall (Planner) says so!

Following is a brief summary of the scope of the proposed gravel mine which explains why so many concerned neighboring property owners "stacked the hall" as KPB contends in their Opening Statement.

1. The mine would include 27.7 acres and will have a projected life expectancy of **15 years**. The mine would be accessed by Anchor Point Road, which is about one mile in length and in a very advanced state of deterioration. Anchor Point Road is the only access to the Anchor River State Recreation Area which includes five state park campgrounds, two private RV parks, and the area's only launch facility to access Cook Inlet by boat. It is also the only access road for most of the roughly 200 people who own property within 1/2 mile of the mine. The mine site is an irregular shape that is bordered on the north by recreation and residential properties that are at or near the grade level of the mine, to the east by residential properties that are all at substantially higher elevation than the mine, and to the south by residential and recreational properties some of which are at substantially higher elevations, and some at or near the same elevation as the mine. This proposed mine site is centered in the heart of a residential/recreational area that is the lifeblood of Anchor Point.
2. The mine would be permitted for removal of up to 50,000 cubic yards of material per year. That, by permit stipulation, could equate to 5,000 ten yard dump trucks hauling out of the mine, and 5,000 ten yard dump trucks returning, for a total of **10,000 ten yard dump trucks** rumbling through the neighborhood each summer for 15 years. The access to Anchor Point Road from the north is via a bridge across the Anchor River which has been condemned, and weight restricted to 11 tons which is approximately the weight of an empty ten yard dump truck. Loaded trucks are not allowed on the bridge, and will be required to travel the Old Sterling Highway with their load. This brings the noise of large diesel engines and engine brakes to another population area, many of whom are within 1/2 mile of the proposed mine.
3. The application has provision for a processing area which includes a rock crusher. All mining is by its nature dusty and noisy. Anytime you move rocks, or break rocks with steel or iron machinery, there is substantial noise and dust generated.

While trucks, loaders, dozers, and all construction equipment produce undesirable sounds and emissions that would be very detrimental to the residential health, safety, and welfare of the neighborhood, the rock crusher is by far the noisiest, and dustiest of all processing equipment

Reply to APPLICANT'S OPENING STATEMENT:

(page 5 of 5) states "The Commission does not have the capacity or duty to determine the effectiveness of Applicant's abatement measures". KPB 21.25.050 states - "**Before granting the permit, the commission must find at a minimum that the proposed activity complies with the requirements of this chapter**". In plain English doesn't this say that the commission is absolutely duty bound to determine that so-called "abatement measures" will effectively satisfy the Conditions and Standards laid out in KPB 21.29? As to the "capacity", by utilizing KPB's GIS technology objective decisions can be made versus the subjective and arbitrary methods used by KPB and the applicant in the design of this application.

In the case of this application, the Applicant has produced **zero** substantial evidence to prove that Mandatory Conditions and Standards will be met.

Reply to KPB's OPENING STATEMENT:

1. KPB speaks only to "adjacent" properties (**P. 8-10, #2. Buffer Zone**) in its findings of fact, but refuses to address protections to "other" properties as required in KPB Standards 21.29.040. The amphitheater like topography combined with the substantial elevation differences between the proposed site and properties to the South and East of it should dictate that while the buffer zone "shall be made in consideration of and in accordance with existing uses of adjacent property..." (KPB 21.29.050 A, 2,e), **other** properties are afforded protection under KPB 21.29.040 A. 4&5.
2. **P. 15, #14** Voluntary Conditions do not meet the requirements of KPB 21.29.050 (A, 14) as they are **not in the best interest** of surrounding property owners.

a. **Voluntary Condition a.** states: “The applicant has volunteered to operate **his** equipment onsite with multi-frequency (white noise) back-up alarms...”. (emphasize “**his**”)

The applicant **does not have** equipment, a fact which is known to Planner Bruce Wall through site visits and communications with the applicant. A request to disclose this fact to commissioners was submitted by Hans Bilben to Planner Wall via email (**attached as Exhibit #1, paragraph 2**) at 11:49 a.m. on June 23rd—one day prior to the Planning Commission hearing. Request was denied, no public comment was allowed at June 24th hearing, and commissioners were not informed by Planner Wall that no such equipment existed. A second email to Planner Wall from Hans Bilben (**attached as Exhibit #2**) submitted at 2:45 p.m. on June 24th requested that public comment be re-opened concerning voluntary conditions some of which were only made known to the public in the Desk Packet which was posted that afternoon. Both of these emails were submitted in a timely manner, and mysteriously, **neither** of them appear in the Record.

b. **Voluntary Condition c.** states: “The applicant has volunteered a condition requiring the berm be placed **near** the active excavation area, damping the noise and reducing the visual impacts at the source. The berm will be moved as excavation progresses.” No definition of “**near**” renders this condition worthless, and further, this condition speaks only to “excavation” while ignoring other undesirable aspects of the proposed use such as hauling and processing.

c. In the Record (T157 p.163 7-19) Commissioner Ecklund states that in order to work rolling /moving berms must always move toward the impacted properties. Commissioner Bentz (T198 p.41 1-15) brings up similar concerns but neither follow up with their correct observations. In order to effectively screen visual and noise impact to other properties a moving berm must **always** be located between the excavation area and the impacted properties, must be of **sufficient height**, and **MUST** move/roll toward said properties.

d. **Exhibit # 3** (attached) is a site plan depicting the proposed material site and some of the surrounding properties. It is important to note that impacted properties to the East of the site, and some properties to the South are at **much higher** elevation than the proposed mine.

As per the application, the mine would proceed starting with Phase I (6.1 acres on northeast portion of mine), move to Phase II (3.9 acres on southeast portion of mine).

Upon completion of Phase I the berm will necessarily have moved to the Eastern edge of the 50 foot vegetated buffer along Danver Street, and to the northernmost boundary of Phase II. As work progresses into Phase II the berm would move in that area to the south and to the east. At the completion of Phase II the 12 foot earthen berm would necessarily be located totally on the eastern parcel boundary inside of the 50 foot vegetated buffer, and on the southern boundary of that phase inside the vegetated buffer.

Phase III at 15.8 acres is more than double the area of the previous two phases combined, will include processing (the noisiest, dirtiest aspect of mining), and because of the design of the project will have little or no screening of the proposed use. Nowhere in the application or during the Hearing was it mentioned just how a rolling/ moving berm will protect properties east and south of the site when the moving berm can only move away from them in Phase III. With a projected life expectancy of 15 years this would mean that surrounding property owners would have no protection under the design of this application for many years into the future!!!!

e. The six GIS profile drawings (**R599-602 and R663-664**) submitted as evidence by Lynn Whitmore (**T128 p.48-49**) and (**T145 p.117 & T146 p. 118-119**) depict this exact situation and clearly show that because of the significant elevation differences between the six properties and the proposed site there is not sufficient screening of proposed use as required in KPB 21.29.050, and as a result standards in KPB 21.29.040 are not met. The proposed use is material extraction which encompasses all activity on the site including excavation, hauling, and processing.

f. GIS (**Geographic Information System**) is used by the KPB Planning Department on a daily basis and is known to be accurate and reliable. KPB employs several people solely to utilize and design projects with this technology and could easily determine accurate **objective** designs for the Buffer Zone in material site applications, but for unknown reasons they choose to determine berm height using arbitrary, subjective decision making. In the case at hand the 12 foot berm has no mathematical or

scientific basis—its just an arbitrary number that the KPB Planner and the applicant think might get past the planning commission!

g. From **P. 17 #3 Appellant's Points...** KPB claims that buffer zone is of sufficient height and density when GIS profile drawings show otherwise. *Minimization (reduction) of visual and noise impacts does not occur when line of sight profiles done with KPB's own technology clearly show the design defect of the application.*

3. **KPB falsely claims** that ***"The approved permit imposes all conditions allowed or required under borough code"***.

a. KPB 21.29.050 (A2) (a&c) allows the buffer zone to be a combination of minimum 6 foot fence, 50 foot vegetated buffer, and **minimum 6 foot earthen berm**. **Proposed Findings of Fact (R591-593)** were developed using KPB's GIS technology to accurately and objectively design a Buffer Zone that would effectively minimize noise and visual impacts to adjacent and other properties by **increasing berm heights as allowed under KPB Code**. KPB claims that a 12 foot berm will meet the requirements of KPB 21.29 when in fact their own technology proves them wrong. There is **no substantial evidence** to support their Findings, while there is substantial evidence to prove otherwise.

4. **Page 19**, last paragraph addresses the bias displayed by Commissioner Ruffner and claims that more "specifics" were needed to make such determination. Again, an email sent to Planner Wall from Hans Bilben (**attached as Exhibit #1, paragraph 1**) addressed just such issues. This email was timely, and for unknown reasons, never entered into the record. The interviewer for the article (**R595-596**) in which Ruffner shows his bias specifically references contentious gravel pits in Anchor Point—Beachcomber was the only permit in the works at the time of the interview.

5. In the **Conclusion on Page 22** KPB **again** makes a **false statement** stating that **"All the protections afforded through the mandatory conditions found in KPB 21.29,050 have been imposed"**. Code allows earthen berms of a **minimum 6 foot height**—**there is no maximum** and 12 foot is clearly not sufficient. Neighbors opposed to the permit did not ask for or expect permit conditions not found in the Code.

Conclusion

This application to place a large commercial mining operation in the heart of a residential/recreational neighborhood is poorly designed and incomplete in that it provides no substantial evidence or explanation as to how it will meet the requirements of the Code at all stages of development.

The Remand from 2018 came with instructions from the Hearing Officer to **Provide adequate findings of fact and provide the substantial evidence to support those findings**— This application does neither! Opponents to this permit proposed adequate Findings of Fact (**R588-593**) and included supporting substantial evidence in the form of profile and vector graphics (**R599-602 & R663-664**) designed with KPB owned GIS technology.

Conclusions made by the planning commission contain Findings of Fact which are not supported in the record by substantial evidence and as such the Hearing Officer must make a different finding, deny the application, or remand to the planning commission.

Rick Oliver

Anchor Point, AK

From: Hans Bilben catchalaska@alaska.net
Subject: Beachcomber Hearing 6/24
Date: June 23, 2019 at 11:49 AM
To: Bruce Wall bwall@kpb.us
Cc: mbest@kpb.us, Pierce, Charlie cpierce@kpb.us



Bruce,

A couple items that need your attention prior to and during the 6/24 Planning Commission decision concerning the Beachcomber material site application:

1. In the Record, Meeting Packet Volume 2, (pages 47-49) I submitted information concerning possible conflict of interest and bias issues with three Commissioners—Ruffner, Foster, and Venuti. Foster and Venuti either did not see the information that I submitted, or determined that no conflict or bias existed, and chose to not recuse themselves from the June 10th hearing. Commissioner Ruffner was absent from the June 10th hearing, but will apparently be present on the 24th. Ruffner's comment ("...the planning commission doesn't have the authority to say no.") in an interview with Renee Gross of KBBI Radio on January 4, 2019 clearly shows bias. The KPB Planning Commission Manual (p.17) states:

Indicators of prejudgement include a commissioner making a clear statement suggesting that a decision has already been reached. Following are types of acts that have been found to constitute bias (2) making public statements or authoring letters regarding a particular case prior to the case coming before the board or commission.

The article references "...contentious debate in rural neighborhoods near Anchor Point..." which would indicate that Ruffner has actually made up his mind regardless of any argument that might be advanced at the hearing. Commissioner Ruffner should recuse himself from this hearing based upon the bias that he has shown. This needs to be brought to the attention of Chairman Martin prior to the hearing.

2. Finding of Fact #14 on page 23 in Meeting Packet Volume 1 is not an enforceable or legitimate Voluntary Condition as the applicant does not own or operate equipment that would be used to mine gravel. As the KPB Planner you have made several site visits, and have spoken with the applicant on many occasions. You are very aware that the applicant is a realtor and not an operator, and that he does not own, and has stated that he does not plan to own mining equipment. Fact #14 "volunteers" that he would use white noise backup alarms on just "his" equipment—of which he has **NONE!!** You are aware of this, and the Commissioners apparently are not—during deliberations in order for KPB to remain **fair and impartial** shouldn't it fall upon you to make this clear to them? Some Commissioners mistakenly seem to be of the opinion that a white noise backup alarm is the "cure-all" for all noise generated by a mining operation, and may base their decision in part upon this blatantly ridiculous "voluntary condition". Further, the idea that an applicant might "ask" contractors to disconnect their traditional backup alarms is illegitimate because it is not enforceable under the Code, and quite likely illegal. Both "voluntary conditions" (#13 and #14) that have been offered in this application bring to mind the parable of The Emperor's New Clothes—no one dares to say that they do not see any clothes (in this case protections as required in the Code) for fear that they will be seen as stupid or incompetent....

Hans Bilben
Anchor Point

From: Hans catchalaska@alaska.net
Subject: Additional public comment requested tonight
Date: Jun 24, 2019 at 2:54:16 PM
To: Bruce Wall bwall@kpb.us
Cc: mbest@kpb.us, cpierce@kpb.us

Bruce,

The KPB Planning Commission Manual on page 22 #11 item 6.
"If new evidence or testimony is allowed, the Planning
Commission may question Staff regarding the same and take
additional public comment regarding the new evidence".

I realize that this was not included in his rebuttal, but the
applicant has added more voluntary conditions since that time.
The neighboring property owners have not had an opportunity to
comment on these conditions and in fairness to them public
comment should be re-opened to discuss just voluntary
conditions. To do otherwise allows the applicant to unfairly
influence the decision making ability of the Planning
Commission.

Hans Bilben
Anchor Point

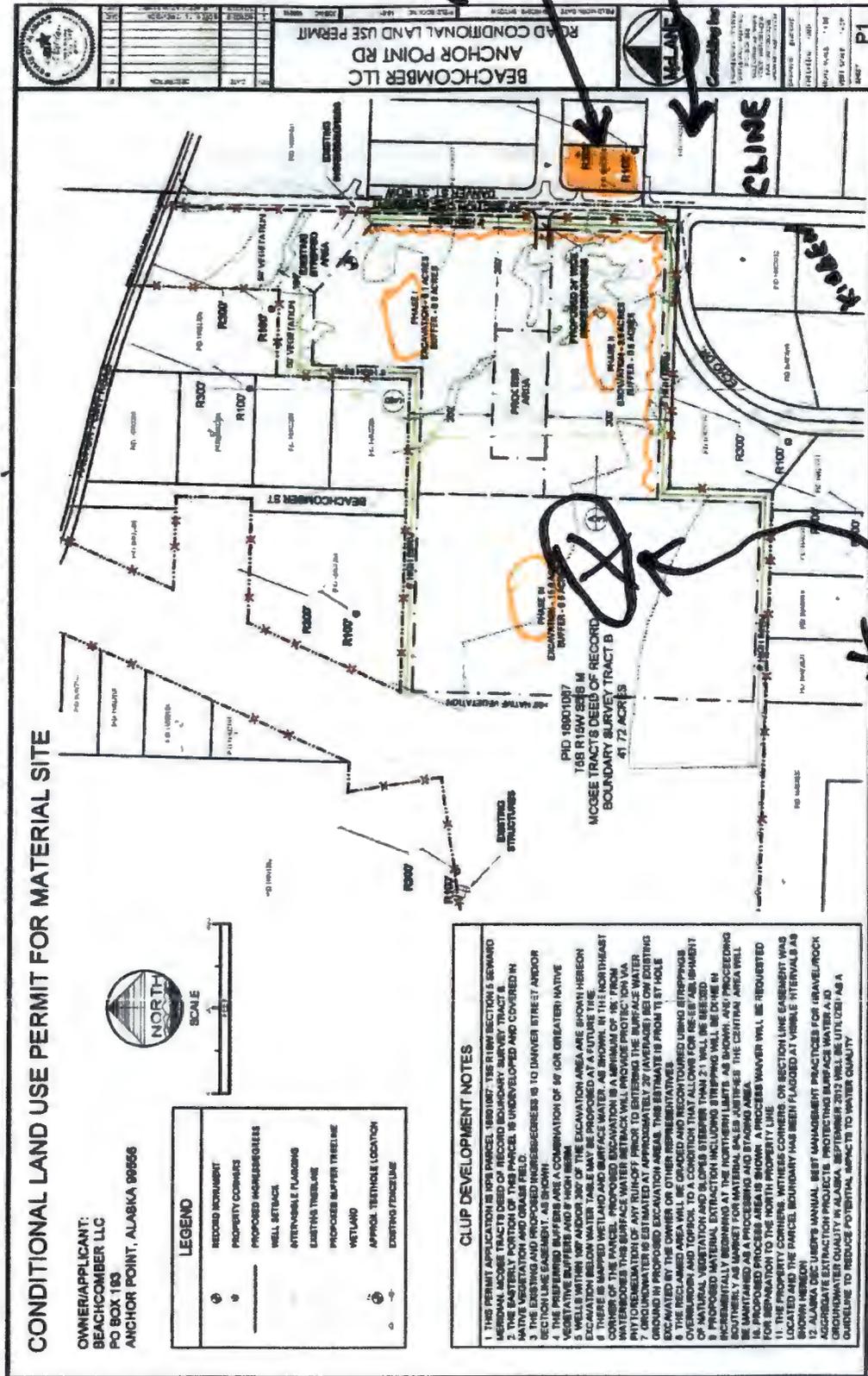
Sent from my iPad

EXHIBIT #3

Rick Driver

STEVE THOMPSON

PROCESSING AREA



CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT:
BEACHCOMBER LLC
PO BOX 193
ANCHOR POINT, ALASKA 99566



LEGEND

○	RECORD INSTRUMENT
●	PROPERTY CORNERS
—	PROPOSED MOUND/BERGESSES
—	WELL NETWORK
—	STRETCHABLE FLAGGING
—	LIMITING TREELINE
—	PROPOSED BUFFER TREELINE
○	WETLAND
○	APPROX. TESTHOLE LOCATION
○	EXISTING FENCELINE

CLIP DEVELOPMENT NOTES

1. THE PERMIT APPLICATION IS FOR PARCEL 10001007, THE 0.10 AC SECTION 16, SEWARD TOWNSHIP, MCQUEE TRACTS DEED OF RECORD BOUNDARY SURVEY TRACT.
2. THE EASTERLY PORTION OF THIS PARCEL IS UNDEVELOPED AND COVERED IN NATIVE VEGETATION AND GRASS FIELD.
3. THE EXISTING AND PROPOSED MOUND/BERGESSES IS TO UNCOVER EITHER AND/OR SECTION LINE EASEMENT AS SHOWN.
4. THE COMBINATION OF #4 (OR GREATER) NATIVE VEGETATIVE BUFFERS AND #8 HIGH BUSH.
5. WELLS WITHIN 100' AND/OR 300' OF THE EXCAVATION AREA ARE SHOWN HEREON.
6. THERE IS MAPPED WETLAND AND SURFACE WATER, AS SHOWN, IN THE NORTHEAST CORNER OF THIS PARCEL.
7. PROPOSED MATERIAL EXTRACTION INCLUDING STRIPPING WILL BE DONE IN THIS AREA. THIS SURFACE WATER NETWORK WILL PROVIDE PROTECTION FOR NATURAL VEGETATION AND SURFACE WATER.
8. PROPOSED MATERIAL EXTRACTION INCLUDING STRIPPING WILL BE DONE IN THIS AREA. THIS SURFACE WATER NETWORK WILL PROVIDE PROTECTION FOR NATURAL VEGETATION AND SURFACE WATER.
9. PROPOSED MATERIAL EXTRACTION INCLUDING STRIPPING WILL BE DONE IN THIS AREA. THIS SURFACE WATER NETWORK WILL PROVIDE PROTECTION FOR NATURAL VEGETATION AND SURFACE WATER.
10. PROPOSED MATERIAL EXTRACTION INCLUDING STRIPPING WILL BE DONE IN THIS AREA. THIS SURFACE WATER NETWORK WILL PROVIDE PROTECTION FOR NATURAL VEGETATION AND SURFACE WATER.
11. THE PROPERTY CORNERS, WITHNESS CORNERS, OR SECTION LINE EASEMENT WAS LOCATED AND THE PARCEL BOUNDARY HAS BEEN PLACED AT VISIBLE INTERVALS AS SHOWN.
12. ALASKA DEC LUBES MANUAL, BEST MANAGEMENT PRACTICES FOR GRANULAR/ROCK AGGREGATE EXTRACTION PROJECTS, PROTECTING SURFACE WATER AND GROUNDWATER QUALITY IN ALASKA, SEPTEMBER 2012 WILL BE UTILIZED AS A GUIDELINE TO REDUCE POTENTIAL IMPACTS TO WATER QUALITY.



Appeal Hearing Summary

October 30, 2019

10:00 AM

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

CALL TO ORDER

The Kenai Peninsula Borough appeal hearing convened on October 30, 2019, in the Betty J. Glick Assembly Chambers of the George A. Navarre Kenai Peninsula Borough Administration Building in Soldotna Alaska. Hearing Officer L. Anmei Goldsmith called the meeting to order at 10:00 a.m.

There were present:

L. Anmei Goldsmith, Hearing Officer
Johni Blankenship, Borough Clerk
Max Best, Director of Planning
Sean Kelley, Deputy Borough Attorney
Bruce Wall, Planner
Michele Turner, Deputy Borough Clerk

Case No. 2019-01-PCA: In the matter of the Kenai Peninsula Borough Planning Commission's decision to approve a conditional land use permit for a material site that was requested for KPB Parcel 169-010-67; Tract B, McGee Tracts – Deed of Record Boundary Survey (Plat 80-104) – Deed recorded in Book 4, Page 116, Homer Recording District.

PRELIMINARY MOTIONS

(10:02:20)

Parties will be asked to present any motions on preliminary matters or raise any objections regarding such matters at this time. These motions may include challenges regarding standing, alleged procedural errors by Hearing Officer, the clerk, or any of the parties, objections to the record or evidence before the Hearing Officer, requests to supplement the record, and so on. These are just examples and not all-inclusive.

MOTION TO EXPAND THE RECORD to include the Planning Commission Manual and Excerpts of Planning Commission Minutes of June 24, 2019 and September 9, 2019 by Attorney Elsner.

Attorney Trinka objected to the motion.

Hearing Officer Goldsmith ruled to include the Planning Commission Manual, and denied the addition of the excerpts of the Planning Commission minutes of June 24, 2019 and September 9, 2019.

11:11:10

OBJECTION: Attorney Trinka objected to allowing Lawrence "Rick" Oliver's Entry of Appearance.

Hearing Officer Goldsmith ruled that Mr. Oliver's Entry of Appearance would be allowed.

[Clerk's Note: All parties who were offering testimony were sworn in by Borough Clerk Blankenship.]

STAFF OVERVIEW - EXPLANATION OF PROCEEDINGS (10 Minutes)

(10:15:41)

Max Best, Planning Director presented the staff overview.

APPELLANT (15 Minutes)

(10:21:40)

Hans Bilben

Represented by Katherine Elsner of Ehrhardt, Elsner & Cooley

Attorney Elsner and Hans Bilben gave their testimony.

PERSONS FILING ENTRIES OF APPEARANCE SUPPORTING APPELLANT POSITION

(5 Minutes Each)

(10:43:21)

- | | |
|-------------------------------------|------------------------------------|
| A. Gary Cullip not present | M. Vickey Hodnik 10:56:46 |
| B. Linda Stevens not present | N. G. George Krier 11:12:03 |
| C. Tom Brook not present | O. Lawrence "Rick" Oliver 11:17:52 |
| D. Linda Bruce not present | P. Gary Sheridan 11:25:57 |
| E. Michael Brantley not present | Q. Eileen Sheridan 11:32:14 |
| F. Shirley Gruber not present | R. Steven Thompson not present |
| G. Joseph Sparkman not present | S. Philip Brna not present |
| H. David Gregory not present | T. Linda Patrick not present |
| I. Theresa Ann Jacobsen not present | U. Mike Patrick not present |
| J. Lynn Whitmore 11:47:45 | V. James Gorman not present |
| K. Xochitl Lopel-Ayala 11:13:44 | W. Marie Carlton 10:45:45 |
| L. Todd Bareman not present | X. Richard Carlton 10:50:44 |

Y. John Girton not present
Z. Joshua Elmaleh not present
AA. Christine Elmaleh not present
BB. Donald Horton 11:02:26

CC. Lori Horton not present
DD. Pete Kinneen 11:03:14
EE. Angela Roland not present

APPLICANT (15 Minutes)

(11:56:04)

Emmitt Trimble dba Beachcomber, LLC
Represented by Holmes, Weddle & Barcott, PC

[Clerk's Note: Attorneys Chantal Trinka participated in person at the hearing and Stacy Stone participated by phone. Both attorneys were from Holmes, Weddle & Barcott, PC.]

Attorney Trinka and Emmitt Trimble gave their testimony.

PERSONS FILING ENTRIES OF APPEARANCE SUPPORTING APPLICANT'S POSITION

(5 Minutes Each)

(12:17:48:)

- a. Lauren Isenhour not present
- b. Allison Trimble Paparoa 12:18:15
- c. Gina DeBardelaben not present
- d. Danica High not present

APPELLANT'S REBUTTAL (5 Minutes)

(12:23:48:)

Hans Bilben
Represented by Katherine Elsner of Ehrhardt, Elsner & Cooley

Attorney Elsner and Mr. Bilben gave a statement of rebuttal.

HEARING OFFICER'S EXAMINATION OF STAFF

(12:28:23)

Hearing Officer Goldsmith questioned Deputy Attorney Kelley and Mr. Wall.

ADJOURNMENT

Hearing Officer Goldsmith adjourned the hearing at 12:32 p.m.

VERBATIM TRANSCRIPT

&

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KENAI PENINSULA BOROUGH PLANNING COMMISSION**LOCATION**

**Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669**

**July 16, 2018
7:30 p.m.**

**TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 111, inclusive**

Commissioners Present:

**Syverine Abrahamson-Bentz, Ninilchik/Anchor Point
Paulette Bokenko-Carluccio, City of Seldovia
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Clam Gulch/Kasilof
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna**

Staff Present:

**Max Best, Planning Director
Patti Hartley, Administrative Assistant
Scott Huff, Platting Manager
Holly Montague, Deputy Borough Attorney
Jordan Reif, Platting Technician
Bruce Wall, Planner**

Others Present:

**Xochitl Lopez-Ayala
Todd Bareman
Hans & Jean Bilben
Gerald Blair
Walt Blauvelt, Axtel Enterprises
Michael Brantley
Phil Brna
Tammy Buss
Richard Carlton
Robert Corbisier, Attorney, Reeves Amodio, LLC**

Transcribed by: Sheila Garrant, Notary Public

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1 Others present: (Continued)
 2 Gary Cullip
 3 Gina DeBardelaben, McLane Consulting, Inc.
 4 Josh Elmaleh
 5 Kate Finn
 6 John Girton
 7 James Gorman
 8 David Gregory
 9 Steve Haber
 10 Don Horton (father)
 11 Don Horton (son)
 12 Lauren Isenhour
 13 Pete Kinneen
 14 Rick Oliver
 15 Eldon Overson
 16 William Michael & Linda Patrick
 17 Jim & Susan Reid
 18 Bob Shavelson, Cook Inletkeeper
 19 Eileen Sheridan
 20 Emmitt Trimble, Beachcomber, LLC
 21 Josh Updike, Peninsula Paving, LLC
 22
 23
 24
 25

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1 will do little to minimize the visual impact or noise
 2 disturbance to other properties. Staff recommends that
 3 a 50-foot vegetated buffer be required adjacent to the
 4 section line easement on the east property line; that
 5 would be along Denver Road.
 6 Part of Denver Road is a half dedication.
 7 Part of it is not -- well, let me rephrase that. Part
 8 of it is -- Denver Road is platted, and the portion on
 9 his property is a section line easement. And then also
 10 the northern part, both sides of the roadway is a
 11 section line easement.
 12 So in simple terms, the staff is
 13 proposing that a 50-foot vegetated buffer be required
 14 along Denver Road beginning at the edge of the section
 15 line easement, and then a six-foot berm inside of that.
 16 And then down along Echo Drive and going
 17 to the west, the same buffer is being proposed by
 18 staff: 50-feet of vegetation and then a six-foot berm
 19 on the inside of the vegetated buffer. And then
 20 wrapping around to the south there, that little leg
 21 there adjacent to that parcel, the same buffer.
 22 And then from there to the west, there's
 23 a few subdivision lots down on the south side there and
 24 there's really no vegetation there at all. There staff
 25 recommends a 12-foot high berm to provide the visual

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1 PROCEEDINGS
 2 7:52:35
 3 (This portion not requested)
 4 8:44:01
 5 **CHAIRMAN MARTIN:** We'll move to Item F4,
 6 Resolution 2018-23. Staff report, please.
 7 **MR. WALL:** Thank you, Mr. Chairman.
 8 This is an application for a conditional
 9 land use permit for a material site in the Anchor Point
 10 area. It is located at 74185 Anchor Point Road. The
 11 parcel number is 169-010-67. The applicant is
 12 Beachcomber, LLC. The site plan and application
 13 proposes the following buffers:
 14 On the north, a six-foot high berm,
 15 except along the east 400 feet where a 50-foot
 16 vegetated buffer is proposed; the south and east, a
 17 six-foot high berm; the west, greater than 50 feet of
 18 vegetation.
 19 Much of the vegetation was removed from
 20 this property 20 to 30 years ago. The neighboring
 21 properties adjacent to the southeast corner of the
 22 proposed material site are at a higher elevation than
 23 the subject property. This may be easiest to see on
 24 the contour map on page 119 of your packet.
 25 The proposed six-foot high berm alone

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1 impacts there.
 2 The west side, he's not excavating in the
 3 far west portion of the property, he's going to leave
 4 that vegetated. And then the berms as he proposed, a
 5 six-foot berm along the other property lines except for
 6 that in the northeast corner there where he's proposing
 7 natural vegetation.
 8 So with the proposed six-foot berm, I was
 9 not able to state in the staff report that the
 10 standards in KPB 21.29.040 had been met, but with the
 11 addition of the 50-foot vegetated buffer in portions of
 12 the property, I was then able to draft the findings
 13 stating that the standards had been met.
 14 Of course, this decision concerning
 15 buffers is entirely up to the Planning Commission. The
 16 code states, "The vegetation and fence shall be of
 17 sufficient height and density to provide visual and
 18 noise screening of the proposed use as deemed
 19 appropriate by the Planning Commission."
 20 While we are still on the map on page
 21 119, some of the property lines are not accurately
 22 depicted on these maps that I created. We've been
 23 updating the -- once I discovered the error, we've been
 24 updating the borough's mapping system, but I wasn't
 25 able to generate a new map for tonight's meeting.

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1 What I'm getting at there is Beachcomber
2 Street on the north portion of the property coming off
3 of Anchor Point Road, where it ends it looks like
4 there's a gap between that parcel -- at the end of
5 Beachcomber Street and the parcel, and that's
6 inaccurate.
7 To get a better representation of that
8 would be to go to the site plan on page 113 where you
9 can see that there's not that gap there. Like I say,
10 we're fixing that.
11 So now that we are looking at the site
12 plan, it indicates that the proposed processing area is
13 located 200 feet from the south of the last lot of
14 Beachcomber Street, which is currently undeveloped.
15 The parcel across the street from that one is developed
16 and it is located within 300 feet of the proposed
17 processing area.
18 This parcel is owned by the applicant's
19 daughter. A waiver is being requested for the 300-foot
20 processing distance requirement from this property
21 line. Staff does not recommend approval of the
22 processing distance waiver request.
23 We have numerous letters from adjacent
24 property owners and agencies in your desk packet
25 tonight. The staff report in your packet recommends

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1 approval of the conditional land use permit, however
2 because of the amount of written materials that you
3 have received tonight, I'm recommending that you
4 conduct the public hearing tonight and then continue
5 the hearing to your August 13th meeting to allow
6 yourselves time to read the written comments that you
7 have received.
8 That is the end of my report.
9 **CHAIRMAN MARTIN:** Thank you. Anyone here
10 wishing to testify? Please state your name and address
11 at the microphone.
12 **ROBERT CORBISIER:** This is the right
13 gravel permit?
14 **CHAIRMAN MARTIN:** Yes, sir.
15 **ROBERT CORBISIER:** Mr. Chairman, I do
16 apologize. I was working on my notes, and all of a
17 sudden I heard "materials site extraction," and I
18 wanted to jump. I was like, "Why isn't anybody else
19 saying anything?"
20 My name is Rob Corbisier. I do have
21 prepared statements. I would ask for ten minutes, I
22 think I can still get through it in five.
23 **CHAIRMAN MARTIN:** Go for it.
24 **ROBERT CORBISIER:** I am a resident of
25 Anchor Point, however, I'm an attorney here

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1 representing Robert Bob Baker on behalf of the R.O
2 Baker Trust. He is an adjacent property owner. I have
3 submitted written comments, I'd like to briefly
4 summarize them orally though.
5 I primarily make five points in the
6 written comments. First of all, there's no way that a
7 conditional use permit in this location could
8 adequately protect the environment. Fugitive dust is
9 going to be coming off of the gravel pit into the
10 adjacent wetlands, the Anchor River, and the estuary.
11 There is going to be drainage issues.
12 There's going to be dewatering issues. Although the
13 applicant has stated at this time he's planning on
14 staying above the water table, the application does
15 state at some point in the future he intends on going
16 into the water table.
17 The well location itself is deceptive
18 when you look at the gradient of where the test hole
19 was dug. It is at a near -- it's at a high point in
20 the area adjacent to a bluff that drops way off, and so
21 naturally you are going to have a lower water table at
22 that spot. It also violates the ADEC best practices
23 manual, which suggests having a four-foot separation.
24 You are also going to have noise that is
25 going to damage wildlife habitat and it violates the

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1 borough's Costal Zone Management Plan.
2 Second, it's not going to be able to
3 preserve recreational values. There are two state park
4 campsites adjacent to the area. Anglers fishing on the
5 Anchor River and camping on the beach and in the
6 campsites are going to be able to hear the noise, and
7 the heavy truck traffic is going to interfere with
8 recreational traffic going to and from the beach and
9 the tractor launch site. That road is quite narrow,
10 that is going to be ripe for disaster.
11 It is going to impact residential values
12 dramatically. There are 13 classified -- residential
13 classified parcels that are adjacent to right next to
14 it. There are -- I counted approximately 40 within
15 1,500 feet.
16 A six-foot berm is not going to be
17 sufficient for either visual separation or auditory
18 separation especially when you consider second-story
19 houses.
20 This is going to create an attractive
21 nuisance. You have Chapman Elementary School that is
22 not far from that. Children go down and play near the
23 beach and in that area all the time.
24 In the borough's working group on the
25 material site regulations there was testimony

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1 describing how winds in the wintertime turn otherwise
 2 vacant gravel pits into sandblasting facilities that
 3 absolutely knock out somebody's house next door.
 4 In this location, it is adjacent both to
 5 Cook Inlet and the Anchor River flats there, there is
 6 undoubtedly going to be high winds. It is the highest
 7 level HUD wind zone.
 8 It is going to impact property values. I
 9 understand the borough assessor does not necessarily
 10 drop property values just based on the existence of a
 11 gravel pit; however, studies in the Lower 48 show a
 12 documented drop of around 33 or higher percent when a
 13 gravel pit is developed.
 14 Although staff has recommended a buffer
 15 on the east side and the north side, there is not a
 16 buffer that is being recommended even on the south
 17 side. And so you are still going to have residential
 18 parcels with nothing other than a six-foot berm.
 19 Lastly, for residential values, Danver
 20 Street does not comply with the ADEC best management
 21 practices for a dedicated access point.
 22 Third, this is not needed. There are
 23 approximately 50 parcels in the greater Anchor Point
 24 area either off the Old Sterling Highway, the Sterling
 25 Highway, or the North Fork Road that either have

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1 conditional use permits as gravel pits or are existing
 2 prior uses.
 3 So lastly, the borough should simply just
 4 wait for the regs to come out. There's no reason for
 5 the Planning Commission to approve this application
 6 right now. Let the process that has been started by
 7 the assembly finish before the conditional use permit
 8 is authorized.
 9 If the Planning Commission feels a need
 10 to do something, an alternative that should be
 11 considered would be only developing the Phase 1 portion
 12 of the project allowing then the applicant to come back
 13 for later phases after the regulations are in place.
 14 Now lastly, my client asked me to make
 15 several additional points here at this meeting. To his
 16 knowledge, the applicant has no experience operating a
 17 gravel pit. I mean, simply from an LLC standpoint,
 18 Beachcomber, LLC is a brand new LLC, it has no business
 19 history.
 20 He has questions about what -- what is
 21 the financing for the extraction? The start-up costs?
 22 The ability for the applicant to post a requisite bond?
 23 What is the insurance going to be like? What is the
 24 LLC's solvency?
 25 In the event that the LLC is to become

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1 insolvent, there is a potential for an outside operator
 2 that could come in and continue to decimate the mouth
 3 of the Anchor River and its recreational values in the
 4 event that there's a sale.
 5 Thank you very much. I will otherwise
 6 defer to my comments. Are there any questions?
 7 **CHAIRMAN MARTIN:** Any questions?
 8 **ROBERT CORBISIER:** Thank you.
 9 **CHAIRMAN MARTIN:** None at this time.
 10 Thank you. Next testifier, please.
 11 **MICHAEL BRANTLEY:** Good day, ladies and
 12 gentlemen of the assembly. You are here today to
 13 represent --
 14 **CHAIRMAN MARTIN:** Name and address for
 15 the --
 16 **MICHAEL BRANTLEY:** Pardon me?
 17 **CHAIRMAN MARTIN:** Name and address for
 18 the record.
 19 **MICHAEL BRANTLEY:** Yes, ma'am -- yes,
 20 sir.
 21 My name is Michael Brantley. My address
 22 is 74057 Anchor Point Road, 300 miles west -- I mean,
 23 300 feet west of Danver Road, which is going to be the
 24 access road for this pit.
 25 I just retired after 41 years and three

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1 months working for the federal government. 31 years of
 2 that working history I worked gravel pits and quarries.
 3 I've seen a lot of noise, or heard a lot of noise too
 4 actually, and these things create carcinogens, and
 5 carcinogens is cancerous.
 6 Imagine somebody with their family
 7 driving down with their RV or SUV, windows down, and
 8 their children breathing in all this air every day that
 9 this is going on. Just imagine that.
 10 We have a traffic problem as it is on the
 11 beach road. And to be exact, that road is a disaster,
 12 it is a hazard, it is a liability to the Kenai
 13 Peninsula Borough as of this day, that is my opinion.
 14 This needs to be rectified.
 15 This pit is on the backside of my lot, it
 16 borders it. I am north of his line there. I spent
 17 hundreds of thousands of dollars the past couple of
 18 years to build my dream, my business down there, a
 19 fly-tying shop. And now I will have a pit going in
 20 next door.
 21 I've got guests that gets up at all types
 22 of hours to fish, you all know that, they go according
 23 to the tide and the weather. So if they are going to
 24 put a berm up there, they better also put up a wall.
 25 They also need to have DEC inspections if

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1 this is going to happen, and I mean on a regular basis.
 2 I had 12 certificates dealing with hazardous waste
 3 working for the Air Force, so I have experience in all
 4 of this, and I'm telling you that it's not right for
 5 the neighborhood.
 6 I've spent tens of thousands of dollars
 7 to get my DEC engineer-approved water system put in.
 8 That was quite the experience. I drilled four wells
 9 right next to one that was producing 26 gallons a
 10 minute. I went down a few hundred feet and still
 11 couldn't find water. Fortunately for me the borough
 12 came back and changed the regulations and now my well
 13 is classified as private, so therefore I can use it.
 14 However, the well is only down 38 feet. And I'll let
 15 you know again, Kenai Peninsula Borough/DEC has
 16 approved this.
 17 There is something that came to my
 18 attention some time ago when I first bought this
 19 property. The property was previously owned by Albert
 20 Don Magee from Oregon. Now some time ago I heard a
 21 story, so I did some inquiring. The story I understand
 22 was that he had a son that had passed away and he
 23 decided to bury his son on this property that we are
 24 talking about today. I have been in contact with the
 25 family members down there trying to get verification of

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1 this as we speak, and as I get this information I will
 2 pass it on to the appropriate people.
 3 And this is all I have to say. Let me
 4 check my notes.
 5 **CHAIRMAN MARTIN:** Do you have any
 6 questions?
 7 **MR. WALL:** Mr. Chairman, if I could.
 8 **CHAIRMAN MARTIN:** Yes.
 9 **MR. WALL:** You mentioned that you have
 10 well. Did you indicate that's approved as a public
 11 water supply system?
 12 **MICHAEL BRANTLEY:** Yes, sir.
 13 **MR. WALL:** And when was that approved?
 14 **MICHAEL BRANTLEY:** Here I got -- finally
 15 got the approval last -- a couple weeks ago.
 16 **MR. WALL:** Okay. Because I was going to
 17 say that doesn't -- in our comment letter from DEC they
 18 didn't mention that.
 19 **MICHAEL BRANTLEY:** Sure.
 20 **MR. WALL:** So I'll do some follow up with
 21 them. Thank you.
 22 **MICHAEL BRANTLEY:** Sure, sure, that's
 23 fine. I appreciate that.
 24 Something else I want to talk about this
 25 possible deceased son that possibly could be buried on

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1 that property. It so happens to be his ancestry is
 2 Cherokee.
 3 I shall leave you with that, and you all
 4 have a good evening. I hope you make the right
 5 decision on this. The community can't have this.
 6 If you are going to put this in and you
 7 push it through, there's three things that I want. I
 8 want that road to be completely redone from the boat
 9 launch all the way to the bridge.
 10 The borough came down the other day and
 11 did some shoulder work. There is no shoulder on one
 12 side of that road half the way down. If you fall -- if
 13 you go over that line, white line, you are down four
 14 feet, your car is ruined, and you guys will get a bill.
 15 I've seen a lot of foot traffic. I got
 16 photos. I have a photo of a woman pushing three babies
 17 in a cart down that road. I have one of two babies. I
 18 have a group of six people. Unfortunately, rushing
 19 here from my place, I left all that information there,
 20 but I'll gladly dig it up and send it to any one of you
 21 that want to look at that.
 22 **CHAIRMAN MARTIN:** Thank you.
 23 **GARY CULLIP:** My name is Gary Cullip and
 24 I'm a resident there. I'm up on the end of Seabury
 25 Court, and I overlook this whole area for the gravel

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1 permit.
 2 My biggest concerns I have -- he might
 3 meet all of the regulations, but I think there's
 4 circumstantial evidence that's involved here that you
 5 really need to take a hard look. I think you really
 6 need to table this, take it up on your August 13th
 7 meeting.
 8 My biggest concerns I have is the
 9 condition of the road, number one. I know the borough
 10 does not have the money to go rebuild that road. So if
 11 that has to happen, you need to put a condition to the
 12 permit to make the permittee liable for it.
 13 And I don't know how in the world anybody
 14 could really address the safety issues. Number one
 15 safety as I see, is that road is the main access for
 16 people to get from the state parks down to the beach.
 17 So you have all kinds of foot traffic on a very, very
 18 narrow road as is. You have up to 40 boats traveling
 19 that road to get launched every day, and you are going
 20 to put these dump trucks and stuff in there, it's going
 21 to be a disaster. It really, really -- you people need
 22 to take a hard look at it.
 23 And like I said, it's a very different
 24 permit that we are talking about here. This is in the
 25 middle of a residential area, lots and lots of people

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1 to be affected by this.
 2 Now if you at all can find yourselves to
 3 go ahead and table this, take all the rest of the
 4 information that you are going to receive from all
 5 these people that are here and then make a wise
 6 decision. Thank you.
 7 **CHAIRMAN MARTIN:** Thank you. Any
 8 questions? None at this time. Next testifier, please.
 9 Name and address for the record.
 10 **WILLIAM PATRICK:** William Michael Patrick
 11 at 34897 Fisher Court in Anchor Point.
 12 I'm a coward. I ran away from the Lower
 13 48 in 1990 and came up here and taught in rural Alaska
 14 for a long time. I came to Anchor Point because it's a
 15 beautiful place. I picked a lot on a hill. I look out
 16 my front window and I can see Mt. Iliamna. I look out
 17 the side window, I see Mt. Redoubt. I go over to my
 18 neighbor's house across the street and we can even see
 19 Mt. Augustine.
 20 Over the past six years I've had the
 21 pleasure, the ecstatic pleasure of a lifetime -- talk
 22 about quality of life -- to see three sets of twin
 23 calves born in my front yard. I actually got to see
 24 them coming out, and I got to enjoy them running around
 25 on the front lawn.

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1 In the fall, sandhill cranes fly about
 2 that amphitheater bowl that we have there at the mouth
 3 of the Anchor River, and they are just squawking, and
 4 the way sounds carry there it sounds like they are in
 5 your living room. They will land on the hillside and
 6 down in the very area where this pit is going to be and
 7 they walk around. They are a majestic bird to see.
 8 I can drive down by the beach and I can
 9 see people walking on the beach, enjoying it. There is
 10 much beauty there. This is a very unique area. It's
 11 not down some dirt road. The farthest westerly point
 12 on the American highway system is right down there, and
 13 I can just see the tourist now, "Hey, I drove out as
 14 far west as I can in the United States and there's a
 15 gravel pit there." You know, "Go West, young man, go
 16 West." I guess you have to go farther west to get away
 17 from the gravel pits.
 18 I don't begrudge anybody making money, I
 19 don't. As a school teacher, I wish I could have found
 20 a way to make a little more money, but I don't begrudge
 21 business, any of that, but I do have some questions as
 22 a science teacher.
 23 You guys are talking about water tables.
 24 When these people make gravel pits and they let them
 25 fill up with that water, does that subject your

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1 groundwater to pollution? Because it's in contact with
 2 the atmosphere now.
 3 When you allow them to dig that out and
 4 put a pond in there, what about attractive nuisance?
 5 Let's say a neighborhood kid falls in there. Is the
 6 gradient on the pond steep enough to where he can't get
 7 out? Or you've got moose walking around, they'll -- if
 8 you've ever watched a moose, he'll walk right into
 9 something like that. Would he end up drowning because
 10 he can't get out of the hole in the ground that's
 11 covered up with water so that the gravel guy didn't
 12 have to reclaim it? I don't know.
 13 Flora and fauna, very unique. You've got
 14 a collision between freshwater systems and saltwater
 15 systems. What is on the ground there? What type of
 16 viruses? What types of bacteria? Are they helpful?
 17 Harmful? And what happens when you make them airborne
 18 on dust particles and they blow around? I personally
 19 am allergic to dust.
 20 But my house sits at 110 feet elevation
 21 about 150 yards from the entrance to this pit. The pit
 22 is at 44 feet elevation. You can't -- you'd have to
 23 put a dome over there to keep me from seeing into it.
 24 But then you would also make Mt. Iliamna and Mt.
 25 Redoubt disappear and that might cause a big stir in

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1 the National Geographic Society.
 2 But sea breezes, land breezes. We always
 3 get a sea breeze. Sometimes it's hurricane force. But
 4 when that sea breeze comes in every evening, guess
 5 what, it blows the dust right on my house, but not just
 6 mine, I've got a neighbor just to the right of me, I've
 7 got a neighbor behind me. Mr. Cullip there lives just
 8 within 100 yards of me.
 9 As you come up my private road, Deesa
 10 (ph) Road -- it's not really a road, it's kind of a
 11 path, but I have one, two, three more neighbors there.
 12 And on the left-hand side I have another neighbor
 13 there.
 14 These people are even closer than 150
 15 yards. But picture that, over 150 yards you have a
 16 rise in elevation of, like, 66 feet.
 17 Now I have two wells at my house. The
 18 reason I have two wells is I drilled the first one and
 19 I ran into an underground stream, an underground
 20 stream. Perfect water, okay.
 21 But through happenstance it gave out in
 22 just a couple of years, so I had to drill another well.
 23 Now that's 70 feet down. Now if you go 70 feet down
 24 from my house into the aquifer that I'm in --
 25 **CHAIRMAN MARTIN:** Could you wrap up?

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1 That's five minutes.
 2 **WILLIAM PATRICK:** All right. Could I
 3 just --
 4 **CHAIRMAN MARTIN:** Yes.
 5 **WILLIAM PATRICK:** -- you carry that over,
 6 that puts the ground level estimate down there at four
 7 feet above the water table. That's just an estimate.
 8 But I would suggest that you would have
 9 to drill more than one hole to determine the validity
 10 of the water table in that area, particularly in that
 11 area because it has many underground streams. Gravel
 12 filters water. That water is running down towards the
 13 ocean and towards the Anchor River.
 14 So, you know, scientifically if you look
 15 at these things it's fine, but I'm going to get the
 16 noise, I'm going to get the dust, I'm going to have the
 17 visual impact. I'm going to be subjected to safety
 18 pulling out of my road and not getting run over by a
 19 dump truck and so are many, many other people.
 20 I've seen the kids at the elementary
 21 school down there on walking field trips. And the
 22 bridge that services that Anchor River Road is
 23 condemned, it's condemned.
 24 **CHAIRMAN MARTIN:** Thank you.
 25 **WILLIAM PATRICK:** Thanks.

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1 **CHAIRMAN MARTIN:** Questions? Ms. Bentz?
 2 We have a question, sir.
 3 **COMMISSIONER BENTZ:** What was the depth
 4 of your first well?
 5 **WILLIAM PATRICK:** 20 feet.
 6 **COMMISSIONER BENTZ:** Thanks.
 7 **CHAIRMAN MARTIN:** Thank you.
 8 **TODD BAREMAN:** My name is Todd Bareman,
 9 and I live on the Old Sterling in Anchor Point, and I
 10 own the tractor launch down there at the beach.
 11 I would like to say that that road does
 12 need some addressing. It's in terrible shape. That's
 13 not what we are here for, but we are here to not make
 14 it any worse and cut into the recreational use that's
 15 going on down there.
 16 This pit, if it's permitted, there will
 17 be a crusher that five campgrounds are able to hear, a
 18 trailer park and two RV parks.
 19 How are recreational people going to get
 20 along with that, much less all the residents here that
 21 do have a problem with it.
 22 I'd like to say we are here because
 23 there's not enough regulations and that's why you are
 24 changing this permit process. And I think it should be
 25 tabled until you get some new regulations. This is not

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1 a normal gravel pit and it's not in a normal area as
 2 you can see by this testimony.
 3 And I would ask that you be a little bit
 4 lenient about people here testifying. This is very
 5 personal, because this is their property and their
 6 livelihoods that are going to be affected here.
 7 That's all I have.
 8 **CHAIRMAN MARTIN:** Thank you. Any
 9 questions? No questions at this time. Next testifier,
 10 please.
 11 **UNKNOWN SPEAKER:** Come on, stand right
 12 behind me. Come on, stand here.
 13 **LINDA PATRICK:** My name is Linda M.
 14 Patrick, I live at 34897 Fisher Court. That was my
 15 husband that spoke earlier.
 16 And I too want to mention all of the
 17 points that he mentioned, however, I'm going to stick
 18 to just one, and that's the noise level.
 19 Now there is excavating going on
 20 presently at that north corner of the designated area,
 21 already been dug out, consistently digging and hauling
 22 gravel and trucks in and out of there right now. That
 23 can sometimes start by 7:30, 7:00 in the morning -- the
 24 other day it was 7:00, and it runs all day. We can
 25 hear it. We can close our doors and our windows; that

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1 noise still permeates our house. Where is our
 2 protection? Where is our safety, our visual, our
 3 hearing? I just want to know, where is our protection?
 4 **CHAIRMAN MARTIN:** Any questions? None.
 5 **JOHN GIRTON:** Hello, my name is John
 6 Girton, and I live on Twin Peaks Loop. I'm about a
 7 mile from this construction site, so it's really not
 8 going to affect me much as far as what most of the
 9 people here are concerned about.
 10 Before I get into my concern, there is at
 11 least two graves in the middle of this site. One is
 12 the son of Joe and Gladys Dandona, their son is buried
 13 there. And I think there's another one, I think the
 14 McDonalds' have a son buried there also. I can't take
 15 you right to where it is, but it's definitely right in
 16 the middle of this plot.
 17 I'm moved to Anchor Point 25 years ago,
 18 and for one reason, the use of the beach road and the
 19 beach launch because I fish. And that road is so bad
 20 that somebody is going to get killed on it the way it
 21 is now.
 22 Three times in the last 25 years I have
 23 had gravel trucks coming down Danver from a project up
 24 there that hit my boat and my tow vehicle. Once it
 25 took my left-hand mirror off and twice it hit the back

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1 of my trailer. There's not enough room to move over to
 2 make room for these boats and the gravel pit trucks.
 3 And believe me, the gravel drivers are
 4 not going to get out of way of the boats, they just
 5 push us off. Now that they put in -- they dug out the
 6 berm, there's no place to go.
 7 And my boat is wide, my boat is 11-foot
 8 wide. And somebody said 40 boats a day. There are
 9 days when there are 100, 125 boats down that road.
 10 There's a lot of traffic. Plus you have the campers
 11 and the motorhomes that, you know, they need room. And
 12 these trucks, when they start rolling, it's going to be
 13 a very, very serious problem.
 14 There's a lot of walkers, a lot of kids,
 15 a lot of bicyclers, and it's -- right now when you
 16 drive onto the beach or back, you always have to move
 17 over to the side of the road to make room for the
 18 people walking along the road.
 19 I don't know if you've ever been down
 20 there. I mean, maybe you guys all live up here and
 21 don't know this road and don't know the problems, but
 22 you should get down and take a look at it before you
 23 make a decision, because it's a very serious problem.
 24 The road is in very, very bad shape and somebody is
 25 going to get killed.

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1 If you do approve it, which God, I hope
 2 you don't, you put in one of these restrictions. One
 3 of the restrictions should be no Jake brakes, because
 4 those trucks go down that hill on the Old Seward
 5 Highway down the left hand appearing to the beach, and
 6 they run those Jake brakes, and it is horrible where I
 7 live.
 8 I only live 150, 200 feet off the Old
 9 Sterling Highway, but it's a big problem when they do
 10 that. And they all do it, and there's no -- there's no
 11 enforcement. I mean, you guys can tell them not to do
 12 it, but nobody is going to enforce it.
 13 Just like -- I've had a couple of gravel
 14 pit operators tell me -- they just laughed. They said,
 15 "Well, once we get the permit we do anything we want.
 16 We come to this, we get our permit, and they tell us
 17 what we can do and what we can't do, but we do it
 18 anyway once we have it."
 19 And that really concerns mem especially
 20 with some of the people involved in this project.
 21 So I really hope you do not approve this.
 22 It's like -- it's just like signing a death warrant to
 23 Anchor Point if you do, because if that tractor and
 24 launch cannot continue to operate because of the road
 25 conditions and the lack of boats going down to launch,

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1 there's nothing else in Anchor Point to do. That is,
 2 like, 95 percent of our commerce in Anchor Point. It's
 3 a very serious thing you are going to do to Anchor
 4 Point if you allow this gravel pit to go in.
 5 Todd was going to expound it a lot more
 6 on what it would do to his business, but I guess he's
 7 just more of a gentleman than I am. But I'll tell you,
 8 it will be devastating if -- to that whole community if
 9 we lose that beach launch. That is the only thing
 10 anybody -- that's the only thing Anchor Point has. We
 11 don't even have a restaurant anymore. We have a beach
 12 launch, and you take that away from us, you are going
 13 to hurt a lot of people.
 14 **CHAIRMAN MARTIN:** Thank you.
 15 **JOHN GIRTON:** I guess that's all.
 16 **CHAIRMAN MARTIN:** Any questions? No
 17 questions at this time. Thank you for your testimony.
 18 **JOHN GIRTON:** Safety is my whole thing.
 19 I don't know anything about that pit. I'm not going to
 20 live by it and I'm not going to smell it, I'm not going
 21 to get the dust from it, it's the safety of that road.
 22 Thank you.
 23 **CHAIRMAN MARTIN:** Thank you.
 24 **HANS BILBEN:** We have some handouts to
 25 hand out to -- for the Commission.

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1 **CHAIRMAN MARTIN:** Patty will take care of
 2 it for you.
 3 **HANS BILBEN:** My name is Hans Bilben. I
 4 live at 35039 Danver Street where we built our home,
 5 and we've resided there for the past 15 years.
 6 I'm going to read a little statement here
 7 that kind of sums up why Jeanne and I, as well as most
 8 people in Anchor Point, live where we do.
 9 The statement says, "The natural beauty,
 10 the authenticity of the people, the adventure and the
 11 peaceful life come together to make Alaska a place to
 12 realize dreams.emm
 13 Funny thing about that statement, it's
 14 the first paragraph from the Coastal Realty website.
 15 That's the company that's owned by the same people who
 16 want to destroy the lifestyle that they claim to
 17 promote in their website. They want to develop a mine
 18 in the very heart of Anchor Point.
 19 There's an unlimited number of
 20 well-qualified reasons not to have a gravel pit in this
 21 location, while greed is truly the only driving force
 22 for its creation. We realize that the Planning
 23 Commission is bound by the Borough Code of
 24 Ordinances -- pardon me -- okay.
 25 We realize that the Planning Commission

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1 is bound by the Borough Code of Ordinances in their
 2 decision making process, and unfortunately these codes
 3 are severely lacking and vague in some areas. The six
 4 standards that the applicant must satisfy are pretty
 5 skimpy, but that's what you guys have to live by for
 6 now.

7 In the case of this application, there's
 8 no possible way that the applicant can meet those
 9 standards due to the topography of the area surrounding
 10 this proposed mine. No amount of berming or vegetated
 11 buffer will meet the standards pertaining to minimizing
 12 noise or visual impact on other properties and not
 13 other homes, as Emmitt would like to say, as required
 14 by the code because of the steep rise in elevation to
 15 the north, the east, and the south of the proposed
 16 mine.

17 Our property is 500 feet south of the
 18 proposed area and 75 feet above the existing floor.
 19 From our property we have clear view and earshot of a
 20 large percentage of the proposed site. If you look at
 21 page 2 and 3 on that handout, it shows some not so good
 22 pictures of what we look at out of our window. But you
 23 can see where the proposed area would be down below us.
 24 There is a lot of people that are much more impacted
 25 than we are.

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1 Recently myself and a friend walked
 2 through and talked with neighbors and actually looked
 3 at the view from the area. On the first page of my
 4 handout -- and you can see that one that has a bunch of
 5 little red dots all over it -- okay, that crosshatched
 6 area is the mine, proposed mine area.

7 The red dots, when we walked through the
 8 neighborhood and talked with neighbors and looked at
 9 them -- and we didn't really just look at homes,
 10 because the code doesn't say you can't impact homes, it
 11 says you can't impact other properties.

12 We counted -- on the red dots you can see
 13 on this thing, we counted 22 homes and talked to those
 14 people in most of those places, and they were impacted,
 15 and they will have visual and noise impact because no
 16 amount of berming can cover that up. You'd have to
 17 build a 100-foot berm down there to block that view.

18 Let's see. And in talking about this
 19 berm thing again and the vegetated buffer, the picture
 20 that we handed out to you -- and again, I'm a little
 21 premature on that, but this one right here, this is my
 22 neighbor Rick Oliver, he lives on Danver Street, he's
 23 going to speak here in a few minutes, but you can see
 24 the vegetated berm is that one tree to his left.

25 Now Rick lives on Danver, you can see the

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1 edge of Danver Street in the picture, okay. The road
 2 he's standing on or the cleared area that he's standing
 3 on is the access road to the pit, which would be to the
 4 processing plant, which would be right in front of his
 5 house.

6 Rick walked in 50 feet on Emmitt's
 7 property, and he trespassed probably. He is standing
 8 there, he's almost six feet tall he claims, and he's
 9 got a ten-foot two-by-six or something in his hand.
 10 The trees behind him will all be lost to excavation,
 11 they will be part of the pit. So what do you think
 12 about the visual impact, the noise impact, and the dust
 13 impact on Rick Oliver's house? Okay.

14 One thing -- we just got here a few
 15 minutes ago, Emmitt handed out a little handout and he
 16 says, "In only three hours we did this. Only five
 17 homes have been -- they have a limited view now." How
 18 many homes do we have to destroy or decimate before we
 19 say no to a gravel pit? Only five homes?

20 And the truth of the matter is it doesn't
 21 matter if it's 50 homes, it doesn't have anything to do
 22 with homes, it has to do with properties. People that
 23 own property up there are going to lose value, they are
 24 impacted by the visual and the noise part of that
 25 thing, and there's no way he can get around it because

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1 of the topography of that area. It's like being in an
 2 amphitheater when you go there.

3 The property, the proposed mine is in the
 4 heart of a residential recreational gem, and we call it
 5 Anchor Point. This property could, if properly
 6 developed, could be a very desirable addition to the
 7 community.

8 **CHAIRMAN MARTIN:** That's five minutes.
 9 **HANS BILBEN:** Okay.
 10 **CHAIRMAN MARTIN:** Can you wrap up?
 11 **HANS BILBEN:** I need about one more
 12 second.

13 **CHAIRMAN MARTIN:** Yep.
 14 **HANS BILBEN:** It's the function of our
 15 elected and appointed officials to represent and hold
 16 up these ordinances and not merely to rubber stamp this
 17 thing. This pit is at the wrong place and it has no
 18 business even getting this far in the process.

19 **CHAIRMAN MARTIN:** Any questions? None at
 20 this time. Thank you. Yep, name and address for the
 21 record.

22 **PETE KINNEEN:** Name is Pete Kinneen, and
 23 I live at 34969 Danver just behind Echo overlooking
 24 this proposed mine.
 25 And I'm here with a slightly different

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1 take. I'm an Irishman and I'm as passionate as anyone
 2 else is, however I'm going to put that aside, save you
 3 from my passion, and strike strictly to the reasons
 4 that you cannot approve this tonight.
 5 It does not meet the conditions. And
 6 the -- you know, the valid concerns about the safety of
 7 the road, et cetera, et cetera are not within your
 8 toolbox to use to make the decision. So just going on
 9 the ordinances and the exact interpretation of them, I
 10 don't think any of the conditions can be met.
 11 In fact, if this were to be -- first of
 12 all, this is not a permit of right. You do not have a
 13 right to do it, you must come and ask permission, and
 14 there's conditions.
 15 And I'm going to suggest, because of the
 16 uniqueness of this, if this were to be passed, there is
 17 no other operation in the Kenai Peninsula Borough --
 18 you might as well just rip up the ordinance and say,
 19 "Pshh, you can do anything you want."
 20 But the way it stands right now in Title
 21 21.29.050(A)(2)(a)(iie) says specifically, "Buffer
 22 requirements shall be made in consideration of and in
 23 accordance with existing use of neighboring property at
 24 the time of approval of the permit."
 25 "Shall" is a mandatory word, it is not

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1 permissive. You must do this, you must keep this in
 2 mind. The road and kids getting running over and all
 3 that is real, but it's not what you are to use in your
 4 decision, but "shall," that you will consider all of
 5 us.
 6 And the uniqueness of this is that if you
 7 were in a helicopter flying up the coastline, you would
 8 see tall bluffs for a mile after mile almost all the
 9 way in from Homer and far north.
 10 The exception is there's a little
 11 amphitheater or bathtub that inundates right in here,
 12 and that was caused by the outflow of the Anchor River.
 13 And it's a small flat area surrounded by a bathtub, and
 14 the noise comes in primarily from the water.
 15 The atmospheric conditions of the body of
 16 water right there play havoc with the sound. I mean,
 17 sometimes you can hear any little thing and other times
 18 you don't hear. But the noise cannot be minimized,
 19 there's virtually nothing you can do. You can have all
 20 the buffers you want.
 21 And in the photos that I've included here
 22 for your perusal, they were taken from my living room
 23 inside the house and they look out over the tops of the
 24 fully matured trees and they look out over -- you will
 25 see just a corner of a blue roof, it's a 20-something

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1 foot home, and everything behind it is part of this
 2 proposed mine.
 3 And there is -- I don't know, you can put
 4 up six-foot or 12-foot fence, you can make the buffer
 5 50 feet wide, 100 feet wide, 150 feet wide, it doesn't
 6 matter. And so this is a unique situation all the way
 7 around.
 8 The stated intent, which is your guide,
 9 is found in Title 21.29.040 and (A) clearly says
 10 "intent". What is the intent? Is the intent just to
 11 shovel out to anybody who comes in here and asks for a
 12 gravel mine anywhere at any time? That's not what the
 13 intent says. The intent says protect against six
 14 different conditions, including dust, noise, and visual
 15 impact.
 16 So with all due respect, because of the
 17 uniqueness of this area, if there's ever been a gravel
 18 mine application that should be denied, this is it.
 19 And I don't understand, I really do not understand how
 20 a permit could be issued for this under these
 21 ordinances and any interpretation of it.
 22 So at my invitation, Bruce Wall came to
 23 the house -- and again, all these photos were taken
 24 from my living room or the deck -- and he and I stood
 25 there and I said, "Here you go." And basically the

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1 entire floor of this bathtub or amphitheater, except
 2 for the estuary of Anchor River itself, virtually
 3 everything else is in this proposed mine. And I said,
 4 "Bruce, look, show me what you could do. I mean, we
 5 are open for ideas, all of us."
 6 And incidentally, there's a lot more than
 7 five houses. I mean, that's just probably an
 8 indication of the people who are proposing this. You
 9 know, Hans found over 20 houses that are impacted by
 10 this, I found more. So there's a lot of people
 11 impacted.
 12 And so anyway, I'm standing there with
 13 Bruce and I said, "Here it is. I can see the entire
 14 mine from left to right. And how can you protect us
 15 per your ordinance -- 'you shall' -- and this is the
 16 intent?"
 17 And I think he was kidding around. He
 18 just kind of jumped over here and said, "Well, you
 19 know, I can't see it now." That was a tree that was
 20 there in front of the house.
 21 And incidentally because of the
 22 atmospheric conditions right up to Echo Road does have
 23 original, vibrant, verdant, green, mature spruce trees.
 24 Past that and coming up the hill it doesn't, because
 25 the ecosystem that comes in behind us is the uplands

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1 boreal forest, and that's just been decimated by the
2 beetle kill.

3 **CHAIRMAN MARTIN:** It's been five minutes.
4 Could you --

5 **PETE KINNEEN:** All right, I'll wind it up
6 here in just a second. I appreciate it, sir.

7 I'm open to questions. But again, all
8 you need is one condition not being met. And as I
9 challenged Bruce Wall -- very nice guy, gentleman, I
10 like him -- I said, "How can you follow the intent?
11 Please show us how you can do it."

12 And you just saw a picture from Hans, of
13 the guy right down on Danver, and I'm like way up
14 there, and Hans looks over my house.

15 So I guess we are open to ideas, but a
16 50-foot buffer along the road, parallel height isn't
17 going to do anything at all. What it is is we're
18 looking down on a box.

19 And the bad thing is normally on a flat
20 plane when you are going down the road, you put up the
21 fence, you know, about the height of eye level and that
22 works. This doesn't work.

23 **CHAIRMAN MARTIN:** Thank you. Are there
24 any questions? None at this time. Thanks for your
25 testimony.

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1 **PETE KINNEEN:** Okay. Great.

2 **CHAIRMAN MARTIN:** Next testifier, please.

3 **RICK OLIVER:** Good evening. My name is
4 Rick Oliver. My address is 34880 Danver Street. Our
5 home is somewhat above and directly opposite the
6 proposed Danver Street -- I'm sorry, site on Danver
7 Street. The activity allowed by this application will
8 totally decimate the property value of our home as well
9 as the quality of life that we now enjoy.

10 We are most definitely not alone in this
11 regard. Obviously the standards set for the sand,
12 gravel, or material sites are said to protect -- again,
13 I'm saying the same thing everybody else has said --
14 against aquifer disturbance, road damage, visible
15 damage to adjacent properties, dust, noise and visual
16 impact.

17 I can state unequivocally that the
18 proposed setbacks, berms, vegetation buffers, et
19 cetera, will not and cannot protect our homes from
20 this -- from these disturbances.

21 No. 1 of said standards addresses a
22 lowering of water sources serving other properties.
23 The existence of substantial lake just below my
24 property indicates that a major mining operation cannot
25 help but affect my water source. I'm told there's some

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1 more significant and additional information regarding
2 that water standards to be presented.

3 No. 3 addresses the minimization of dust
4 offsite areas. Due to the proposed placement of the
5 proposed -- of the processing equipment, any onshore
6 breeze will bring dust to my home directly across the
7 street.

8 No. 4 addresses the noise disturbance to
9 other properties. According -- excuse me. According
10 to the radii shown on the application, the processing
11 equipment is roughly set 300 feet from my front door.

12 I'm close to six feet -- well, kind of
13 close, used to be closer. I'm holding in this picture,
14 of which you guys now have a copy, is a ten-foot board
15 just to show you how a six-foot board would -- so you
16 could see how a six-foot berm will minimize the visual
17 impact, which is not at all.

18 Mrs. Trimble approached a neighbor of
19 mine after the informal meeting last Wednesday and
20 stated that she and her husband had walked the property
21 and said they could see only six houses. This does not
22 include other properties as addressed by the code that
23 could at some point be developed. This begs the
24 question as to just how many homes does the project
25 have to decimate in order to convince this body that it

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1 should not happen?

2 For the record, let it be known that my
3 family and I, along with the dozens of other families
4 residing in this area, vehemently oppose the granting
5 of this permit.

6 Enough said. Thank you.

7 **CHAIRMAN MARTIN:** Thank you. Any
8 questions? Next testifier, please.

9 **JEANNE BILBEN:** My name is Jeanne Bilben.
10 I'm the wife of Hans Bilben that just spoke. And I
11 won't take very long, I just have a few things to say.

12 With the papers that I've handed out is
13 just regarding some of the information that we
14 discovered.

15 We love this beautiful recreation area.
16 Some of us have bought and built homes here. We own
17 land here just as the permit owner owns lands, but we
18 are not digging a gravel pit in his front or back yard.

19 We are not against a gravel pit, but we
20 do not want them in our neighborhoods. You would think
21 we have just as many rights as a gravel pit. We pay
22 our taxes too.

23 This is called gravel pit -- this
24 so-called gravel pit will be disturbing the peace of
25 our beautiful area. We know once this permit is issued

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1 it goes with the land, no matter who owns it, making it
 2 even more valuable to the owner and making our property
 3 values go down.
 4 Not only is this a recreational area,
 5 it's also a historic area. We have been in contact
 6 with the State Historic Preservation Office and there
 7 are documents like the ones that you have that there is
 8 a highly potential historic archeological site and
 9 that's the documents I have of historic graves,
 10 possible cache pits, et cetera.
 11 So I'm asking to stop this permit and
 12 keep this area away from mining and gravel. The state
 13 recreational area in Anchor Point is where people come
 14 to see the beauty and the history of this part of the
 15 world. Do you really want a gravel pit in this place
 16 for them to see?
 17 Please keep gravel pits away from our
 18 neighborhoods, historical lands, and recreational
 19 areas. That's all. Thank you. That's all we ask.
 20 Thank you.
 21 **CHAIRMAN MARTIN:** Thank you. Any
 22 questions?
 23 **JEANNE BILBEN:** Any questions?
 24 **CHAIRMAN MARTIN:** None at this time.
 25 Thank you.

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1 **JEANNE BILBEN:** I dropped it again. I'm
 2 old, I can't do this.
 3 **JIM REID:** Hi. My name is Jim Reid. I'm
 4 a retired paramedic, fire lieutenant, metro Dade, Miami
 5 Dade, and my address is 73820 Seaward Avenue.
 6 And my issue is the safety factor. Okay.
 7 This is what I did for 30 years, and I can tell you
 8 that that road that they are talking about, both roads,
 9 when they come down off of that hill down Danver, if
 10 you are coming down there in the winter time and a dump
 11 truck -- and that gravel truck pulls out, you are not
 12 stopping. Everybody in the neighborhood has complained
 13 about it. I mean, there's just nothing you can do. It
 14 gets iced over and you are going. That part.
 15 The other part is there's kids, and
 16 that's what I deal with, okay. And you've got four
 17 parks there or five parks, but you got three of them
 18 that them trucks have to pass with every load. And you
 19 are talking five -- you're not talking a couple hundred
 20 trucks a year, you're talking 5,000 trucks is what they
 21 are talking about.
 22 With the amount of aggregate they want to
 23 take out of there, you are talking five -- ten yards a
 24 truck, just figure it real quick, it's 5,000 trucks.
 25 We're not -- this is not a little thing. And I'll tell

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1 you right now, whatever happens, I will write a letter
 2 on this, because this is -- you know, this is what I
 3 did, and I don't like picking up kids.
 4 But even the gentleman who is trying do
 5 this, I believe it was his daughter and grandson, they
 6 were walking down there, and we were coming out with a
 7 boat trying to go down to Homer and there was another
 8 car coming the other way, and we had to stop, and she
 9 had to push the kid off the side of the road. All
 10 right. So I was there.
 11 And I can tell you, usually when I face
 12 12 people it's called a jury and I don't like that, so
 13 I don't normally get up and do anything like this, but
 14 this is really a serious problem. Okay.
 15 Aside from the bridge is condemned, so we
 16 really kind of left a bunch of people off. Well, they
 17 have to turn right and go out seven or eight miles to
 18 get back out to Seward Highway (sic).
 19 **UNKNOWN SPEAKER:** Sterling.
 20 **JIM REID:** The Old Seward (sic) --
 21 **UNKNOWN SPEAKER:** Sterling, Sterling.
 22 **JIM REID:** Sterling, I mean.
 23 That's like a snake. So we should have
 24 included all of those people who live down that road
 25 that want to get to look at them 5,000 trucks. That

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1 road is dangerous anyway. They run off that road for
 2 whatever reason.
 3 Okay, folks, thank you.
 4 **MS. REID:** I want to say -- my name is
 5 Susan Reid and I'm at 73820 -- where am I -- Seaward
 6 Avenue.
 7 We stand here with all of our friends and
 8 our neighbors and our community to let you know that we
 9 are really opposed to this and we object to the
 10 applicant for all the reasons everybody has stated,
 11 from bridge repair that's not going to hold their
 12 weight, from the property value of us going down. I
 13 assume if our property value does go down you would be
 14 very happy to lower our taxes, I'm assuming that you do
 15 that.
 16 **JIM REID:** Yeah, I'm sure.
 17 **SUSAN REID:** I'm assuming if you let him
 18 have this -- if you let him have this permit you are
 19 going to widen that road. Because right now it's not
 20 wide enough, like Mr. Cullip said, for all of this
 21 traffic. That's probably going to cost you a million
 22 and a half to fix the road.
 23 **JIM REID:** Well, right now all the dumps
 24 trucks that are empty go right out across that bridge.
 25 Well they just lowered from -- to 11 tons, which is

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1 22,000 pounds. And an empty dump truck weighs how
 2 much -- he should know that right off hand -- about
 3 26-, 28,000 empty. So right off the bat they are not
 4 abiding by the law right now.
 5 **SUSAN REID:** It's a highly, highly
 6 congested --
 7 **JIM REID:** That bridge is very dangerous.
 8 **SUSAN REID:** -- residential area.
 9 **CHAIRMAN MARTIN:** Yeah, one at a time.
 10 We are almost done.
 11 **SUSAN REID:** Okay. It's a highly
 12 residential -- it's a highly residential area, and all
 13 of us as the residents just want you to understand
 14 we're not taking this -- we're taking it very harshly
 15 here. We don't want you to do it, we don't want you to
 16 pass the permit.
 17 I know he has a right to try to make
 18 money off of his land, that's why he bought it, but
 19 years ago we all bought in this beautiful neck of the
 20 woods because it was quiet, not a lot of noise. I'm
 21 hearing beeping backup noises right now. I don't care
 22 how much white noise stuff you put on these trucks, you
 23 are still going to have this.
 24 Thank you for listening to us and I hope
 25 we aren't too emotional about it.

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1 **CHAIRMAN MARTIN:** Thank you. Next
 2 testified, please.
 3 **DON HORTON:** Hi. My name is Don Horton,
 4 and I live on 34910 Echo Street, directly across the
 5 street from this proposed gravel pit.
 6 We bought this property 15 years ago for
 7 recreational purposes and maybe some day to build a
 8 house on it when I retire. A month ago I retired and I
 9 get -- a month later I get a letter stating that I'm
 10 going to have -- look at a gravel pit directly across.
 11 My only view is this field. I look across this field
 12 and I see Mt. Redoubt.
 13 So if you build a 12-foot berm, six-foot
 14 berm, eight-foot berm, I'm going to look at berm, a
 15 gravel pit, and then Mt. Redoubt, so that -- it's going
 16 to virtually ruin my property. I would never build on
 17 it now, it's -- not even with a consideration of this
 18 going in, never could I build on it. I could never
 19 even give the property away.
 20 I have three sons and a daughter that
 21 hopefully someday this -- and a grandson now --
 22 hopefully that someday this will be his property.
 23 Well, I'd hate to see you guys ruin my
 24 little slice of heaven. Thank you.
 25 **CHAIRMAN MARTIN:** Thank you.

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1 **EILEEN SHERIDAN:** There's no place to
 2 sign. Next page?
 3 **UNKNOWN SPEAKER:** Just carve your name in
 4 the wood there.
 5 **UNKNOWN SPEAKER:** Better save room for
 6 the rest of us.
 7 **EILEEN SHERIDAN:** Right here, if you will
 8 take that page, yeah.
 9 While she's changing that, I'm Eileen
 10 Sheridan, I am around a 50-year resident of Alaska.
 11 We've lived in -- we've lived in Juneau, Sitka,
 12 beautiful places.
 13 **CHAIRMAN MARTIN:** And your current
 14 address?
 15 **EILEEN SHERIDAN:** We've lived in Palmer.
 16 We now live in 34860 Seabury Court, Anchor Point.
 17 We're above this area. We're secondary families, we
 18 live right near these people right here.
 19 We understand the noise, because if
 20 you've ever been out there when the wind is going 125
 21 miles-an-hour, you can feel it whooshing up that river.
 22 You talked about the cliffs and it coming up, and
 23 definitely there's no way berms or vegetation like that
 24 is going to take away those noises.
 25 When they had that oil/gas people out

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1 there in the Bay making their sonogram things all
 2 summer long, that was distracting. This gravel pit
 3 will be distracting too.
 4 We put our retirement into this home.
 5 It's going to go down in value. There's no way -- even
 6 Emmitt has said at the meeting the other night that,
 7 yeah, a gravel pit would make the value of your
 8 property go down. We had hoped that our kids could
 9 enjoy this later in life also. We've worked hard to do
 10 what we are doing, and so we understand him wanting to
 11 do something too, but not a gravel pit that we have to
 12 live with.
 13 And the dust, I had terrible allergies up
 14 in the Valley. We moved down here, because every time
 15 we brought our boat down or our trailer down, my
 16 allergies were halfway better living right there by
 17 ocean instead of up in the hay fields. And even though
 18 it was beautiful up there, we retired down here.
 19 So for -- if you are looking at how it's
 20 going to be a noise area, minimizing the dust, we
 21 already get dust from our dirt roads that are up there.
 22 Right now our Seabury Court road is just
 23 mainly a trail, a road trail. We have to go up to
 24 Seaward or down Deesa -- they said it's Deesa Avenue
 25 now onto a dirt road.

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1 The trucks speed down that road and
 2 there's no other way, you know, except to go and pick
 3 up dust, so you get the extra dust from a gravel pit.
 4 We lived next to one when we were -- while we were
 5 building this home and I was very glad to get up on my
 6 peaceful house to look at Mt. Iliamna and out at Mt.
 7 Redoubt.
 8 And I realize that if he gets these
 9 permits that he has the right to sell and have maybe
 10 even a bigger gravel pit put in there.
 11 Lowering of water sources, we noticed
 12 that there was only one test hole shown and was
 13 wondering if there's any consideration of loss of
 14 vegetation and resulting water rises from this.
 15 There seems to be, looking at the maps,
 16 some wetlands in there. We watch as we go down Denver
 17 to the right just across from that property the ducks
 18 that come in, they have their babies, the moose have
 19 their babies down there. If you get that noise in from
 20 the gravel pit, those moose mothers, they get so
 21 disturbed. They could be leaving their babies too.
 22 **CHAIRMAN MARTIN:** That's five minutes.
 23 **EILEEN SHERIDAN:** Thank you.
 24 **CHAIRMAN MARTIN:** Any questions? None at
 25 this time. Thank you for your testimony.

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1 **EILEEN SHERIDAN:** Pardon?
 2 **CHAIRMAN MARTIN:** Thank you. There's no
 3 questions.
 4 **EILEEN SHERIDAN:** Yes. I hope that you
 5 will reconsider and maybe think about looking at the
 6 new resolutions you're thinking about.
 7 **UNKNOWN SPEAKER:** There's two more spots
 8 there.
 9 **GERALD BLAIR:** Good evening. My name is
 10 Gerald Blair, I live at 73600 Twin Peaks Loop.
 11 Most of what I might have said this
 12 evening has already been said, probably far more
 13 eloquently than I would have, by prior speakers.
 14 But there is one issue that has not been
 15 covered, and that is not just the safety of that road,
 16 but the cost of that road. What I've been able to
 17 determine is that that road started life as a Cat trail
 18 that went from the Sterling Highway out to the beach,
 19 and that it was never engineered or properly built so
 20 it has no base.
 21 It doesn't have even enough right-of-way
 22 to be any wider than it is in spots, and that is barely
 23 wide enough. Two trucks could lose their mirrors if
 24 they are not careful because there's no way to get off
 25 the road, particularly with a loaded truck.

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1 Estimates. If you are going to fix that
 2 road to where it will handle these dump trucks -- and
 3 some of the trucks I see going up the North Fork weigh
 4 well in excess of 100,000 pounds. They are a tractor
 5 pulling two side dump trailers that haul 20 yards of
 6 rock a piece, and that's about 60,000 worth of rock per
 7 trailer plus the truck and the trailers.
 8 Guesstimates to fix that road to bring it
 9 up to par is in excess of \$2 million, because you get
 10 to rip it all up and rebuild it all, plus you've got to
 11 go in a do right-of-way work and achieve right-of-way
 12 to make the road wide enough.
 13 Over the lifespan of this pit, if the
 14 road isn't totally fixed in the beginning, you could
 15 spend \$6 million in maintenance maintaining that road
 16 for 15 years, and that's if the pit stops at 15. I
 17 don't know if the Kenai Borough has that kind of money
 18 laying around that they would want to put into that
 19 when all they are going to get is some mineral
 20 separation fees, which is not going to amount to very
 21 much money.
 22 So to me, I'm lucky enough to be far
 23 enough away from that that the dust and the noise, it
 24 will be minimal. The truck noise will be there. But
 25 by and large, the cost to the borough to maintain that

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1 road or to rebuild that road, it's -- it would not be a
 2 business I would go into, because you would spend 2- or
 3 \$3 million and you'd get back almost nothing.
 4 That's all I have to say. Thank you.
 5 **CHAIRMAN MARTIN:** Thank you.
 6 **UNKNOWN SPEAKER:** Don't forget the
 7 bridge.
 8 **GERALD BLAIR:** Well, I think the bridge
 9 is going to be built anyway. I don't know that the
 10 gravel pit will have much to do with that.
 11 **CHAIRMAN MARTIN:** All right. Thank you.
 12 Next testifier, please.
 13 **BOB SHAVELSON:** Thank you. Again, my
 14 name is Bob Shavelson, I'm the Director of Advocacy for
 15 Cook Inletkeeper. And I'm hearing a lot of concerns
 16 from property owners around here, and it brings to mind
 17 the whole notion of private property, which is
 18 obviously vital to our economic system.
 19 But one of the central tenets of property
 20 rights is that you can do what you want on your own
 21 property, but you can't harm folks around you, okay,
 22 and that includes private property and that includes
 23 public property, and that's the issue that I'm here to
 24 talk about tonight is the public property and, again,
 25 the ground and the surface water resources.

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1 And when I look at the staff report and
2 the findings of fact, Finding of Fact 8C says, "You
3 shall keep two feet above the seasonal high water
4 mark." And again, I'm going to come back to the issue
5 that I raised the last time, but nothing in the
6 application says that the test hole was drilled and
7 monitored to ascertain the seasonal high water mark.
8 So how can you, as the Planning Commission, how can the
9 staff know what that level is? You cannot.

10 And so I would say that you can't approve
11 the permit if you want to abide by the ordinance. And
12 I'd say if you do, then it's just guess work, and we
13 shouldn't be gambling with the resources that we have
14 in the estuary of the Anchor River.

15 And I'll also go back and refer to the
16 scientist from the National Estuarine Research Reserve,
17 and they provided you with a groundwater flow that
18 shows that this parcel -- excuse me -- at least
19 partially flows to the Anchor River, and that water
20 plays a vital role in the life stage of various salmon.

21 And when I first thought about an
22 estuary, you know, I think I'm like a lot of people, I
23 think, well, salmon goes down and it goes through the
24 estuary, and then comes back and it goes through the
25 estuary again.

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1 It's a lot more complicated than that,
2 and we're just beginning to scratch the surface on this
3 complexity.

4 As I mentioned before, you know, our
5 ecology of these salmon systems is kind of like a
6 fabric, and when you start to pull at the threads of
7 that fabric it will unravel. So we've got to be really
8 careful here.

9 One of the things that really concerns
10 me, and when I looked at the ordinance it says you have
11 to comply with all these other environmental laws and
12 rules. And there's something that I call the myth of
13 rigorous permitting.

14 And the myth of rigorous permitting is
15 that there's this whole alphabet soup of local, state,
16 and federal laws and rules, and if you dot all the i's
17 and cross all the t's, then, viola, you are going to
18 have salmon habitat protection.

19 But I've been doing this for 25 years,
20 and I can tell you that that's not the case. You know,
21 we've got a 50-foot buffer on our salmon streams in the
22 Kenai Peninsula Borough. We know that Mayor Pierce is
23 now looking actively to revoke some or all of those
24 protections.

25 We have what's called Title 16 in our

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1 state law, that's our habitat protection law. We have
2 one law in the state that protects habitat protection.
3 It's one sentence long and it was adopted at statehood.
4 There's an effort now to revise that in a ballot
5 measure that's causing a lot of controversy.

6 But a lot of people feel that there's
7 this whole alphabet soup of laws and rules out there;
8 they don't protect our habitat. This is one of the
9 ways that you can.

10 And it reminds me of a book that some of
11 you might have read, it's called the King of Fish by a
12 professor named David Montgomery at the University of
13 Seattle, and he talks about the demise of salmon from
14 Europe to New England to the Pacific Northwest.

15 And the thing that you take from it is
16 that it wasn't just neglect that led to the loss of
17 these salmon runs across the world, it was knowing
18 neglect, okay. We knew what we were doing was wrong
19 and we did it anyway, and that's how I feel about these
20 permits that just continue to get rubber stamped
21 through this process.

22 And I'm coming to the end of my time, but
23 I'll just say I think a lot of you feel like your hands
24 are tied. There's this ordinance and it puts you in a
25 straight jacket and you can't do anything, but you have

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1 enormous discretion. You have discretion that's given
2 to you by the borough. And if you look, and I provided
3 this in my written comments, but under Kenai Peninsula
4 Borough's 2.40.050 you have broad discretion to
5 investigate and make recommendations, including to the
6 assembly.

7 And so I sense that this is going to be
8 deferred to your August 13th meeting. I would
9 encourage you to ask the questions that need to
10 answered to do this right, because the mouth of the
11 Anchor River is a special place, it's why you have this
12 room packed tonight, and I think this body needs to
13 represent the public interest.

14 The private interest is always adequately
15 represented, the public interest needs to be
16 represented, and I feel like that's the job of the
17 Planning Commission.

18 Thank you very much.

19 **CHAIRMAN MARTIN:** Thank you. Any
20 questions? Next.

21 **ELDON OVERSON:** I'd like to apologize, I
22 didn't make enough copies of my picture, but that is
23 the view from my property from which I built a cabin
24 this winter.

25 I have a statement that I would like to

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1 read, and then I have a few questions if that's all
 2 right with the Committee. Is that acceptable?
 3 **CHAIRMAN MARTIN:** Yes.
 4 **ELDON OVERSON:** Okay. I would like to
 5 thank you guys for hearing my thoughts on the proposed
 6 Beachcomber gravel pit that is being submitted by
 7 Emmitt and Mary Trimble in our community.
 8 I will thank you even more after this
 9 meeting if you reject the proposed land use permit that
 10 will decimate my neighbors' and my view for the next 15
 11 to 20 years.
 12 I was at work on the Slope when I got the
 13 e-mail for this planning meeting, and I flew today and
 14 drove down from Anchorage just for today, and I have to
 15 drive up and fly back up to work tomorrow. I say this
 16 to show the importance that this proposed gravel pit
 17 means to me and how much I do not wish it to go
 18 forward. I feel that this is a very bad proposal and
 19 deserved more of my time and effort.
 20 I bought my lot on the corner of Danver
 21 and Seaward about eight years ago, and it's the spot
 22 that I would eventually build my dream home. I
 23 started, like I stated, to build a cabin on the lot to
 24 use for summertime camping this winter, and that
 25 picture is of me standing on my loft from that cabin.

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1 The red area that is marked is where the proposed
 2 gravel pit will be. I'm approximately 65 feet above
 3 the gravel pit, so I will be looking directly into it.
 4 The view of Iliamna, the ocean, and the
 5 river was the main reason for me purchasing my
 6 property. And as the permit states, that -- the
 7 six-foot high berm in the plan will offer little to no
 8 relief from the visual impact of the gravel pit. This
 9 is true for my lot, my neighbors', and many others.
 10 I don't feel that they have offered any
 11 mitigating factors to lowering our value of the
 12 surrounding properties to increase his.
 13 Noise is also another factor that will
 14 keep me from using my property in the future as I
 15 intended. The machinery that will be working in the
 16 daytime hours will make me basically not want to be
 17 there. There is no buffer between me and the gravel
 18 pit, so I will have to hear the constant droning of the
 19 processing of the sand and gravel for the next 15-plus
 20 years. This was a very tranquil neighborhood and I
 21 enjoyed hanging out there during the summer months.
 22 In closing, I find it very disingenuous
 23 and unethical that Emmitt and Mary Trimble have
 24 profited from selling many of the lots in our
 25 neighborhood, and now single handedly want to undermine

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1 the enjoyment, the view, and the property values of the
 2 same people that they sold the property to.
 3 I find it very disrespectful that they
 4 did not consider anybody but themselves and do not wish
 5 to accurately describe what they want to use the
 6 property for. I have heard from many of the neighbors
 7 from the meeting that they attended that they said that
 8 they only wanted to go down ten feet. The permit
 9 states that they want to go down 18, and then apply
 10 further in the future for going down even farther. So
 11 I would like to hear him address those.
 12 And also on the permit that it says that
 13 this land was not intended for future subdivision,
 14 which he also claims that that's why he's only going
 15 down ten feet was to later subdivide the property,
 16 which will also make all the septs in that area lower
 17 to the water table.
 18 The questions I have, I'll skip to those.
 19 I would like to ask how could the borough
 20 simultaneously tax me for my view while also approving
 21 a big eyesore right in the middle of it? I know that
 22 in Homer they've started to assess views on top of
 23 property. So I was just wondering, will there be a
 24 waiver granted for all of us that are being impacted by
 25 this gravel pit, and if so, what's the loss revenue to

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1 the borough? Does anybody want to speak to that?
 2 **CHAIRMAN MARTIN:** This is your night to
 3 speak.
 4 **ELDON OVERSON:** All right.
 5 **CHAIRMAN MARTIN:** If you could wrap it
 6 up, you've had five minutes.
 7 **ELDON OVERSON:** I thought if I requested
 8 longer, I could have longer.
 9 **CHAIRMAN MARTIN:** How much more are
 10 you --
 11 **ELDON OVERSON:** I just have a few other
 12 things.
 13 **CHAIRMAN MARTIN:** Okay.
 14 **ELDON OVERSON:** I won't -- I won't
 15 mention the campgrounds, but it's already been
 16 addressed, I think, better than I would have.
 17 And then also there is some incorrect and
 18 wrong statements on the permit concerning that there
 19 were no wells within 100 feet of the property boundary.
 20 There is -- I do believe the We Tie Fly has a well
 21 within 100 feet, so that is inaccurate on the permit.
 22 So I don't know how they can claim that there's no
 23 wells within 100 feet of the property when there is.
 24 And also -- I think that's all I had.
 25 Thank you for your time.

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1 **CHAIRMAN MARTIN:** Thank you. Any
 2 questions?
 3 **UNKNOWN SPEAKER:** Mr. Chairman.
 4 **CHAIRMAN MARTIN:** Yes.
 5 **UNKNOWN SPEAKER:** I apologize, I didn't
 6 get your name.
 7 **ELDON OVERSON:** Eldon Overson, and my
 8 address is 73976 Seaward Avenue.
 9 **CHAIRMAN MARTIN:** I'd like a show of
 10 hands of how many more we have left to testify. I'm
 11 going to declare a five-minute recess.
 12 (Recess - 10:07 p.m. - 10:15 p.m.)
 13 **CHAIRMAN MARTIN:** All right, we are ready
 14 to go.
 15 **PHIL BRNA:** My name is Phil Brna. I live
 16 at 5601 E. 98th Avenue in Anchorage, but I've spent a
 17 good part of spring, summers, and falls in Anchor Point
 18 for the last 41 years. I own a cabin on the Anchor
 19 River inside the state park, and I also have a piece of
 20 property that's surrounded by the proposed gravel pit.
 21 In the last 41 years I spent 21 years
 22 with the Alaska Department of Fish & Game as a habitat
 23 biologist, and 14 years with U.S. Fish & Wildlife
 24 Service. I'm retired from both. I have lots of
 25 experience with large development projects like Pebble

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1 Mine, Donlin Mine, Chulitna Mine to name a few. I was
 2 the Fish & Wildlife Service biologist on all of those.
 3 I just want to make an aside here that
 4 the science related to groundwater here and the other
 5 gravel permit is a total joke. I have worked with some
 6 of the best groundwater hydrologists in the country and
 7 in Canada, and it is pretty stunning how you are making
 8 decisions based on groundwater with no groundwater data
 9 other than one test hole that's dug who knows where.
 10 Anyway, as former governor Jay Hammond
 11 once said -- former governor Jay Hammond once said
 12 this is about Pebble Mine. "The only worse place for a
 13 mine would be in my back yard."
 14 Well, this proposed gravel pit is in my
 15 back yard. In fact, it surrounds my one-acre property
 16 on three sides. I'm the last lot on Beachcomber. I
 17 bought the property to build a small house when I fully
 18 retired, which I did two years ago, and this proposal
 19 will pretty much destroy my plans to do that, my wife
 20 and I, and it will destroy my property value. I'm not
 21 going to go on and on because most things have been
 22 said.
 23 In 2018, I think it is ludicrous to think
 24 that someone could develop a gravel pit in the middle
 25 of a residential area and one of the most heavily used

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1 recreational areas in Alaska. It's really unthinkable.
 2 As far as the noise, when the property
 3 was being cleared and when the other little gravel pit
 4 across the street was being built, from my cabin I
 5 could hear every truck backing up, I could hear every
 6 truck going down the -- down the road, I could hear
 7 Todd's tractors backing up. You can hear everything in
 8 that valley, and it's not going to be any better with a
 9 gravel pit.
 10 There's also archeological sites on my
 11 property, there's old cache pits, and probably at least
 12 one house pit. I walked the gravel pit property a long
 13 time ago, and there's a bunch of house pits and cache
 14 pits on that property as well.
 15 There's also an old wagon road that goes
 16 off the end of Beachcomber that was built in the 1920s,
 17 I believe, to get to an old homestead, and it goes
 18 across my property and it goes through the -- through
 19 the gravel pit.
 20 I've submitted written comments, I guess
 21 I have enough time to read them, but I won't. If you
 22 promise to read them, I won't read them.
 23 So I hope the Kenai Borough Planning
 24 Commission, or whatever you are, I'm not even sure,
 25 denies the proposal for this project because it's not

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1 good for Anchor Point, it's not good for the people
 2 that live there, it's not good for the people that come
 3 there to recreate.
 4 There are people from all over the world.
 5 I was fishing the Anchor River today, and I probably
 6 talked to 20 people from all over the world, and this
 7 is kind of not a good thing. Thank you.
 8 **CHAIRMAN MARTIN:** Thank you.
 9 **PHIL BRNA:** Questions?
 10 **CHAIRMAN MARTIN:** Do you have any
 11 questions? Not at this time.
 12 **LYNN WHITMORE:** My name is Lynn Whitmore.
 13 I live at 34680 Beachcomber Street. And the proposed
 14 project is literally in my back yard and is adjacent to
 15 my property.
 16 When I first -- when the applicant first
 17 bought the property he told me he was going to
 18 subdivide it and put homes back there. And I
 19 considered moving since I had that nice piece of the
 20 world to myself for a long time with just one neighbor.
 21 And when he told us it was going to be a
 22 gravel pit, then I went to the staff, and the staff
 23 said this pretty much flies through if he can meet
 24 those six conditions.
 25 And so everybody I talked to said, "Well,

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1 Lynn, it's just going to fly through." And it's a
 2 frustrating thing to watch all these people speak
 3 knowing that it's just going to fly through. So why
 4 are you having this hearing? What is the purpose?
 5 What do you gain out of that if he meets
 6 those conditions and it flies through? So maybe that
 7 wouldn't be the best way to approach this thing is tell
 8 everybody it's just going to fly through. And I've
 9 heard from the neighbors that they were told the same
 10 thing.
 11 So if there is a chance to consider their
 12 feelings and what they are going to listen to and what
 13 I'm going to hear and listen to and we can reduce or
 14 stop that, that would be a great benefit to me. And I
 15 feel like you guys have had enough time with everybody
 16 talking here, so I'll keep it short. Thank you.
 17 **CHAIRMAN MARTIN:** Thank you.
 18 **JAMES GORMAN:** Good evening. My name is
 19 James Gorman, I live at 73608 Twin Peaks Loop, Anchor
 20 Point. I look right down on the beach road. The
 21 things these people say, I see them every day.
 22 I was a history major in college, maybe
 23 you will appreciate this letter. This comes from the
 24 Alaska State Historical Preservation Office:
 25 In receipt of your request for

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1 information regarding known historical sites in the
 2 area of a proposed gravel mine, upon review of the
 3 Alaska Heritage Resource Survey database there are two
 4 reported cultural resource sites in the area of the
 5 proposed mine.
 6 One I've referenced as SEL-00280,
 7 prehistoric site reported to consist of two house pits.
 8 Location is represented as a large polygon on the
 9 site -- you can see that -- exact location of features
 10 is unknown, but current projected boundaries are within
 11 the proposed mining area.
 12 Second one is SEL-00281, historic graves
 13 and possible cache pits reported to consist of five
 14 graves that at one time had grave markers.
 15 Depressions, tentatively described as cache pits, were
 16 reported north of the graves. Location is represented
 17 as a large polygon. Exact location of features is
 18 unknown, but current projected boundaries are within
 19 the proposed mining area.
 20 In Alaska, there are two historical
 21 perseveration laws that may apply unless the project is
 22 entirely private in nature.
 23 The first one is the Alaska Historic
 24 Preservation Act: State law requires all public
 25 construction or improvement activities conducted by or

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1 requiring licensing and permitting from the state to
 2 comply with the Alaska Historic Preservation Act, AS
 3 41.35.070. This also includes required reporting of
 4 historic and archeological sites on lands covered under
 5 contract with or licensed by the state or government
 6 agency of the state. This would include any material
 7 resources used under contract with the state.
 8 And secondly, the National Historic
 9 Preservation Act: If there is federal involvement,
 10 financial assistance, permit, license, or approval with
 11 the project, it is the statutory obligation of the lead
 12 federal agency to comply with Section 106, 36 CFR-800
 13 of the National Historic Preservation Act which
 14 requires the federal agency to take into account the
 15 effects that their undertaking may have on historic
 16 properties.
 17 Were either of those laws to apply, our
 18 office would be likely to request that an
 19 archaeological survey is conducted to verify the site
 20 locations and assess the potential effects of the
 21 project pursuant to the applicable historic
 22 preservation law.
 23 In addition, there are state laws
 24 requiring the discovery and/or intentional disturbance
 25 of human remains. This pertains to all lands in

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1 Alaska, including private. I have attached our handout
 2 regarding human remains.
 3 Due to the lack of clear information
 4 regarding the site locations, our office strongly
 5 encourages the use of a qualified cultural resource
 6 professional to verify the site.
 7 Questions? I'll leave you a copy of this
 8 if you'd like.
 9 **CHAIRMAN MARTIN:** Any questions?
 10 **UNKNOWN SPEAKER:** We got it.
 11 **JAMES GORMAN:** You've got a copy.
 12 **CHAIRMAN MARTIN:** Thank you.
 13 **JAMES GORMAN:** Oh, and one more thing.
 14 According to the recently retired chief ranger of the
 15 park system, the park owns both sides of the beach road
 16 and they will not permit a widening of that road.
 17 Thank you.
 18 **CHAIRMAN MARTIN:** Next testifier.
 19 **XOCHITL LOPEZ-AYALA:** Hello, my name is
 20 Xochitl Lopez Ayala. I currently reside in Homer, but
 21 my family owns the property directly across from this
 22 proposed gravel mine at 34910 Echo.
 23 It is on the corner of Danver and Echo,
 24 so right literally standing at the edge of our property
 25 we will look up to a berm. We will actually submit a

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1 picture for you so you can see what our proposed view
 2 will look like here if this goes through.
 3 I did want to bring up to you all that --
 4 I want you to see that everyone here drove from Anchor
 5 Point or Homer or Anchorage, and we want you to make
 6 that same commitment that we are here to commit to you.
 7 And, you know, since this is proposed to
 8 be shelved, is drive down to Anchor Point, drive down
 9 to that road, look at this site, because you will see
 10 what we are all so passionate about.
 11 And I want you all to know that although
 12 all this negative talk about this, it's actually been
 13 really great in terms of the community. I've gotten to
 14 know people that I didn't get to know before, and we've
 15 all really kind of grouped together and found one
 16 common thing that we all love and that's Anchor Point.
 17 That's why we go there.
 18 And this mine, which is should be
 19 described as a mine, not a pit, a mine, is not good for
 20 us, it's not good for Anchor Point. And you just have
 21 a lot of passion in this room and we want you to
 22 recognize that.
 23 And I know you guys are glossing over,
 24 it's getting late. So, you know, thank you for staying
 25 here. But there's tons of people who want to talk and

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1 want you to hear their testimony, so please read over
 2 our information that we are trying to send you and
 3 understand that, you know, it's -- do what's right for
 4 the public, not necessarily a private owner, because
 5 it's affecting all of us.
 6 And I also wanted you to realize that --
 7 don't you think it's kind of odd that there's a lot of
 8 gravel pits and mine proposals going up now that
 9 this -- now that this ordinance has been pushed back a
 10 year? I mean, you approved two earlier today, and now
 11 a third. Like, how many more are you going to see?
 12 Obviously, that's a lot of red flags that
 13 you should see that if people are doing this, obviously
 14 they are trying to skirt something or get past
 15 something, and really look into why they are trying to
 16 do this. Are they trying to sell to a corporation up
 17 in Anchorage? Are they trying to sell to an
 18 out-of-state investor?
 19 You know, why -- why don't we just keep
 20 what we love, and why we moved down here, why we moved
 21 to the Peninsula.
 22 My husband and I just relocated here from
 23 Juneau, and now I get to look at a fricken mine and a
 24 berm. So, yeah, I'm kind of disappointed in that.
 25 So, you know, thank you all. And, you

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1 know, thank you all, everybody, for coming here, even
 2 Emmitt and his family. You know, it's hard -- it's
 3 hard on all of us, a lot of tears, a lot of anger, and
 4 it really means a lot to us. So thank you.
 5 **CHAIRMAN MARTIN:** Thank you.
 6 **BRUCE WALL:** Mr. Chairman. Ma'am, could
 7 I get you to do me a favor and put your name and your
 8 address on the sign-up sheet?
 9 **XOCHITL LOPEZ-AYALA:** Oh, sure.
 10 **BRUCE WALL:** Thank you.
 11 **CHAIRMAN MARTIN:** Who is next?
 12 **JOSH ELMALEH:** Hi. My name is Josh
 13 Elmaleh, I own the property 34885 Seabury Court. My
 14 wife and I looked over many properties over the last
 15 couple of years, and we purchased our place a year ago,
 16 overlooking several -- probably half a dozen to a dozen
 17 houses that were beautiful houses, beautiful land, but
 18 they were really close, within earshot of a gravel pit.
 19 And we strongly oppose it.
 20 My first king salmon I caught in the
 21 Anchor River probably half a dozen years ago, and I
 22 want that same thing for my four-month-old son, I want
 23 that same thing for my six-year-old daughter. I want
 24 them to be able to enjoy the things that I got to
 25 enjoy. It is a piece of heaven. And I'm terrified to

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1 talk up here, so I'm done.
 2 **CHAIRMAN MARTIN:** Any questions? Thank
 3 you. Who is next? I think we've heard from you --
 4 **UNKNOWN SPEAKER:** Am I permitted to talk
 5 for another minute?
 6 **CHAIRMAN MARTIN:** No, we are going to run
 7 out of time. Everybody -- we need everybody to be as
 8 quick -- as punctual as possible.
 9 **UNKNOWN SPEAKER:** All right. I just
 10 wanted you to know that sound travels up and the wind
 11 blows it the other way.
 12 **LAUREN ISENHOUR:** Hello. My name is
 13 Lauren Isenhour, I own -- I live at 34737 Beachcomber
 14 Street, which is three acres that borders this
 15 property. Mary and Emmitt are my parents.
 16 I understand everyone's concerns and I
 17 respect everyone's opinion in here. This is my back
 18 yard too, so I definitely understand the concern.
 19 And I understand the scope of what the
 20 permit allows is a lot, and I certainly understand and
 21 respect everyone's concerns.
 22 My husband and I live there for all the
 23 same reasons that everyone else in this room has chosen
 24 to live in Anchor Point. We recreate, we walk on that
 25 road, we go to the beach, we do all those things too

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1 and love it there.
 2 I was born there and grew up in Anchor
 3 Point. My parents have been in Anchor Point for 40
 4 years and have made a living in real estate by
 5 developing and improving land. And they have -- I'm
 6 sure everyone in the room will scoff at it, but they
 7 have a great reputation of improving land.
 8 **UNKNOWN SPEAKER:** (Indiscernible).
 9 **LARUEN ISENHOUR:** I feel I'm respectful
 10 to others' opinions, so I'd appreciate the same.
 11 They have made a living for 40 years
 12 improving land and selling it and caring for the land,
 13 and they are very meticulous in how they care for
 14 things. And everyone here can see that because they
 15 look out at this beautiful property that my parents --
 16 they bought it and then they invested \$60,000 into
 17 improving it by clearing all the stumps, burning the
 18 burn piles, and they mow it and care for this property,
 19 because that's how they care for land. And they've
 20 done it for a long time.
 21 They have other subdivisions that they've
 22 developed in Anchor Point that are on solid gravel, and
 23 they chose not to develop that to a gravel pit. They
 24 are land developers, not pit developers. And as
 25 someone mentioned, they don't have equipment, they

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1 don't have a plan for operating procedures as people
 2 have been asking detailed information about that, and
 3 they don't have that. And I understand the scope of
 4 the permit and the concerns.
 5 There is obviously a benefit to gravel,
 6 and everyone in that community has benefitted by the
 7 road development in that subdivision. All the
 8 subdivisions back in there, all their driveways and
 9 their foundations have all been built with gravel, and
 10 the majority of it from a previous pit right there off
 11 Danver that's been reclaimed and subdivided and sold
 12 and now homes are on that.
 13 And there is a way, a balance. There is
 14 a need for gravel, and in Anchor Point, above others,
 15 gravel is a main cornerstone to the infrastructure of
 16 Anchor Point and the families that are employed by road
 17 construction, by building residential construction, by
 18 equipment operating. There's a lot of families that
 19 are not represented here who are -- I respect and
 20 understand everyone's concerns here, and they do
 21 represent a portion of Anchor Point for sure, but there
 22 is another portion of Anchor Point that is fine with
 23 pit development and understands the balance of it, and
 24 that's why there are the regulations, too.
 25 We do need some gravel. I respect my

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1 parents' ability to develop land in such a strategic
 2 and thoughtful way that there is a way with the
 3 regulations that the borough sets to excavate some
 4 gravel and reclaim it.
 5 And unlike some other pit developers, and
 6 like Mr. Walt who came and presented earlier, who
 7 that's what they do and they have equipment and they
 8 are -- immediately when they get the permit they are
 9 going to go and use the permit and use the gravel.
 10 My parents' primary interest in that
 11 property is the property, and other land developers it
 12 wouldn't. Their primary interest in a pit -- or a
 13 property with that much financial gain in it would be
 14 the resource below the property, but my parents'
 15 primary interest there is the property itself.
 16 I understand they are requesting for a
 17 permit with a large scope and that it could be a gravel
 18 pit. I live right there too. My parents would like to
 19 build a house down on the property.
 20 And again, everyone in this room will
 21 scoff at it, but as real estate professionals, it's in
 22 their best interest, and they fought for a long time to
 23 help maintain property and home values in Anchor Point,
 24 and they have roots in the community.
 25 And not just because I live there,

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1 they've lived there and invested interest maintaining a
 2 quality of life in Anchor Point. Their first home in
 3 the area in the '70s was on Beach Access Road when it
 4 was a dirt trail, and they operated a tackle shop right
 5 there.
 6 They've had an invested interest in this
 7 area for many decades, and they've managed to develop
 8 land and provide a living for them and their family in
 9 this small area and done so with great care for
 10 property and for land. And something they've instilled
 11 in myself and my sister is care for the land.
 12 And I can -- I can understand the
 13 concerns in this room about the scope of the permit and
 14 what could potentially happen there.
 15 **CHAIRMAN MARTIN:** Can you -- can you
 16 summarize?
 17 **LAUREN ISENHOUR:** Oh, sure.
 18 **CHAIRMAN MARTIN:** Kind of wrap up.
 19 **LAUREN ISENHOUR:** I was just, I guess,
 20 looking at the time, not the amount left.
 21 Yes. I just wanted to, I guess, say I
 22 understand the concerns. It's my area too. And I have
 23 a lot of respect for my parents and how they care for
 24 the land.
 25 Some previous speakers, Lynn Whitmore has

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1 been a good friend of my parents for a long time, and
 2 also Phil, who has the property next door, neither
 3 chose to mention that my parents voluntarily built a
 4 14-foot berm along their property at their own cost,
 5 they believe at \$10,000 worth of cost, voluntarily
 6 built a large berm there to try to protect them when
 7 they weren't required to do so. They are the type of
 8 people to do those things. Thank you.
 9 **CHAIRMAN MARTIN:** Thank you. Any
 10 questions? Next. Oh, we had one -- we had a question.
 11 I'm sorry, we did -- there was a question after all.
 12 **COMMISSIONER CARLUCCIO:** So my question
 13 is are you saying that your parents don't have any
 14 plans to develop this right now, that they just want to
 15 get this gravel pit on the books?
 16 **LAUREN ISENHOUR:** I can't really say. I
 17 can speculate at what I think their plans are. And I
 18 can say their primary plan for the property is to own
 19 it, and what they want above all else is to own the
 20 property in its entirety.
 21 They have plans to subdivide it, a plat,
 22 a plan, but that doesn't mean they will enact that
 23 plan. And they would like the permit to potentially do
 24 a gravel pit. This is my opinion of theirs, so
 25 please --

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1 **COMMISSIONER CARLUCCIO:** Okay. Okay.
 2 That's all right. Thank you.
 3 **LAUREN ISENHOUR:** Okay.
 4 **COMMISSIONER FIKES:** I have a question.
 5 **CHAIRMAN MARTIN:** Yes.
 6 **COMMISSIONER FIKES:** You say you are near
 7 the location of the actual mining itself. What kind of
 8 impact on your personal water well? How close is your
 9 well to the site?
 10 **LAUREN ISENHOUR:** I don't know. You
 11 could look on the map. I guess it probably shows in
 12 the development where my well is in relation. I
 13 couldn't tell you, I'm sorry.
 14 **CHAIRMAN MARTIN:** Any other questions?
 15 All right. Thanks. Next, please. Is anyone else in
 16 the audience wishing to testify?
 17 **GINA DEBARDELABEN:** This is my third
 18 time. My name is Gina DeBardelaben, I'm with McLane
 19 Consulting. I'm a principal engineer with McLane, and
 20 I was hired by the property owner -- my firm was hired
 21 by the property owner to survey the property and
 22 prepare the permit and exhibits and application.
 23 Just a few points really quick. We've
 24 been through a lot. You've had a plethora of public
 25 comments and a packet to read.

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1 A few things that have kind of come up I
 2 just kind of want to point to is that Anchor River Road
 3 is state owned and maintained, not borough owned. So
 4 requirement -- you know, DOT enforces, requires the
 5 gross vehicle weight measure on the bridge, which is
 6 actually on Old Sterling, speed, proper use of lane,
 7 shoulders, the health and use of the road, and it
 8 really doesn't apply to the borough CLUP permitting
 9 process.
 10 Some other things that have come up
 11 tonight were questions about wells being within --
 12 within -- one well being within 100 feet of -- yes,
 13 within the property, but not within the extraction
 14 area, the proposed extraction area. So there's fine
 15 points about the permit that always need to be read
 16 that sometimes isn't interpreted well during public
 17 meetings. And so I hope that you -- that as you always
 18 do your due diligence, read the fine points, and read
 19 the -- read the notes in the permit.
 20 Gravel extraction for a material site is
 21 always based on -- is usually based on a prospective
 22 sales as is -- it is with this site. This site isn't
 23 being permitted for a DOT project like we see sometimes
 24 or a commercial development. So the amount of material
 25 to be utilized is just a prospective. That's why it

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1 says, you know, less than 50,000 cubic yards.
 2 That number is one that we kind of always
 3 choose based on the area. And DNR permitting changes
 4 with greater than and less than 50,000 yards. The
 5 reality of 50,000 cubic yards coming out of this
 6 material site in a year is -- is not very realistic.
 7 You know, a large gravel sale in a rural
 8 area like this would be 10,000 yards or maybe 25,000
 9 yards. And, you know, that would equate to -- it's a
 10 lot still. It would equate to less than 1,500 yards --
 11 1,500 trucks, not 5,000 trucks.
 12 You know, if you are going to sell -- if
 13 you are going to sell a large amount of material you
 14 are not going to run it in a 10-yard end dump. You are
 15 going to be running a side dump or a belly dump, which
 16 is 17 yards, it separates out your weight on your axle
 17 load and such.
 18 So other test hole information, there was
 19 one test hole at the time of application. There has
 20 been additional since then. And as with -- as I
 21 continue to point out at material site hearings is that
 22 as a developer or an operator enters a pit, they
 23 continually test hole for groundwater and for different
 24 materials that meet specification for whatever they are
 25 trying to sell, whatever they are trying to make.

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1 All roads have a specification that the
 2 material has to meet, and maybe, you know, 200 feet
 3 over here it meets it, but over here it doesn't, so
 4 they are going to test hole, they are going to move
 5 around and will constantly be checking, you know,
 6 groundwater if it varies.
 7 The whole requirement is that you stay
 8 two feet above it, so that's -- you know, it's not that
 9 it's at 20 feet, it's two feet above.
 10 I think I just have just a couple of
 11 other little notes here. Yes, the owner has in their
 12 permit that they plan on installing monitor wells for
 13 potentially -- potentially a different permit, but, you
 14 know, that's again, that's prospective. They do want
 15 to put -- putting in monitor wells on a material site
 16 is a great benefit to the owner and also to the
 17 borough.
 18 It gives you some comprehensive data on a
 19 quarterly basis or a monthly basis of where the
 20 groundwater is at. So they do -- they are proposing
 21 that they might do that in the future even though this
 22 permit isn't to enter the groundwater table.
 23 There's other concerns regarding site
 24 buffers and such, we've heard lots of those.
 25 Do you guys have any questions for me at

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1 this time?
 2 **CHAIRMAN MARTIN:** Any questions? None at
 3 this time.
 4 **GINA DEBARDELABEN:** Okay. Thanks.
 5 **UNKNOWN SPEAKER:** I have a question.
 6 **CHAIRMAN MARTIN:** Who is the next
 7 testifier?
 8 **UNKNOWN SPEAKER:** I have a question.
 9 **CHAIRMAN MARTIN:** You've had your chance.
 10 You've had your five minutes. We are trying to get --
 11 make sure everybody gets at least five minutes.
 12 **UNKNOWN SPEAKER:** I heard something I
 13 don't like. Don't I get a right to ask a question?
 14 No? Yeah, that (indiscernible).
 15 **EMMITT TRIMBLE:** I'm Emmitt Trimble,
 16 managing member of the Beachcomber, LLC and the
 17 principal applicant.
 18 Just as I did in Anchor Point voluntarily
 19 last Wednesday opening myself for some questions and
 20 anything that you would like clarified.
 21 There were a number of things here that
 22 could be clarified tonight, but most of them were not
 23 pertinent any way to what you will be deliberating on,
 24 so I'm not going to try to counter those things. But
 25 if you have questions for me, I'm here.

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1 **CHAIRMAN MARTIN:** Mr. Ruffner.
 2 **COMMISSIONER RUFFNER:** Thank you, Mr.
 3 Chairman.
 4 Mr. Trimble, so we heard at the beginning
 5 the staff report that their recommendation was, given
 6 the volume of information that's come in recently, some
 7 of it is kind of technical and science in nature, their
 8 recommendation was to postpone this or put it off at
 9 least until the August meeting.
 10 So, you know, I hoping that you are in
 11 concurrence with that so that -- I mean, it's a
 12 complicated thing that we want to chew on a little bit.
 13 So I just kind of wanted to ask what your thought on
 14 that were.
 15 **EMMITT TRIMBLE:** I have no problem with
 16 that at all.
 17 **UNKNOWN SPEAKER:** Mr. Trimble, I have a
 18 question.
 19 **CHAIRMAN MARTIN:** This is -- we have
 20 certain steps that we do. No, sir, we're not in that
 21 part of the meeting.
 22 **COMMISSIONER RUFFNER:** So I'll follow up,
 23 because there's a couple of people that still have
 24 stuff they want to want to say.
 25 **EMMITT TRIMBLE:** Sure.

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1 **COMMISSIONER RUFFNER:** I get that. And I
 2 guess what I would say is that, given that the staff's
 3 recommendation is for us to postpone this, and even the
 4 applicant himself said he's willing to put this off for
 5 a month, so that's going to give you a chance to ask
 6 those questions that you have of staff or of us, you
 7 know. I just wanted to put that out there for you.
 8 **CHAIRMAN MARTIN:** Thank you, that was
 9 really helpful.
 10 **EMMITT TRIMBLE:** I will offer that, you
 11 know, I sent some pictures to Mr. Wall over the
 12 weekend, and I did say in about three hours we put up a
 13 pretty extensive berm, just mostly as a demonstration
 14 as to what could be done blocking those homes.
 15 There's about five homes that have any
 16 way to see into any of the property, and, you know, I
 17 could not see any of -- from the pit itself, not the
 18 floor of the pit, but the top level of excavation, I
 19 couldn't see any of those homes. That can be
 20 replicated moving back.
 21 I don't -- I'm not in the gravel
 22 business, but it is part of the asset value of this
 23 property, and it's incumbent upon me to protect my
 24 family and our investment to maximize that possible
 25 value.

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1 Now, what I would like to do really is my
2 own business, my family's business as to what we would
3 like to do. I have a subdivision plan, but I have no
4 intention of submitting it for preliminary approval,
5 it's just I want to know that I've done my homework
6 ahead of time.
7 And it's the same way, we've taken a --
8 we took a few loads of gravel out of that pit of less
9 than an acre to take to -- down to the boat launch to
10 put the ramp in. We took some more down to expand a
11 parking lot, and that's the kind of thing that's
12 happening. But I do intend to pursue this for the
13 entire property that we permitted -- or we're applying
14 for.
15 **CHAIRMAN MARTIN:** Any questions for the
16 applicant? Ms. Carluccio.
17 **COMMISSIONER CARLUCCIO:** Yes, thank you
18 for testifying. I think it was your daughter who spoke
19 before --
20 **EMMITT TRIMBLE:** Yes, ma'am. Quite proud
21 of her.
22 **COMMISSIONER CARLUCCIO:** -- that I asked
23 what -- so you right now have no intentions to develop
24 this as a gravel pit? You just want to get it on the
25 books?

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1 **EMMITT TRIMBLE:** I've already started
2 developing a small pit that was within the one-acre
3 confines. So I want to go through this procedure,
4 submit myself to the process, live up to the permit if
5 and when I get it, and I would be able to do whatever
6 the permit allowed at that time.
7 My plan is pretty small scale. It's for
8 local projects. All of those homes, all of these
9 people have those properties because Buzz Kyllonen took
10 a small, like less than two-acre pit that built all of
11 those roads and built all of those driveways and
12 provided the gravel for almost all of those people up
13 there or those properties wouldn't be there now to be
14 concerned. And it's now one of the nicest looking
15 properties in the area. It's directly across the road
16 from mine.
17 **COMMISSIONER CARLUCCIO:** So I'm sorry, it
18 doesn't really pertain. I was going to ask you if that
19 property was originally yours and you subdivided it,
20 but that doesn't --
21 **EMMITT TRIMBLE:** Which one?
22 **COMMISSIONER CARLUCCIO:** That really
23 doesn't pertain to what we're talking about, so...
24 **EMMITT TRIMBLE:** No, the other property,
25 that was -- that was in 1975 when I first came there,

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1 and I've owned property there since then, there was a
2 small half-acre pit that Ralph Miller had. And Buzz
3 Kyllonen bought from him, developed all the
4 surrounding -- paid for the Silver King Village, all of
5 the subdivisions from that gravel pit, and it's now a
6 lake and it's very nice. We have it listed for sale.
7 **COMMISSIONER CARLUCCIO:** Okay. Thank
8 you.
9 **EMMITT TRIMBLE:** Thank you.
10 **CHAIRMAN MARTIN:** Any other questions for
11 the applicant? Mr. Venuti.
12 **COMMISSIONER VENUTI:** Thanks for coming,
13 Mr. Trimble.
14 **EMMITT TRIMBLE:** Yes, sir.
15 **COMMISSIONER VENUTI:** So you heard
16 concern from the people who testified --
17 **EMMITT TRIMBLE:** Sure.
18 **COMMISSIONER VENUTI:** -- about the hazards
19 of trucks on the road, on the haul road, and also there
20 was a mention of the condition of the bridge that goes
21 over the Anchor River.
22 I would presume that any haul road out of
23 your pit, if this comes to be a pit, would go over that
24 bridge. Is that going to --
25 **EMMITT TRIMBLE:** Well, that's not

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1 possible now. It's been condemned, so that's why
2 people are having to drive from the North Fork Road all
3 the way to Eight Mile and back down the Old Sterling to
4 go down and bring gravel down to the beach. You can't
5 go across the bridge now. But they are going to
6 rebuild that within a year or two here.
7 **COMMISSIONER VENUTI:** Okay. That was a
8 concern.
9 **EMMITT TRIMBLE:** Yeah, and there are
10 trucks -- there are gravel trucks going up and down
11 Danver all the time right now. And, you know, I have
12 no complaint about those big boats going up and down
13 that road.
14 Buzz Kyllonen and I got that road paved
15 through a maintenance budget with DOT for \$150,000
16 because we gave them permission to go through our
17 properties where there's not a right-of-way to this
18 day.
19 So those people that are worried about
20 that road, we would have loved to have had them there
21 by our side helping us back then.
22 **COMMISSIONER VENUTI:** Thank you very
23 much.
24 **EMMITT TRIMBLE:** You bet.
25 **CHAIRMAN MARTIN:** Anyone else?

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1 **EMMITT TRIMBLE:** Thank you.
 2 **CHAIRMAN MARTIN:** Not at this time.
 3 Thank you.
 4 Is there anyone else in the audience
 5 wishing to testify? Please.
 6 **DON HORTON:** Hi. My name is Don Horton,
 7 my family owns property at 34910 Echo. Like my father
 8 said, it is directly across the street from that
 9 proposed gravel pit.
 10 I just had a couple of quick questions
 11 for, I guess, you guys. If a permit is issued for this
 12 property, is it attached to the property or is it
 13 attached to the owners of the property? Like, if it is
 14 sold, does the permit stay with it?
 15 **CHAIRMAN MARTIN:** With the property.
 16 **DON HORTON:** With the property, okay,
 17 that's what I thought.
 18 The Trimbles, they spoke on -- the last
 19 guy that spoke, he just spoke that he wants to maximize
 20 the property value of his property that he owns by
 21 applying for this permit while it is at the expense of
 22 everyone's property around it, I want everyone to
 23 realize that. I don't think that's right.
 24 That's mainly what I wanted to ask.
 25 Thank you for your time.

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1 **CHAIRMAN MARTIN:** Next. Did we get your
 2 name and address?
 3 **DON HORTON:** No pen.
 4 **CHAIRMAN MARTIN:** Is there anyone else?
 5 Please.
 6 **RICHARD CARLTON:** I am a retired lineman.
 7 I fell in love with the Anchor Point River area in 1996
 8 and started coming up here pretty regularly. The wife
 9 and I purchased a piece of ground in 2007, it's 73500
 10 Seabury Road. We go up Danver to Seaward and then take
 11 a right and go to our house.
 12 It's kind of an emotional thing for me,
 13 because I fell in love with the place and the lack of
 14 noise. You know, these people talk about machinery and
 15 things like that.
 16 I had 40 years with backup alarms and
 17 backhoes, you know, and noise. And I go up there and I
 18 can sit on my patio and look out at Iliamna and drink
 19 my coffee and I'm in heaven. It's a wonderful thing.
 20 I've got wonderful neighbors that all
 21 give a shit about one another. And if they need
 22 something, they help each other. And if they are
 23 making too much noise, they say something and you quiet
 24 down. It's a great, great life.
 25 I don't know why it matters who owns the

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1 road that goes to the beach. The bridge is condemned,
 2 the Old Sterling Highway is a hazard, and if you take
 3 just a 10-yard, 12-yard dump truck by itself and drive
 4 it up and down that road with its Jake brakes, that
 5 quiet goes away.
 6 There is all these RV parks. Buzz
 7 Kyllonen's RV Park was where we fell in love with the
 8 area. We'd come here year after year, and it's right
 9 across where one of the entrances to this Beachcomber
 10 Road is. We'd take a rubber boat out and catch a
 11 halibut, and then we'd drive all the way down to
 12 Southeast Washington and plan for next year to go back
 13 up here. That will all change if they dig a big hole.
 14 And I'm kind of like some of these other
 15 people. You know, I don't begrudge anybody wanting to
 16 make a living, but this has no place where it is at. I
 17 mean, you know, people raise hell about Pebble Mine.
 18 Well, it's a long ways away. It's, you know, it's --
 19 maybe -- maybe it does -- it could trash a lot streams
 20 and salmon runs and things like that, but I don't see
 21 it so it isn't personal to me.
 22 But if I have to drive when I go to the
 23 post office, and I got to come up Danver and I got to
 24 hear backup alarms or white noise, I'm not going to
 25 enjoy the place like I used to.

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1 And so I really think the road safety and
 2 these things, even though maybe the borough doesn't
 3 have any jurisdiction over the road because it's a
 4 state road or the Old Sterling Highway, I really think
 5 you guys should be able to have some input on this
 6 project and do the right thing. Thank you.
 7 **CHAIRMAN MARTIN:** Thank you. Any
 8 questions?
 9 **THE CLERK:** Mr. Chairman.
 10 **CHAIRMAN MARTIN:** Yes.
 11 **THE CLERK:** Could he state his name?
 12 **CHAIRMAN MARTIN:** Did you state your name
 13 and address?
 14 **RICHARD CARLTON:** Yes, I did.
 15 **CHAIRMAN MARTIN:** In the record, in the
 16 microphone? It helps if she gets it recorded as well.
 17 **THE CLERK:** Could you please state your
 18 name. I didn't catch it.
 19 **RICHARD CARLTON:** Yes. It is Richard
 20 Carlton, 73500 Seabury Road. I did -- we did send a
 21 letter in, too.
 22 **CHAIRMAN MARTIN:** Okay. Thank you. Mr.
 23 Ruffner.
 24 **COMMISSIONER RUFFNER:** Mr. Chairman, at
 25 this time I would like to vote to suspend the rules so

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1 that we can extend any public comment beyond our normal
2 closing time at 11.
3 **COMMISSIONER CARLUCCIO:** Second.
4 **CHAIRMAN MARTIN:** Is there any opposition
5 to the motion? Seeing none, the motion to extend the
6 rules passes.
7 And I will ask another time for the next
8 testifier.
9 **STEVE HABER:** My name is Steve Haber.
10 Sorry, it's late. I just want to tell you all I was
11 at -- on the beach road this morning, and everyone who
12 knows it mentioned it before, someone is going to die
13 if this project goes through.
14 I unfortunately had a high school
15 incident with my son's school many years ago, and we
16 couldn't get a traffic light put in at a very famous
17 school in the desert, and three kids got killed, you
18 know, several weeks later. And then, of course, the
19 whole town went crazy and put the light in. That's
20 what's going to happen here.
21 And you may be under such tremendous
22 pressure from the way you do it that you are going to
23 approve this. This won't work with this road, beach
24 road. Everything that everybody else has said about
25 the views and stuff doesn't compare to the bike

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1 companies going up and down. The boat trailers are
2 going 60 miles an hour themselves -- I mean, the boats
3 that are going to get put in the water. They are not
4 obeying the laws either.
5 I was trying to hitch from one campground
6 to the other this morning, and it was crazy. There was
7 two kids being pulled in a deal and being wheeled up
8 there. Someone is going to die. You remember I said
9 this tonight, every one of you. You are sitting here,
10 you can prevent it.
11 And I don't mean to think you are bad
12 people. Someone is going to die on that road and then
13 you are all going to change your mind. Thank you.
14 **CHAIRMAN MARTIN:** Anyone else?
15 **DAVID GREGORY:** Okay. My name is David
16 Gregory. I live on 73850 Seaward, which is just up
17 Danver around the corner from this proposed pit.
18 We are calling it a pit, a gravel
19 extraction area, which is actually a mine as it was
20 mentioned earlier.
21 I work at a mine, and there's a place for
22 mines, but the mine I work at is way out in a remote
23 area.
24 And I've sent an e-mail several days ago,
25 and noise and dust is one of my big concerns. And then

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1 as it was mentioned, the noise goes uphill, and there's
2 numerous homes. Maybe there's only five that could be
3 seen from one particular point, but there are dozens up
4 this hill that the noise will carry right up there, as
5 well as the dust. And the dust can be carried by the
6 wind or if it is -- if the wind is still, it just hangs
7 in the air.
8 Now at the mine where I work, the whole
9 ground for a large area, in the wintertime especially
10 so you can see it, fresh snow will only stay fresh for
11 a day or two and it's got a dark color, crusty, dirty
12 look for a big area around the mine. So this is one of
13 my biggest concerns at this point is the noise and the
14 dust. Thank you.
15 **CHAIRMAN MARTIN:** Thank you. Anyone
16 else? This will be the last call for public comment
17 this evening. Hearing and seeing no further requests,
18 we close public comment and bring it back to the
19 Commission for a motion. Mr. Ruffner.
20 **COMMISSIONER RUFFNER:** Thank you, Mr.
21 Chairman. Move to postpone action on this item until
22 next meeting and hold public comment open.
23 **COMMISSIONER BENTZ:** Second.
24 **CHAIRMAN MARTIN:** Discussion. Ms.
25 Ecklund.

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1 **COMMISSIONER ECKLUND:** I really would
2 like to take action on this tonight. We've heard the
3 public. I would -- you know, if we did bring it back
4 on August 13th, I would hope that they would all be
5 back again and we'd hear it again.
6 I did have opportunity to look through a
7 bit of the material prior to the meeting, but I believe
8 what I've heard tonight and I think it would be just
9 verified in these documents. And I think I would like
10 to take action on this conditional use permit tonight
11 rather than postpone it until August 13th.
12 **CHAIRMAN MARTIN:** Mr. Whitney.
13 **COMMISSIONER WHITNEY:** I concur with
14 that. I had an opportunity to read through everything,
15 and I just as soon do it tonight and get it over with.
16 **CHAIRMAN MARTIN:** Roll call, please.
17 **THE CLERK:** Thank you, Mr. Chairman.
18 This was a motion to postpone action until the next
19 meeting or to continue the public hearing. Carluccio?
20 **COMMISSIONER CARLUCCIO:** No.
21 **THE CLERK:** Ecklund?
22 **COMMISSIONER ECKLUND:** No.
23 **THE CLERK:** Fikes?
24 **COMMISSIONER FIKES:** No.
25 **THE CLERK:** Martin?

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1 **CHAIRMAN MARTIN:** Yes.
 2 **THE CLERK:** Morgan?
 3 **COMMISSIONER MORGAN:** No.
 4 **THE CLERK:** Ruffner?
 5 **COMMISSIONER RUFFNER:** Yes.
 6 **THE CLERK:** Venuti?
 7 **COMMISSIONER VENUTI:** Yes.
 8 **THE CLERK:** Whitney?
 9 **COMMISSIONER WHITNEY:** No.
 10 **THE CLERK:** Bentz?
 11 **COMMISSIONER BENTZ:** Yes.
 12 **THE CLERK:** Four yes, five no.
 13 **CHAIRMAN MARTIN:** So the motion to
 14 postpone fails.
 15 Ms. Ecklund.
 16 **COMMISSIONER ECKLUND:** To put this on the
 17 floor, I would like to make a motion to approve the
 18 conditional use permit for a material extraction site
 19 in the Anchor Point area.
 20 **COMMISSIONER CARLUCCIO:** Second.
 21 **CHAIRMAN MARTIN:** Discussion. Ms.
 22 Ecklund.
 23 **COMMISSIONER ECKLUND:** I believe that we
 24 have sufficient findings to deny this permit based on
 25 the public opinion or the public testimony and the

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1 borough code as it is written now and the facts that
 2 were written in the staff report.
 3 I do have a question for staff, for Mr.
 4 Wall at this time, to know if we can even address this
 5 because they requested a waiver for the processing
 6 portion of the pit, and you recommend denying that
 7 waiver, which would then not allow them enough area for
 8 a processing as submitted tonight. Would that require
 9 a new submission of their application?
 10 **MR. WALL:** The permit would be for the
 11 extraction, they could certainly extract. To process
 12 the material, it would still leave them a narrow area
 13 within the proposed area, within the material site to
 14 do some processing.
 15 But the material extraction would be
 16 approved, but they wouldn't be able to process outside
 17 of that narrow area that would be -- and I'd have to
 18 put my scale to it, but it would pretty narrow if we
 19 narrow it down to the 300 foot from the property lines.
 20 **COMMISSIONER ECKLUND:** Yeah, I think it
 21 would be 50-foot wide or so, so it would be a pretty
 22 narrow area.
 23 So then the motion -- the motion was to
 24 approve this. Do we have to address that waiver or do
 25 we just take your recommendation?

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1 **MR. WALL:** Right. If you -- the motion,
 2 it sounded like it was to approve as recommended in the
 3 staff report, which includes the approval -- I mean,
 4 the denial of the waiver.
 5 **COMMISSIONER ECKLUND:** Okay. Okay.
 6 Thank you.
 7 **CHAIRMAN MARTIN:** Further discussion? Go
 8 ahead, Mr. Ruffner.
 9 **COMMISSIONER RUFFNER:** Thank you, Mr.
 10 Chairman.
 11 So I was kind of hoping to put this off
 12 because I had a couple of legal questions that I would
 13 have wanted to ask. I don't think we have time to go
 14 through kind of a memo that I was thinking about asking
 15 for.
 16 So I will try to summarize what I know
 17 about where we stand legally with looking at this and
 18 why I had to give this little talk a number of times in
 19 an uncomfortable way, is that, you know, the borough
 20 bssembly has given us the rules by which we are allowed
 21 as Planning Commission members to work under.
 22 And so they've kind of put the side
 23 boards up there that says what we can and can't
 24 approve. And the six criteria that staff has laid out
 25 shows that, in their opinion, that it meets those

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1 conditions.
 2 So what I would want to hear from my
 3 fellow commissioners, is of those six criteria, which
 4 ones you -- if you are going to vote against this, you
 5 know, which ones you don't think we're meeting in the
 6 discussion so that I can at least understand where you
 7 would be deviating from what's been presented to us in
 8 the staff report.
 9 **CHAIRMAN MARTIN:** Ms. Ecklund.
 10 **COMMISSIONER ECKLUND:** Yes. With the
 11 findings that I've drafted, the first one addresses
 12 current Ordinance 21.29.040(A)(4). That states that
 13 the noise -- let me find it on page 101 -- that states
 14 "...minimizes the noise disturbance to other
 15 properties."
 16 And from the testimony I've heard tonight
 17 and the documents that have been submitted, I don't
 18 think that the berms or the vegetation buffers will do
 19 justice to minimize the noise disturbance to other
 20 properties. We've been handed out maps with properties
 21 identified, so I think that's one finding.
 22 Another finding right along with that is
 23 21.29.050(A)(5), and I don't think that the visual
 24 effects will be reduced sufficiently with buffers,
 25 berms. I don't think they could build them high enough

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1 for that.
 2 The application was submitted without the
 3 seasonal high water determination. I don't think that
 4 was sufficiently delineated in the application.
 5 And I don't know if this is a finding or
 6 not, but I think we need to determine if that well that
 7 was mentioned several times tonight is within 100 feet
 8 of the pit as designated in the application.
 9 **CHAIRMAN MARTIN:** It comes down to did
 10 you state your case?
 11 **COMMISSIONER ECKLUND:** So I guess that
 12 would be -- that's my case.
 13 **CHAIRMAN MARTIN:** That's your findings.
 14 **COMMISSIONER ECKLUND:** And then the vote
 15 would determine if we stated it. And if we fail this
 16 motion to approve it, then there's followup procedures
 17 that could be taken by the applicant, as I understand,
 18 is that correct, through the chair to staff?
 19 **MR. WALL:** So your question was is if it
 20 is denied, what the applicant's recourse is?
 21 **COMMISSIONER ECKLUND:** Yes, if you could
 22 explain that for us.
 23 **MR. WALL:** Yes. There is a 15-day appeal
 24 period once the decision is made, once the notice of
 25 decision is issued, and that appeal would go to the

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1 hearing officer. And that would be -- anybody that
 2 testifies tonight or has written -- submitted written
 3 comment would have the ability to appeal.
 4 **COMMISSIONER ECKLUND:** Just to follow up.
 5 So anyone that testified and any comments, the hearing
 6 officer would get a transcript of the comments tonight
 7 as well for their review?
 8 **MR. WALL:** That is correct. The
 9 transcript is provided to the hearing officer.
 10 **COMMISSIONER ECKLUND:** Okay. Thank you.
 11 **CHAIRMAN MARTIN:** Mr. Ruffner.
 12 **COMMISSIONER RUFFNER:** So I thank my
 13 fellow commissioner for kind of laying out what will be
 14 the findings, I think, attached if it goes that way.
 15 So I'll just summarize. And I think this
 16 would be good if it were to be appealed just to have
 17 this on the record as my understanding of kind of how
 18 we get to where we feel like, as commissioners, our
 19 hands are tied. And, I mean, I think we heard it from
 20 the public that you've heard that our hands are tied in
 21 a number of cases.
 22 So as best I can, I can lay out what my
 23 understanding of the legal -- legal standing that we
 24 have is here, and we have an attorney here that can
 25 correct me if I run astray here.

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1 So one testifier talked about the broad
 2 authorities that have been given to the Planning
 3 Commission very early on in borough code at 240.050,
 4 which authorizes the Planning Commission to kind of
 5 consider all the factors in everything that we do and
 6 make a good determination, so that's very high in our
 7 code.
 8 Then later on in 21.25 it lays out the
 9 procedures for when we would authorize a conditional
 10 land use permit, and there are several steps in there.
 11 And then later in the code is 21.29,
 12 which is the code specifically for gravel pits. Now my
 13 understanding of -- or interpretations of how we've
 14 gotten to this point in the past has been that 21.29
 15 really lays out what you can do with buffers and what
 16 you can't do with -- what limitations you could put on
 17 a pit operator, and those are handed down to us from
 18 the bssembly.
 19 Previously I think I've heard that the
 20 21.29 says it's the most recent set of code is that
 21 that's the ones that are supposed to govern our
 22 decisions. And then looking further up the code where
 23 we have broader latitude has not been afforded to us in
 24 the past.
 25 So that's been my understanding, and if

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1 there's any clarification or corrections to that, I
 2 mean, I would like to hear that from counsel.
 3 **MS. MONTAGUE:** That was a good summary,
 4 Mr. Ruffner. The one thing I would add is it's not
 5 just a matter of the ordinance that is adopted later in
 6 time, but also the ordinance that is most specific to
 7 what you are reviewing.
 8 And in this case, the KPB 21.29 is the
 9 ordinance that very specifically addresses material
 10 sites. So that has more weight than a very general
 11 purpose clause, for example, that just says that the
 12 Planning Commission can review the public health,
 13 safety, and welfare. The very specific criteria in
 14 21.29 is how the assembly has chosen to protect the
 15 public health, safety, and welfare.
 16 **CHAIRMAN MARTIN:** Ms. Carluccio.
 17 **COMMISSIONER CARLUCCIO:** If 21.29 says
 18 that a 50-foot berm or 50 feet of vegetation is one of
 19 the criteria and a ten-foot berm, but yet the pit is
 20 lower than all of the surrounding area, and the 50 foot
 21 doesn't do anything, don't we have some authority to
 22 say that this is the letter of the law, but it is not
 23 the intent of the law, because the intent of the law is
 24 to protect the surrounding land owners?
 25 **MS. MONTAGUE:** The intent of the law is

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1 to protect the surrounding land owners in the way the
2 assembly has laid out in the borough code.
3 **CHAIRMAN MARTIN:** It's the unique
4 topography that -- what gets us into this corner right
5 now. It's hard to foresee all the different
6 ramifications of a crater.
7 **COMMISSIONER CARLUCCIO:** That's true, but
8 I would not be able to support this at the time -- at
9 this time anyhow.
10 **CHAIRMAN MARTIN:** Ms. Bentz.
11 **COMMISSIONER BENTZ:** Yeah, I would just
12 like to follow up on that with just an observation that
13 in our staff report it says that the proposed
14 extraction meets the material site standards from 21.29
15 minimizing noise disturbance from other properties, but
16 I don't agree with that. I don't think these
17 conditions will minimize noise disturbance to other
18 properties and the conditions won't minimize visual
19 impacts either.
20 **COMMISSIONER MORGAN:** I have to agree as
21 well. I don't see how the 50-foot buffer or berms are
22 going to minimize visual impact or sound impact because
23 of the unique topography.
24 **CHAIRMAN MARTIN:** Are we ready to -- Mr.
25 Ruffner.

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1 **COMMISSIONER RUFFNER:** I just want to say
2 one more thing. I think we've done a good job of
3 laying out the record of why -- why we're going to vote
4 the way we are or not. And likely, you know, if it
5 doesn't be approved it would likely be appealed, and so
6 the Board of Adjustment will have a good record from us
7 about why -- why we thought that it might not meet
8 those criteria of being able to screen or vegetation.
9 So at least it's all there for the process.
10 **CHAIRMAN MARTIN:** Yes, thank you. Roll
11 call, please.
12 **THE CLERK:** Thank you, Mr. Chairman. The
13 motion was to approve the conditional land use permit
14 application for a material extraction on a parcel in
15 Anchor Point.
16 Carluccio?
17 **COMMISSIONER CARLUCCIO:** No.
18 **THE CLERK:** Ecklund?
19 **COMMISSIONER ECKLUND:** No.
20 **THE CLERK:** Fikes?
21 **COMMISSIONER FIKES:** No.
22 **THE CLERK:** Martin?
23 **COMMISSIONER MARTIN:** Yes.
24 **THE CLERK:** Morgan?
25 **COMMISSIONER MORGAN:** No.

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1 **THE CLERK:** Ruffner?
2 **COMMISSIONER RUFFNER:** Yes.
3 **THE CLERK:** Venuti?
4 **COMMISSIONER VENUTI:** Yes.
5 **THE CLERK:** Whitney?
6 **COMMISSIONER WHITNEY:** No.
7 **THE CLERK:** Bentz?
8 **COMMISSIONER BENTZ:** No.
9 **UNKNOWN SPEAKER:** Three yes, six no.
10 **CHAIRMAN MARTIN:** The motion fails.
11 I'd like to -- I would like to thank
12 everyone for the effort and sacrifice it took to come
13 to this hearing. And I want to encourage you to
14 continue to stay connected as a community and make the
15 most of your community, and thanks for coming.
16 Yeah, we are still going. Down while the
17 gang is working on the findings. Okay.
18 **COMMISSIONER ECKLUND:** Do you want me to
19 read them into the record?
20 **CHAIRMAN MARTIN:** Yes, ma'am.
21 **COMMISSIONER ECKLUND:** Okay. I move that
22 we attach the following findings to the denial of
23 the --
24 **CHAIRMAN MARTIN:** We can hear. We can
25 hear.

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1 **COMMISSIONER ECKLUND:** -- conditional use
2 permit for the Anchor Point material extraction site,
3 that the Borough Code 21.29.040(A)(4), we find that the
4 noise will not be sufficiently reduced with any buffer
5 or berm that could be added.
6 Borough Code 21.29.040(A)(5), that the
7 visual impact to the neighboring properties will not be
8 reduced sufficiently.
9 **MR. WALL:** Mr. Chairman, can I go close
10 the door real quick?
11 **CHAIRMAN MARTIN:** Yes. Mr. Wall
12 interrupted to close the door, because --
13 **COMMISSIONER ECKLUND:** Okay.
14 **CHAIRMAN MARTIN:** -- they weren't -- they
15 weren't clueing in.
16 **COMMISSIONER ECKLUND:** Do you think
17 you've got those?
18 **CHAIRMAN MARTIN:** The recording?
19 **COMMISSIONER ECKLUND:** Thank you. All
20 right.
21 **COMMISSIONER CARLUCCIO:** Second.
22 **CHAIRMAN MARTIN:** Discussion on the
23 motion. Any opposition of adding these findings?
24 Seeing no opposition, the motion passes unanimously.
25 11:23:14

1 (End of requested portion)
2 11:24:07
3 (Meeting ajourned at 11:24:07 p.m.)
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1 CERTIFICATE
2 I, Sheila Garrant, transcriber, do hereby certify
3 that the foregoing pages numbered 1 through 112 are a
4 true, accurate, and complete transcript of proceedings
5 transcribed by me from a copy of the electronic sound
6 recording to the best of my knowledge and ability.
7
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9 8/28/18
Date Sheila Garrant, Transcriber
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**VERBATIM TRANSCRIPT
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MARCH 25, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION**LOCATION**

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Monday, March 25, 2019
7:30 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 112, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Syverine Abrahamson-Bentz, Anchor Point/Ninilchik
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Robert Ernst, Northwest Borough
Dr. Rick Foster, Southwest Borough
Diane Fikes, City of Kenai
Virginia Morgan, East Peninsula
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna

Staff Present:

Max Best, Planning Director
Marcus Mueller, Land Management Officer
Julie Hindman, Administrative Assistant
Jordan Reif, Platting Technician
Holly Montague, Deputy borough Attorney
Karyn DeCinco, Resource Planner
Bruce Wall, Planner
Scott Huff, Platting Manager

Others Present:

Douglas Clegg

Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP

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1 PROCEEDINGS
 2 7:28:18 p.m.
 3 (This portion not requested)
 4 8:03:22 p.m.
 5 **COMMISSIONER FOSTER:** It brings us to
 6 Item G-4.
 7 Yes, Mr. Brantley, do you have something
 8 you'd like to offer?
 9 **COMMISSIONER BRANTLEY:** Yes. I would
 10 like to recuse myself from this -- from G-4 for an
 11 appearance of a conflict of interest.
 12 **COMMISSIONER FOSTER:** It's been brought
 13 forth that Mr. Brantley may have a conflict, or at
 14 least appears to have a conflict of interest.
 15 Does anybody have an issue that we would
 16 need to call this to a count -- to a vote? Seeing and
 17 hearing no one, you are so recused.
 18 Anybody else have a concern? Mr. Venuti.
 19 **COMMISSIONER VENUTI:** Thank you, Mr.
 20 Chair. In our lay-down packet there is a letter
 21 suggesting that I have a conflict of interest on this
 22 issue and actually accuses me of unethical behavior,
 23 which is quite insulting. I don't feel that I have a
 24 conflict of interest. I feel that I could make a fair
 25 decision on this.

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1 **COMMISSIONER FOSTER:** Does anybody here
 2 have a concern that Mr. Venuti may have the appearance
 3 of a conflict of interest; and if so, want to discuss
 4 this?
 5 Should we -- in this case should we vote
 6 on this, or -- Mr. Venuti, you don't want to set out as
 7 recusing yourself then, is that correct?
 8 **COMMISSIONER VENUTI:** No.
 9 **COMMISSIONER FOSTER:** Okay, does anybody
 10 have an issue with that? Seeing and hearing no one,
 11 you are so not recused. You do not have a conflict,
 12 the chair decides.
 13 Staff report, please.
 14 **MR. WALL:** Thank you, Mr. Chairman. This
 15 is an application for a conditional land use permit for
 16 a material site in the Anchor Point area. It is
 17 located at 74185 Anchor Point Road. The parcel number
 18 is 169-010-67. The applicant is Beachcomber, LLC.
 19 This application was heard by the
 20 Planning Commission on July 16th where the application
 21 was denied approval. This decision was appealed, and
 22 it was reviewed by a hearing officer. The hearing
 23 officer has remanded the application to the Planning
 24 Commission.
 25 Excerpts from the hearing officer's

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1 decision is included in the staff report, and copies of
 2 the decision is contained in pages 20 through 41 of
 3 your packet.
 4 Pages 2 through 10 of your packet
 5 contains the staff report. It has been updated from
 6 the July meeting to be consistent with the hearing
 7 officer's instructions that the findings should be
 8 based on the mandatory conditions contained in KPB
 9 21.29.050.
 10 Staff is recommending different buffers
 11 from what is showing on the applicant's site plan and
 12 different from staff's recommendation in July.
 13 On page 18 of your packet is a map
 14 showing staff's recommendations. On the north
 15 boundary, staff recommends a 50-foot vegetated buffer
 16 adjacent to the south boundary of parcel 169-022-03,
 17 this is the Brantley parcel, with a six-foot high berm
 18 between the vegetated buffer and the extraction area.
 19 There is a riparian wetland and
 20 floodplain in the very northeast corner of the
 21 property, and staff is recommending a six-foot high
 22 berm between the extraction area and the 100-foot
 23 setback from the riparian wetland and floodplain.
 24 Then along the rest of the northern
 25 boundary, staff recommends a 12-foot high berm. And

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1 then on the south boundary, staff is recommending a
 2 50-foot vegetated buffer adjacent to the southern
 3 parcel boundaries with a 12-foot high berm between the
 4 vegetated buffer and the extraction area.
 5 Along the east boundary, a 50-foot
 6 vegetated buffer adjacent to the eastern-most parcel
 7 boundary -- and actually let me rephrase that. That
 8 actually should say a 50-foot vegetated buffer adjacent
 9 to the section line easement along the eastern property
 10 boundary with a 12-foot high berm between the vegetated
 11 buffer and the extraction area.
 12 And then along the west side, greater
 13 than a 50-foot vegetated buffer along the western most
 14 property boundary.
 15 A waiver is being requested for the
 16 300-foot processing distance requirement from the
 17 property lines. Staff does not recommend approval of
 18 the processing distance waiver requested. There is
 19 room elsewhere on the property for processing that
 20 meets the 300-foot setback requirement.
 21 Pages 42 through 115 of your packet
 22 contains comments that have been received for this
 23 hearing. And pages 116 through 303 contains the
 24 commission packet from the July meeting, including the
 25 application, the site plan, and public comments.

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1 Pages 304 through 331 contains the
 2 minutes from the July meeting. And then an additional
 3 54 comment letters have been received since your packet
 4 was prepared last week. These comments are sitting on
 5 your desk tonight.
 6 Also on your desk tonight is a letter
 7 from the applicant's representative requesting a
 8 continuance of the hearing due to unforeseen issues,
 9 and I will let the applicant address that. It was
 10 assumed that the applicant or the representative would
 11 not be available this evening, but it appears that they
 12 are.
 13 Staff recommends that you open the public
 14 hearing tonight as advertised and then continue the
 15 hearing to the April 22nd meeting. Even though the
 16 applicant and the representative appears to be here
 17 tonight, staff is -- has made an effort to make sure
 18 the public is aware that this would be continued and
 19 that they would not need to be here at this meeting to
 20 testify, that they could come to the next one.
 21 So we recommend that you table it to
 22 the -- or continue the hearing to April 22nd. And that
 23 is the end of my staff report.
 24 **COMMISSIONER FOSTER:** Thank you. At this
 25 time I'm going to have -- I'll open it for a

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1 presentation by the applicant and their representative.
 2 And as they are coming up, I will make
 3 comment that I will entertain a motion for a
 4 continuance after they speak -- after the public
 5 hearing, I'm sorry.
 6 **KERI-ANN BAKER:** Keri-Ann Baker on behalf
 7 of the applicant. First, I just wanted to apologize.
 8 I did not believe I was going to be able to make it to
 9 this hearing because of a personal issue. I spoke with
 10 Ms. Montague about it about a week ago. She suggested
 11 that I send an e-mail to Mr. Wall, which I did. It
 12 wasn't until today that I was able to get here at the
 13 last minute. As a courtesy to this group, as well as
 14 to everyone else, I did want to come.
 15 We're prepared to go forward, but we also
 16 understand, and we've spoken to Mr. Wall about his
 17 recommendation, that some of the public may not have
 18 heard because of our request, so whatever this body
 19 decides, we would respect.
 20 And again, I apologize that my e-mail
 21 caused that. That was not my intent, and it wasn't my
 22 intent to delay.
 23 **EMMITT TRIMBLE:** I'm the applicant,
 24 Emmitt Trimble, from Anchor Point, Mr. Chairman.
 25 I'd like to use the words that the

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1 borough attorney and borough staff used in their
 2 opening statement for the appeal. I think they
 3 articulated issues better than I could.
 4 This material site is located in the
 5 rural district of the borough. The rural district is
 6 unzoned. As such, this is not a case where a
 7 conditional use is being allowed in a residential zone
 8 where it would normally be prohibited. Subject to some
 9 protections afforded surrounding property owners as set
 10 forth in the code, a material site can be placed almost
 11 anywhere in the rural district of the borough.
 12 Given the wealth of gravel deposits in
 13 the Anchor Point area, it should not be surprising that
 14 this parcel would be utilized for a material site.
 15 Some of those property owners will be
 16 more protected by their distance from the material site
 17 and the proposed buffers; however, there will always be
 18 at least some noise and visual impacts to adjacent
 19 properties from a material site operation.
 20 In the history of the material site
 21 ordinance, there has not been an interpretation that
 22 all surrounding properties must not be able to see or
 23 hear the material site at all; rather the
 24 interpretation over the course of the 96 material site
 25 permits that have been issued since 1996 is a reduction

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1 in certain negative impacts is the goal of the material
 2 site regulations.
 3 Full elimination of negative secondary
 4 impacts has never been discussed or required, nor is it
 5 feasible. Attempting to judge whether a permit should
 6 be denied based on how many people claim they are not
 7 sufficiently protected ultimately will lead to
 8 arbitrary decision making.
 9 Rather than relying on evidence, this
 10 approach relies on surrounding property owners stocking
 11 the hall. Whether a permit is approved or denied
 12 becomes a numbers game. Such negative community
 13 sentiment is not a valid reason to deny a permit.
 14 Given the mandate from the assembly that
 15 material sites be subject only to certain mandatory
 16 conditions, a denial based on a conclusory statement
 17 that the buffers are insufficient to protect against
 18 noise and visual impacts cuts against the grain of the
 19 code.
 20 Rather, if the buffers that can be
 21 fashioned are entirely useless to protect surrounding
 22 uses, the answer is a waiver of the buffer requirements
 23 under the code, not an unauthorized denial of the
 24 permit.
 25 Staff though did not believe buffering

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1 would be useless and recommended enhanced buffers to
 2 afford increased protection over and above what the
 3 minimum buffers set forth in the code would require.
 4 The Planning Commission's findings are
 5 required to be supported by the substantial evidence in
 6 the record. The substantial evidence in the record
 7 required to support the Planning Commission's findings
 8 is not the same as a substantial number of people
 9 opposing a material site. Substantial evidence is
 10 defined as relevant evidence that a reasonable mind
 11 might accept to support a conclusion.
 12 One of nine commissioners indicated they
 13 read the information. One other commissioner indicated
 14 that they had read a bit of the information and assumed
 15 it would be verified by what they heard in the
 16 testimony.
 17 A Superior Court decision has upheld the
 18 borough assembly's authority to adopt an ordinance that
 19 favors material site operations. This order further
 20 held that it is the Planning Commission's
 21 responsibility to abide by the legislative standards
 22 the assembly has established.
 23 The assembly has specifically adopted
 24 ordinances that are protective of material site
 25 operators and rejected proposed ordinances that make it

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1 more difficult for the same to receive project
 2 approval.
 3 In adopting the material site code
 4 language, the borough task force rejected language that
 5 placed a larger burden on the permit applicant.
 6 The assembly could have chosen a policy
 7 that favors residential property owners; instead, it
 8 chose to adopt a policy that favors the material site
 9 operators.
 10 This is not to say a material site permit
 11 cannot be denied, but rather it cannot be denied based
 12 on inadequate buffers when, under the code, either
 13 enhancing the buffers or waiving the buffers are the
 14 authorized resolution to a situation where buffers are
 15 not feasible.
 16 This is the borough's reply to the
 17 opening statements of the opposition: The briefs
 18 presented in opposition to the Beachcomber application
 19 are very similar in that they discuss the volume of
 20 people who attended the hearing who complained
 21 primarily about the view shed being potentially ruined
 22 by the material site and also about potential noise,
 23 dust, road damage, diminishing property values, water
 24 quality and quantity.
 25 As discussed in the opening statement of

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1 the Kenai Peninsula Borough, the standards in .040
 2 address only water quantity, road damage, physical
 3 property damage, dust, noise, visual impacts, and
 4 reclamation. These are the adopted standards because
 5 these are the concerns that are raised about many, if
 6 not most, of the material site applications.
 7 The complaints received about the
 8 Beachcomber material site are not unique. Repeating
 9 over and over again the same complaints about the same
 10 material site doesn't change the standards or
 11 conditions for material site approval.
 12 Regardless of the evidence presented, the
 13 material site code is not designed to support a permit
 14 denial based on the buffers not being feasible given
 15 the topography of the location.
 16 Where buffers are not feasible, a waiver
 17 for those buffers is in order under the code. Staff,
 18 however, does not agree that the buffers are useless
 19 and not feasible, but rather believes that they reduce
 20 the negative impacts of the material site.
 21 The borough further contends that it
 22 would be unrealistic to expect buffers to fully
 23 eliminate the negative impacts of noise and
 24 unsightliness, which appears to be the position of the
 25 Planning Commission.

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1 Although the Planning Commission did not
 2 clearly articulate this interpretation of the code, it
 3 is inferred from their findings that a denial was
 4 appropriate because the buffers would not minimize
 5 noise and visual impacts.
 6 Reference is made to 200 pages of
 7 documents submitted, it's the Bilben brief. However,
 8 documents that don't address the standards are not
 9 persuasive. Minimal questions were asked of the
 10 applicant and testifiers regarding the standards
 11 applicable to the proposed material site.
 12 Evidence and fear are not synonymous.
 13 Much of what is referred to as evidence is actually
 14 voicing fear of what may happen if the material site is
 15 operated on the Beachcomber parcel.
 16 The borough inevitably hears complaints
 17 that wells will run dry and roads will be ruined by a
 18 material site, yet there has never been a substantiated
 19 case of these deleterious results occurring after 96
 20 permitted material sites. Fears and concerns, even
 21 though they may be real, are not evidence.
 22 There was no real discussion of these 200
 23 pages of documents. This wasn't a thorough,
 24 well-reasoned decision; it was a hasty, reactionary
 25 decision made to accommodate the fears and concerns of

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1 the crowd.
 2 In -- the Girton brief references the
 3 peace, tranquility, natural beauty of the open meadow
 4 and the view shed that will be destroyed by the
 5 material site; however, that open meadow is not a state
 6 or national park. That open meadow is a privately
 7 owned parcel in an unzoned area of the borough.
 8 The Baker Trust chose a -- referenced a
 9 case from Anchorage, however -- as supporting denial of
 10 a conditional use permit. However, in both cases the
 11 applicant was attempting to conduct a use in a
 12 residential zone where the activity would generally be
 13 prohibited.
 14 The borough has not adopted the
 15 geographical zoning scheme authorized in .040, but
 16 rather has adopted an ordinance to minimize unfavorable
 17 effects of material sites as authorized in .040.
 18 Consistent with the KPB comprehensive
 19 plan, a permit is required to operate a material site
 20 in the unzoned borough, but that permit requirement
 21 does not rely on the premise that material sites are in
 22 conflict or are generally prohibited in residential
 23 areas. A permit is required in the borough whether the
 24 nearest residence is across the street or across
 25 Kachemak Bay.

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1 The Bilben brief asserts there is
 2 substantial evidence in the record to support the
 3 Planning Commission's decision, but then goes on to
 4 argue is that if there isn't substantial evidence, the
 5 hearing officer should remand to the Planning
 6 Commission.
 7 Obviously, Bilben does not have
 8 confidence in the position that the substantial
 9 evidence in the record supports denial of the permit or
 10 he would not be suggesting a remand as an alternative.
 11 The arbitrariness of the Planning
 12 Commission's decision is underscored by the fact that
 13 another material site in Anchor Point was heard by the
 14 same commission on the same night. The Blauvelt pit is
 15 27-and-a-half acres, while the Beachcomber pit is 27.7
 16 acres.
 17 The testimony regarding Walt Blauvelt's
 18 material site was remarkably similar to the testimony
 19 regarding the Beachcomber material site; however, three
 20 people testified about the negative impacts of the
 21 Blauvelt material site while approximately 30 testified
 22 regarding Beachcomber. The extreme difference between
 23 the two decisions the Planning Commission reached
 24 cannot be rationally explained.
 25 While some commissioners may not like the

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1 standards and conditions in the material site code, is
 2 it not the Planning Commission's job to second guess
 3 the standards established by the assembly or ignore
 4 that the only conditions that may be placed on a
 5 material site are those set forth in KPB .050?
 6 The Planning Commission must work within
 7 the legislative standards established by the assembly.
 8 Staff does not believe there is legal support for
 9 upholding the Planning Commission's findings of fact or
 10 conclusions of law.
 11 Indeed, the Planning Commission gave no
 12 explanation for its diversion from the legal
 13 requirements. The Planning Commission's findings were
 14 conclusory and inadequate to support abandoning the
 15 well-established approval process for material site
 16 CLUPs.
 17 Conclusion, the denial of the material
 18 site based on perceived inadequate buffers is
 19 inconsistent with the many decisions issued by the
 20 Planning Commission where similar complaints have been
 21 raised.
 22 In those cases the Planning Commission
 23 enhanced the buffers to the extent allowed by the code.
 24 The Planning Commission may change course as its
 25 expertise and experience suggests or requires, but when

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1 they do so, they must provide a reasoned analysis
 2 indicating that prior standards and policies are being
 3 deliberately changed, not casually ignored.
 4 The Planning Commission made no analysis
 5 of why it would deny this material site as opposed to
 6 other material sites the very same meeting. It was
 7 arbitrary and unreasonable for the Planning Commission
 8 to deny this material site permit.
 9 Rather than relying on its own expertise
 10 and experience in administering KPB 21.29, it ignored
 11 the expertise and experience. As such, the hearing
 12 officer should not give consideration to the Planning
 13 Commission's interpretation in this case.
 14 In fact, it would be difficult to give
 15 much consideration to the Planning Commission's
 16 interpretation because they didn't discuss the
 17 ordinance, question staff or the witnesses in any
 18 meaningful way, or attempt to fashion more appropriate
 19 buffers.
 20 I'm sorry for being so lengthy. I know I
 21 went long there. I have submitted, and I believe you
 22 have a drawing and a cover letter that provides a grid
 23 and a profile to respond to the opposition's drawings
 24 that were submitted.
 25 And so we feel that this drawing done by

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1 a licensed registered surveyor is a more accurate
 2 representation. And that at worst it shows that as
 3 long as the berm is placed close to the excavation site
 4 as recommended by staff, they are showing that it would
 5 have to be 24 feet tall at Echo Street.
 6 But that's hundreds of feet away from
 7 where we propose to put the berm, which is right at the
 8 excavation site that will probably last for three to
 9 five years without any movement. It's not a
 10 large-scale operation. That's on page 410 or 412 in
 11 your packet, that drawing.
 12 **UNIDENTIFIED SPEAKER:** You think it is.
 13 **EMMITT TRIMBLE:** I think it is, yeah.
 14 **COMMISSIONER FOSTER:** Is that Mr.
 15 Trimble? Does anybody have any questions for Mr.
 16 Trimble?
 17 **COMMISSIONER BOKENKO-CARLUCCIO:** The
 18 question that I have is -- he just spoke to a drawing
 19 on page 410, and I have no 410. So I don't know what
 20 he's referring to.
 21 **MR. WALL:** Mr. Chairman, he's referring
 22 to a letter from his surveyor, which begins on page
 23 41.69 of your desk packet, 41.70, and 41.71.
 24 **COMMISSIONER FOSTER:** Thank you. Go
 25 ahead.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** I'm
 2 sorry, I have no questions at this time.
 3 **COMMISSIONER FOSTER:** Ms. Ecklund, yeah.
 4 **COMMISSIONER ECKLUND:** I have a question
 5 for Mr. Trimble.
 6 **EMMITT TRIMBLE:** Yes, ma'am.
 7 **COMMISSIONER ECKLUND:** So the large
 8 amount of reading that you did was all from our staff
 9 or our attorneys during the hearing process with the
 10 hearing officer, that was their presentation to the
 11 hearing officer? It was hard to determine where you
 12 began and ended.
 13 **EMMITT TRIMBLE:** It was all from --
 14 **COMMISSIONER ECKLUND:** Our attorney?
 15 **EMMITT TRIMBLE:** -- borough staff and
 16 borough attorney. It was the opening statement
 17 prepared for the appeal, and then it was the reply to
 18 the opponent's opening statement.
 19 **COMMISSIONER ECKLUND:** From our staff?
 20 All from our staff?
 21 **EMMITT TRIMBLE:** Yes, correct, from two
 22 different angles. There were two attorneys.
 23 **COMMISSIONER ECKLUND:** Two attorneys --
 24 **EMMITT TRIMBLE:** Yeah, so they responded
 25 to --

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1 **COMMISSIONER ECKLUND:** -- on our staff?
 2 **EMMITT TRIMBLE:** -- both of them.
 3 **COMMISSIONER ECKLUND:** Okay, thank you.
 4 **COMMISSIONER FOSTER:** Yes, Ms. Carluccio.
 5 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes, I
 6 do have a question, Mr. Trimble.
 7 So when you're talking about the berm,
 8 you're basically talking about a moving berm that's
 9 going to go along with -- as you excavate, then at the
 10 edge of that and when you decide to go further, you'll
 11 put up another berm, another 50 feet or 25 feet or
 12 whatever? But the berm will be 12 feet, or how high
 13 will the berm be?
 14 **EMMITT TRIMBLE:** Through the chair. Yes,
 15 ma'am, it would be as recommended, a 12-foot berm.
 16 There is currently about a 14-foot berm there that's
 17 running east to west with an area of about a half acre
 18 that's been stripped, which probably would not much
 19 happen this year.
 20 But I'm proposing, and was on site with
 21 Mr. Wall a few days ago, to go ahead and put a
 22 substantial berm 14 feet high if necessary towards the
 23 back of the Phase 1, in that area. And we looked at it
 24 on site and talked about the area to the east is
 25 actually where we're recommending a 12-foot berm.

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1 There is actually very dense timber there
 2 for a portion of that, and we discussed the possibility
 3 of not needing a berm there because of -- and the road
 4 is down below the level of the ground.
 5 And I would be moving, yes -- to
 6 answer -- I would be moving that berm when necessary,
 7 keeping it close to the excavation. And then we're 25
 8 feet below that level.
 9 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
 10 through the chair, one other question. So in the area
 11 that is vegetated --
 12 **EMMITT TRIMBLE:** Uh-huh.
 13 **COMMISSIONER BOKENKO-CARLUCCIO:** -- do
 14 you plan on leaving that also and only taking the
 15 vegetation down as you move the gravel pit?
 16 **EMMITT TRIMBLE:** I spent a lot of
 17 money -- ma'am, through the chair -- I spent a lot of
 18 money making that vegetation look like it does right
 19 now. It was a mess when I bought it.
 20 So yes. I don't anticipate having a big
 21 operation there, so having the berm close to the
 22 excavation, the pastures and the trees remain just like
 23 they are now for an extended period of time, depending
 24 on what the market is for sales of gravel. I primarily
 25 want to use the gravel for my own projects.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
2 thank you.
3 **COMMISSIONER FOSTER:** Are there any other
4 questions? Mr. Venuti.
5 **COMMISSIONER VENUTI:** Thank you for
6 coming, Mr. Trimble.
7 So my question is, what is the condition
8 of the Anchor River bridge?
9 **EMMITT TRIMBLE:** Through the chair.
10 It's, in a sense, been condemned to weight standards.
11 So gravel trucks can't -- they are doing it, not
12 anything to do with me, but there shouldn't be
13 anything -- I think it's either 10,000 or 11,000 pounds
14 limit. And it's proposed to be replaced. But it may
15 be two or three years.
16 **COMMISSIONER VENUTI:** So any product you
17 produce would go down the Old Sterling?
18 **EMMITT TRIMBLE:** Yes, sir.
19 **COMMISSIONER VENUTI:** Okay, thank you.
20 **COMMISSIONER FOSTER:** Any other questions
21 or comments? Now, thank you Mr. Trimble. Oh, one
22 more.
23 **MARY TRIMBLE:** Mary Trimble, I'm the
24 other half of Beachcomber, LLC. And my testimony is
25 quite a bit shorter.

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1 When we first started this permit
2 application process, we talked to the mayor about it,
3 and he said simply, "Follow the rules." And we have
4 been following the rules.
5 We hired an engineering firm to do the
6 surveys, drawings, and to work with us and the staff to
7 make our application complete.
8 Based on that, the staff did recommend
9 our permit for approval. Once again, we have worked
10 with the staff, and now are clearly stating in the
11 permit that our berms will be where they are most
12 effective, between the vegetative buffer and the
13 extraction site as we have intended to do all along.
14 The staff is again recommending approval.
15 The planning director Bruce and the borough attorney
16 have all visited the site and saw no problems with our
17 plan.
18 The borough attorney, in her briefs as
19 Emmitt already told you, interpreted the code, stated
20 the case law to back up her position that the permit
21 should be granted. These are professional, educated
22 people who represent the borough interests and who
23 interpret and enforce the code.
24 Emmitt and I became Anchor Point
25 residents in 1976, and we owned a tackle shop on the

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1 Anchor River for three years, so we have firsthand
2 experience in a tourist business there. Even though
3 our campgrounds and state park are a valuable resource
4 that we all enjoy, they contribute very little to the
5 town's economy.
6 The gravel industry is the economic
7 driver that helps many year-round businesses thrive.
8 The trickle-down effect is huge. We could not have
9 developed 150 residential home sites in the area
10 without an affordable source of gravel close by.
11 Currently we own 42 parcels of land,
12 eight homes, and a commercial building for a
13 significant combined tax assessed value. We also own a
14 construction company with our daughter, and we're
15 building new homes in town. Preserving property values
16 is very important to us.
17 With this permit we will only be a mom
18 and pop business and are not intending, able, or
19 willing to compete with the large operations, it just
20 isn't practical. We don't have equipment, so we will
21 hire local contractors that we know do a good job.
22 The permitted 27.7 acres, minus the
23 buffers, is actually less than 20 acres, planned in
24 three phases, and will be reclaimed as required by the
25 permit.

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1 As Emmitt said, our prime use for the
2 gravel will be to improve our other properties and sell
3 to the limited local market.
4 The contour of the surrounding area has
5 been mentioned many times, and erroneously described as
6 an amphitheater or bathtub. I submitted a colored
7 contour map, which I don't know what page it is in the
8 packet, but it clearly shows the true situation.
9 The higher area above our property runs
10 in a straight northeast/southwest line. Emmitt and I
11 believe in rights with responsibilities. And this is a
12 situation where we are agreeing to take on
13 responsibilities in exchange for the right to excavate
14 gravel on our property.
15 The opposition has the right to protect
16 their property but are unwilling to accept the fact
17 that they have a responsibility to do what they can to
18 minimize visual and noise, if it is bothersome, by
19 building a fence or a berm on their property or/and
20 installing blinds that raise up from the bottom so they
21 still maintain their inlet view.
22 They do not have rights to our land, so
23 we should not bear all the responsibility for
24 mitigating their perceived discomfort. As Emmitt said,
25 in fact our land is not a wildlife refuge, a bird

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1 sanctuary, or a state park. It is our private
 2 property, and we have the right to put it to its
 3 highest and best use, which is defined -- which being
 4 realtors, we deal with this quite a bit, highest and
 5 best use.
 6 It is the likely use, selected from a
 7 number of available choices, to which an area of land
 8 may be put based on what is physically possible in
 9 compliance with zoning and building regulations and
 10 which produces the most profitable present value of the
 11 land.
 12 As we have said before, this is an
 13 amazing legacy property for our family. We desire to
 14 build a home there so we can be close to our
 15 grandchildren who are on the lot adjoining Phase 3.
 16 Finally, 21.29 attempts to balance a
 17 variety of public needs, including residential area
 18 protection, a private party's right and ability to use
 19 their land to its highest and best use, and the
 20 public's need for gravel.
 21 Whether one agrees or not with 21.29, it
 22 is the law and standards that control what the Planning
 23 Commission can or can't do.
 24 Planning Commissioners have a fiduciary
 25 obligation to the taxpayers to thoroughly read and

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1 listen to what is presented, dismiss any irrelevant
 2 information, and make an informed decision based solely
 3 on the code and substantiated facts, thank you.
 4 **COMMISSIONER FOSTER:** Thank you. Are
 5 there any questions for Ms. Trimble? Seeing and
 6 hearing none, is there another statement?
 7 **KERI-ANN BAKER:** Yes, this will be a
 8 final statement. Keri-Ann Baker on behalf of the
 9 applicant, Beachcomber.
 10 You've got a very lengthy and heavy
 11 packet, and that packet contains our application for
 12 conditional land use together with our supporting
 13 documents. We've also asked the engineer, Gina
 14 DeBardelaben, to be here. She can answer any technical
 15 questions that you might have.
 16 You also have a staff report, a couple of
 17 staff reports, but the most recent staff report done in
 18 March.
 19 So what happened is after we all went
 20 back from this hearing, we went back through the
 21 application materials and we took a look at the permit
 22 conditions contained in 21.29.050. Because at the end
 23 of the day, that is really what we're here to look at,
 24 is the mandatory conditions that are set out in
 25 21.29.050 as compared to my client's application

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1 together with their supporting documentation.
 2 And when you take out the personal
 3 attacks, the personal attacks that have been made
 4 against my clients, the personal attacks that have been
 5 made against the commissioners, at the end of the day
 6 this doesn't have to do with a popularity contest, it
 7 has to do with the standards that are contained in
 8 21.29.050.
 9 Now, your staff, I believe, has gone
 10 through and done the same thing as us -- I don't know,
 11 you can ask them -- but gone back, looked at the
 12 application, analyzed it, looked at the permit
 13 conditions to determine whether they were met or
 14 exceeded.
 15 My client's position is that he has -- or
 16 they have met the codified conditions in the code.
 17 They have met the buffer requirements. They have met
 18 the water source separation. They have met the
 19 monitoring wells.
 20 And what I have here is a document where
 21 I've gone ahead and I've analyzed all of the conditions
 22 in 21.29.050, I compared it to the materials submitted
 23 by my clients, I've compared it to all of the staff
 24 reports that have been prepared by the borough
 25 representatives, and it will show you exactly what

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1 pages in the record -- and I do apologize, I was going
 2 to the hearing record -- where the information is
 3 showing that my client has met the mandatory conditions
 4 in 21.29.050.
 5 So if we take out all of the personal
 6 attacks and all of the animosity of this case, really
 7 what it comes down to is, does my client meet the
 8 mandatory conditions in 21.29.050 or not? And we
 9 believe the record clearly shows the substantial
 10 evidence that they do. So at the end of my conclusion,
 11 I'll go ahead and turn this in.
 12 So we would urge at this point that --
 13 either at this hearing or the 22nd if it's continued,
 14 that the commissioners take a look at the record and
 15 they take out everything else and they look at the
 16 conditions and they look at my clients' application and
 17 supporting materials, and they look at the staff
 18 report, and they look at the staff permit conditions.
 19 And when you look at that and you take out everything
 20 else, it's clear that my client has satisfied those
 21 mandatory conditions.
 22 And under the law, they have a right to
 23 receive this permit. I would just point out that we do
 24 have our engineer, if there were any technical
 25 questions, and she would be happy to answer them as

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1 well.

2 **COMMISSIONER FOSTER:** Does anybody have

3 any questions for the attorney? How about for the

4 engineer? Not at this time, thank you.

5 **KERI-ANN BAKER:** Thank you.

6 **COMMISSIONER FOSTER:** Okay, at this point

7 I will be opening the public hearing. And also to let

8 you know that we will -- I will entertain a motion to

9 continue this public hearing and not close it until the

10 22nd.

11 So if you've got something to say now or

12 you want to wait until then, that's perfectly up to

13 you, but the public hearing is now open. For anybody

14 who has any comments, please sign in.

15 And I will, again, read from the rules by

16 which public hearings will be conducted.

17 Persons wishing to testify must wait for

18 recognition by the chair and state their name and

19 address for the record at the microphone provided by

20 the public comment.

21 Each speaker is limited to five minutes

22 unless they have a prepared statement, in which case

23 they may request additional time. All questions will

24 be directed to the chair. All questions and comments

25 will be kept to the subject at hand and shall not deal

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1 with personalities. And the public shall maintain

2 decorum at all times and treat all testifiers with

3 respect. No applause or verbal outbursts will be

4 allowed.

5 Does anybody want to testify?

6 **HANS BILBEN:** Just a clarification before

7 we start on this, Mr. Chair. We've been told --

8 **COMMISSIONER FOSTER:** State your name,

9 please.

10 **HANS BILBEN:** Hans Bilben, Anchor Point.

11 Mr. Wall has advised us of this request

12 for a continuance, and he's also advised us that people

13 that wish to speak tonight would be allowed to speak

14 again at the continuance, is that correct?

15 **COMMISSIONER FOSTER:** As far as I know,

16 yes.

17 **HANS BILBEN:** Okay. Let me go ahead

18 then. A couple things here. First off, a mom and pop

19 operation doesn't take out 50,000 cubic yards per year

20 for 15 years. So you call it what you want, but it's

21 not a mom and pop operation. If it was, I think we

22 could probably deal with it, but not 50,000 cubic yards

23 a year, and that's what the permit stipulates, and it's

24 a 15 year.

25 They talk about buying and selling

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1 houses. Who is buying and selling these houses? It's

2 people that move to Anchor Point, a lot of them live in

3 this area. A lot of people that are upset about this

4 are people that bought properties through the Trimbles,

5 and now after investing their money they are going to

6 have a gravel pit in their front yard. I don't think

7 that's quite acceptable.

8 One thing, I'm a member of the Anchor

9 Point Advisory Planning Commission, and the chairman of

10 the Planning Commission, the local commission, and

11 myself have repeatedly tried to convince the planning

12 department to allow our group in Anchor Point to hear

13 this application. They wanted the community to weigh

14 in, make a recommendation to this commission, and the

15 request has been denied.

16 Wouldn't you think it would be

17 appropriate maybe if the locals were allowed to weigh

18 in in Anchor Point? And that didn't happen.

19 When I asked the borough planner how it's

20 possible that the applicant, without any legitimate

21 justification for a continuance, is allowed to dictate

22 the date he feels up to defending his application. He

23 said that the applicant has special rights. He did pay

24 the \$300 application fee, you know. So for \$300 he has

25 rights that are over and above the rights of 60-plus

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1 neighbors? We have asked for a continuance for this

2 hearing on a couple of occasions and been denied.

3 And the reason for that is it's a

4 recreational/residential area. A lot of the residents

5 of that particular area are snow birds. They worked

6 and lived in Alaska for many years, they bought

7 property in Anchor Point, now they winter someplace

8 else. They won't be back until May.

9 We'll requesting that if there is a

10 continuance, that it would be until May 28th. The

11 reason for that is so that the residents that are

12 affected by this application will be here and able to

13 speak in person.

14 For \$300 he lays claim to the planning

15 department, the borough attorney, unlimited financial

16 backing. And it's like, well, I brought 300 bucks. If

17 I throw this out, can we get rights, too?

18 I mean, it kind of boils down to you say

19 that the applicant has special rights but we don't. So

20 there is something wrong with this system.

21 In the July hearing there was findings of

22 fact from this Planning Commission, and thank you for

23 making a good decision in July, and it was the correct

24 one. There was some problems.

25 The findings of fact said the noise will

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1 not be sufficiently reduced with any buffer or berm
 2 that could be added, which is true. Number two, the
 3 visual impact to neighboring properties will not be
 4 reduced sufficiently, which is also true.
 5 The stated intent of these findings is
 6 very clear. The application does not meet the minimum
 7 requirements of the code. And the exact wording and
 8 contents of the findings of fact were disputed by the
 9 hearing officer, and probably rightfully so. The main
 10 reason that she wanted a remand is because she wanted
 11 to see these findings of fact linked to specific
 12 conditions from 21.29.050, and she wanted to see the
 13 substantial evidence going along with it.
 14 I don't think I'm mistaken, but I believe
 15 the deputy borough attorney was present and involved
 16 with the wording of those stated findings, and
 17 shouldn't she be knowledgeable enough to advise you
 18 people on the correct contents?
 19 The Planning Commissioner's handbook
 20 actually goes through what findings of fact should
 21 state, and that was kind of lacking.
 22 This time we'll propose adequate findings
 23 of fact for you to adopt, along with the substantial
 24 evidence that was admitted from the findings in the
 25 previous hearing.

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1 The hearing officer further stated that
 2 the code does not afford the commission the discretion
 3 to judge the effectiveness of the conditions identified
 4 in the code. I agree with that.
 5 As Planning Commission members, you can't
 6 say, "Hey, berms don't work." Berms work, everybody
 7 knows that, it's a standard in the industry, and that's
 8 why they use buffers and berms.
 9 What the Planning Commissioners -- what
 10 you guys have to do is determine from 21.29.050 if the
 11 berms are appropriate -- pardon me, if they are of
 12 sufficient density and sufficient height.
 13 So you don't have to say, "Berms and
 14 buffers don't work," you have to say, "Are they of
 15 sufficient density and sufficient height to screen
 16 neighbors from the proposed use?" And the answer in
 17 this case is absolutely not. We will have some
 18 drawings that we won't submit until the continuance of
 19 this hearing.
 20 Those drawings will show you that -- from
 21 some of these houses, from line of sight -- and we use
 22 line of sight from the upper levels of these houses,
 23 because we pay taxes on those upper levels, the borough
 24 gladly accepts our money for them -- line of sight from
 25 some of these houses is 53 above the floor of that.

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1 Now, how are you going to protect
 2 somebody that's 53 feet above the floor of this pit
 3 with a 12-foot berm? Razzle dazzle maybe, but I don't
 4 think it's quite possible.
 5 The fact that in the initial application
 6 there was six-foot berms that were supposed to protect
 7 people that were 53 feet above this thing, it was
 8 ludicrous to think that that was even in the
 9 application. The commissioners did the right thing,
 10 and hopefully they will do it again.
 11 As commissioners, you're required to make
 12 your decisions based upon the law. In this case, the
 13 law is the code. It's written in plain English and
 14 adopted by the borough assembly. The hearing officer
 15 is certainly entitled to her opinion, but it's just an
 16 opinion. She can't change the law as adopted by this
 17 assembly.
 18 The code, yes, it unfortunately favors
 19 material site applicants, but there are a few
 20 protections in place for neighboring property owners.
 21 Those few protections need to be fiercely protected by
 22 this Planning Commission.
 23 There aren't many things that you can say
 24 that can help the residents in this neighborhood, but
 25 because of the way this code is written, it does state

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1 in 21.29.050 that berms and buffers have to be of
 2 sufficient height and density. And I think you're
 3 going to see through the evidence that that's not the
 4 case.
 5 With all the supporting evidence
 6 presented in the past, plus what you're going to see
 7 and hear tonight, you'll see that this application is
 8 ill-conceived, can't possibly comply with the mandatory
 9 conditions and standards set forth in the code, and
 10 it's just wrong for the Anchor Point community. If
 11 ever there was an application -- pardon me?
 12 **COMMISSIONER FOSTER:** Sir, are you
 13 getting close to the end?
 14 **HANS BILBEN:** I am, I'm two seconds --
 15 well, five seconds away.
 16 **COMMISSIONER FOSTER:** Okay.
 17 **HANS BILBEN:** If ever there was an
 18 application that should be denied and could be denied
 19 justifiably because of the way the code is written and
 20 because of the way this application is written, based
 21 upon the protections afforded neighboring property
 22 owners, this application should definitely be denied
 23 again by the Planning Commission, thank you.
 24 **COMMISSIONER FOSTER:** Thank you. Any
 25 questions? Yes, Ms. Carluccio.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes,
 2 thank you very much for your comments. What I
 3 wanted -- what I noticed that -- you mentioned that you
 4 were going to give us findings of fact and that you
 5 were going to give us documentary information that
 6 would substantiate your claim for not having this
 7 gravel pit.
 8 What I ask you to do -- I know you said
 9 you were going to save it for the next meeting, but
 10 please make sure you get it to the staff in time that
 11 we get a chance to review it before we come to the
 12 meeting.
 13 **HANS BILBEN:** Right, we will do that.
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** Because
 15 tonight we ended up with this packet --
 16 **HANS BILBEN:** 322 pages, I saw it.
 17 **COMMISSIONER BOKENKO-CARLUCCIO:** -- that
 18 just got turned in, and I'm sorry, I read pretty fast,
 19 but not that fast.
 20 **HANS BILBEN:** Right. We will probably
 21 present it at the hearing and get it so it's fresh in
 22 your hands. It's only six pages, so it's not -- it's
 23 pictures.
 24 **COMMISSIONER BOKENKO-CARLUCCIO:** But it
 25 still would be good to have it prior to the meeting.

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1 **HANS BILBEN:** Okay.
 2 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
 3 thanks.
 4 **COMMISSIONER FOSTER:** Any other
 5 questions? Okay, next testifier, please. State your
 6 name and --
 7 **MARK CLAYPOOL:** Mark Claypool from Kenai.
 8 I'm here to represent Silver King RV Village in Anchor
 9 Point on Anchor Point River Road.
 10 I'm also the president of the association
 11 there. I've gotten a lot of calls from a lot of people
 12 that oppose this inside the park. I have also got
 13 calls from people that didn't get their letter in time
 14 to get the e-mail back by the 22nd.
 15 So a continuation of this would be
 16 greatly appreciated for their efforts, because they
 17 come back here in the summer. And they come here to
 18 enjoy a summer here and peaceful and quiet, and then
 19 these dump trucks are going to be coming down through
 20 there.
 21 And it don't make any sense to me to have
 22 this kind of activity on a road that's already
 23 fractured and in poor shape to where as a boat owner
 24 and an RV owner, we pull our boats down to the beach,
 25 we drive our RVs down to the beach, and we have to

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1 drive slow because of the condition of the road.
 2 But these dump trucks are not going to
 3 run 25 mile an hour. They are going to be pushing
 4 hard, they run by the load, and they are not going to
 5 care about the noise.
 6 And I can't hold hope that -- it said in
 7 the paper that we picked up tonight that there is going
 8 to be a bond put down in case the dust rises and there
 9 will be -- Beachcomber will be held liable if they have
 10 to -- you know, if the dust comes up and they are not
 11 watering the roads, or if the noise is bad.
 12 I can't hold hope that the state is going
 13 to contact me and say, "Okay, we'll be right out." Or
 14 if I call them and tell them, I don't think they are
 15 going to come out here and stick their nose into
 16 Beachcomber's business and say, "Come on, you guys got
 17 to slow down, or you guys got to quit making so much
 18 noise."
 19 We have people that walk down through
 20 there with their animals going to the beach. There is
 21 no place to get off the side of the road. I don't know
 22 what these people are going to do. And the dump trucks
 23 ain't going to be careful of them. And there is also
 24 businesses on this road, a couple businesses that are
 25 just now trying to make it.

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1 Well, here is the business, the big guys
 2 are going to knock these little guys out. It's just
 3 not fair to these people, it's not fair to the people
 4 that live on this road, or from Danver to the New
 5 Sterling. But yet, you know, they want this to happen.
 6 And I just don't see any reason for it.
 7 And I'd like to ask for a continuation on
 8 this, so that people when they come back, they can
 9 voice their own opinion. I thank you.
 10 **COMMISSIONER FOSTER:** Sir, you would
 11 rather have a continuance from the -- not to the 22nd,
 12 but to the next --
 13 **MARK CLAYPOOL:** Actually, I'd like to see
 14 it continued probably into May sometime or maybe even
 15 June. I mean, these people, a lot of them don't come
 16 back until June.
 17 **COMMISSIONER FOSTER:** Okay, thank you.
 18 Any -- anybody have any questions?
 19 **MARK CLAYPOOL:** Thank you.
 20 **COMMISSIONER FOSTER:** Next testifier,
 21 please. State your name and your address.
 22 **DAN SYME:** Dan Syme, 73530 Seabury Road.
 23 I'm up over the hill from this proposed gravel pit
 24 within the boundaries of a half mile though.
 25 I guess my concern is here, you guys as a

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1 council and chair, Planning Commission, my concern is
 2 are you looking out for the safety for those
 3 constituents that you guys represent? And I haven't
 4 heard anything about -- very little about dust control.
 5 A 12-foot berm isn't going to hold the dust in.
 6 We just mentioned about the roadway.
 7 Where is the safety into all these state parks and
 8 stuff that are right along that roadway, right across
 9 the street from this gravel pit? There is kids out
 10 there all the time. I don't hear anything about the
 11 safety of those kids.
 12 I guess I would say to you guys, I hope
 13 you really look at this permit. It's time for a
 14 change. This free gratis of just putting a gravel pit
 15 wherever you think -- I don't think anybody that lives
 16 in the City of Kenai, because he has an acre, can have
 17 a gravel pit next to you.
 18 There has to be some gives and takes on
 19 both sides, I realize that. But this place and this
 20 pristine area, boat launches, state parks, residential
 21 areas, people walking their dogs, to me we need to take
 22 special attention to this. This is just not as usual,
 23 let it go down the lane and we'll approve it.
 24 Public safety means something. And I
 25 would like to see that happen to this council, thank

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1 you.
 2 **COMMISSIONER FOSTER:** Are there any
 3 questions, comments? Thank you. Thank you, not at
 4 this time. Next testifier, please.
 5 **RICHARD CARLTON:** My name is Richard
 6 Carlton. I live in Anchor Point not far from Mr. Syme,
 7 73500.
 8 I'd like to echo the safety issue, but at
 9 the same time I'd like to kind of bring -- you know,
 10 you could approve a facility, an extraction facility,
 11 you have certain guidelines, certain rules that have to
 12 be met for these people to apply -- to make their
 13 application out and for you guys to even look at the
 14 application.
 15 But what isn't on those applications,
 16 if -- from what I've seen in this last few months is
 17 going to meetings and things, is that -- just like what
 18 Dan was saying, you know, the fact that there is no
 19 shoulders on this primary haul road that gets them to
 20 the Old Sterling Highway, which is already pretty bad
 21 shape after the -- Hilcorp had their trucks running up
 22 and down it and all the neighbors had to put up with
 23 the sound and everything the last few months over that.
 24 This little stretch is about a half a
 25 mile, and like I said, no sides on it at all. Mr.

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1 Trimble's daughter, I had to stop last summer. She was
 2 pushing her baby in a stroller, and I had to just wait
 3 for the cars and the boats to go by before I could go
 4 around her. I mean, she was just going out for a walk.
 5 It's just the fact that, you know, what
 6 makes sense and what doesn't make sense doesn't seem to
 7 be applying to this particular event.
 8 A gravel pit amongst the state parks, RV
 9 parks, and, you know, cabin -- little business -- like
 10 the gentleman said, there was a couple businesses
 11 there, and all these people that come, wait all year
 12 long to come to this place to vacation.
 13 My wife and I, that's what we -- since
 14 1996 we would save up our vacation, come up to this
 15 location, and spend -- eventually we got up to a whole
 16 month. And so we got to be here for a whole month.
 17 Well, when we retired eventually, we went
 18 ahead and we live here now. And so when somebody
 19 wanted to desecrate this little jewel to us, naturally
 20 we've put a lot of time into trying to figure out why,
 21 you know. And I still haven't -- you know, I haven't
 22 figured out why, out of 96 applications, this happens
 23 to be the very first one.
 24 But it isn't really that hard to figure
 25 out when you consider not only all the residences that

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1 are around there, but the actual location, where it is.
 2 I realize there is no zoning, but it's
 3 not right. And anybody can say that it is. I'm sorry,
 4 they are really just not looking. They are not going
 5 for a walk in this area. That's all I have, thanks.
 6 **COMMISSIONER FOSTER:** Thank you. Any
 7 questions or comments for the speaker? Not at this
 8 time, thank you. Yes, next.
 9 **KATIE ELSNER:** Hi, good evening. My name
 10 is Katie Elsner, it's E-l-s-n-e-r. I don't actually
 11 live in Anchor Point. I'm a local attorney, and I've
 12 been helping the people who have been impacted or who
 13 will be impacted by this proposed site.
 14 And I just wanted to take the opportunity
 15 to discuss a little bit of the law with you tonight.
 16 And I will, in fact, be presenting proposed findings to
 17 you all and will do that in advance of the next
 18 hearing, and then I can sort of explain those proposed
 19 findings at that point in time.
 20 But there has been some notion that your
 21 authority is somewhat constrained here. And what the
 22 code does make very, very, very clear is that you are
 23 the body that is both vested with the authority and the
 24 responsibility to determine what site and noise impacts
 25 can be reduced sufficiently, and whether or not those

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1 reductions are, in fact, sufficient.
 2 And that is actually contained within the
 3 conditions, which can be found in 21.29.050, which
 4 requires you, as the body who applies the facts to the
 5 law, to determine what vegetation and fencing will be
 6 of sufficient height and density to provide visual and
 7 noise screening of the proposed uses deemed appropriate
 8 by you.
 9 And so the code actually requires that
 10 you determine that the buffer and berming proposal is
 11 both sufficient and appropriate to screen the nearby
 12 land owners and the nearby properties.
 13 And in order to approve an application,
 14 you must find that these conditions allow the standards
 15 to be met. And the standards that we're talking about
 16 here are, of course, 21.29.040(a)(4) and (5), which
 17 require that these conditions are both sufficient and
 18 appropriate to minimize these noise and visual impacts.
 19 And as far as your ability to deny an
 20 application when you cannot make a finding that the
 21 impacts are going to be minimized, that authority
 22 specifically is granted to you under 21.25.050(b),
 23 which states that before granting a permit, you must
 24 find at a minimum that the proposed activity complies
 25 with the code.

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1 And so you must find that these minimum
 2 standards are met, and these minimum standards are
 3 clearly met, and the conditions require that the
 4 berming, that the screening, be both sufficient and
 5 appropriate.
 6 And so if you disagree with the notion
 7 that you are un -- you're disallowed from denying or
 8 disallowing a permit when you cannot find that these
 9 conditions are met, you cannot find that these
 10 standards are met, you are allowed to, you know, break
 11 away from prior precedent.
 12 And if you believe that that prior
 13 precedent is clearly erroneous, the law does allow you
 14 to break away from those prior precedents and those
 15 prior interpretations of the code.
 16 But I would submit to you that you need
 17 not do that, because an application that does not
 18 provide sufficient screening, sufficient noise
 19 screening, sufficient visual impact screening, is
 20 actually just an incomplete application.
 21 And so in the event that you find that
 22 the applicant's submission -- that the conditions that
 23 the applicant is proposing in an effort to screen
 24 nearby neighbors and other properties that already
 25 exist is not sufficient and not appropriate, then I

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1 also submit to you that you could deny that application
 2 as it is an incomplete application because it does not
 3 meet the buffer requirements under the code.
 4 And so, like I said, I will propose
 5 actual proposed findings of fact for your consideration
 6 in advance of the next hearing and then be available in
 7 the event that there are any questions in support of
 8 those findings of fact.
 9 **COMMISSIONER FOSTER:** Are there any
 10 questions at this time?
 11 **KATIE ELSNER:** Thank you.
 12 **COMMISSIONER FOSTER:** Next testifier.
 13 **PETE KINNEEN:** My name is Pete Kinneen.
 14 **COMMISSIONER FOSTER:** You turned the
 15 light off. There you go.
 16 **PETE KINNEEN:** Oh yeah, all right. There
 17 is a major disconnect in this whole situation, not just
 18 in this particular application, but in what you are
 19 doing up there, and I'm compelled to talk about it.
 20 This is basically a head-on collision,
 21 and this is the time to get it straightened out. You
 22 are being told when you go through the whole tale that
 23 they are putting to you, that you are really nothing
 24 but a rubber stamp, that's what they are saying. That
 25 you cannot deny the application because the assembly

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1 has dictated that gravel pits get priority over
 2 everything else.
 3 We have queried most of the assembly.
 4 The assembly denies it. There is nobody on the
 5 assembly that will admit to that. So we say terrific.
 6 Where are the assembly people? Where is the director
 7 from the assembly that says that you are mandated to
 8 issue permits for a gravel pit?
 9 And incidentally, this is not a gravel
 10 pit. Gravel pits are typically little backyard
 11 operation. This is a mine. This is a full-blown
 12 processing mine with a proposed asphalt plant, that's
 13 what we've heard from the applicant in previous
 14 presentations. So this is a really big deal.
 15 And you have vested in you -- you are our
 16 legislature. You have higher authority than anybody
 17 over here. You do not work for them. You work for us.
 18 And all that we're asking is to follow the law.
 19 I've made a presentation before, it's in
 20 your packet under my name, Pete Kinneen, look it up.
 21 And we just had an attorney tell you in plain language
 22 that the code says that not only do you have the
 23 authority to deny, despite what you're hearing, and we
 24 lay it out, 1, 2, 3, 4, it starts with the legislative
 25 intent from the assembly, it's right in the code, it

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1 says "intent." The intent is to protect the
 2 preexisting properties.
 3 We were there mostly because we got
 4 buffaloes by the Trimble clan that we have covenants,
 5 we have protective zoning, self -- volunteer zoning.
 6 And we were told by them that this last little flat
 7 area down there at the bottom of the hill would be a
 8 high-end subdivision, and it would certainly not be
 9 motivated for gravel.
 10 And we hear incessantly about rights,
 11 that this is unzoned, and that the assembly is telling
 12 you that unzoned means the Wild West. It's not true,
 13 okay, it's not true.
 14 When it comes to gravel, there is three
 15 levels of gravel extraction. The first is -- you can
 16 disturb one acre, okay, almost anywhere you are unless
 17 it's zoned out.
 18 The second is up to two-and-a-half acres,
 19 then you have to go get an administrative approval.
 20 But it very clearly says that you cannot disturb more
 21 than two-and-a-half acres without your approval. And
 22 that's a proactive approval.
 23 And the code is incredibly clear that,
 24 okay, you cannot mandate out of whole cloth something
 25 more than berms and buffers. And so that is the only

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1 mandatory thing that you can do. But please go back
 2 and look at this, and it says "minimum six-foot berm."
 3 And we're going to have excellent
 4 evidence, excellent evidence using the borough's own
 5 data that will show you that in this particular
 6 circumstance, because of the topography of it, it's a
 7 very unique topography, that there are no berms and
 8 buffers that will meet the code. And therefore because
 9 it cannot meet the code, the standards and conditions,
 10 then it is your duty to deny.
 11 **COMMISSIONER FOSTER:** Thank you, Mr.
 12 Kinneen. Any questions?
 13 **PETE KINNEEN:** Sir, one last sentence,
 14 please.
 15 Also in the packet is testimony that we
 16 brought up before. And in this particular case the
 17 planning department met with the applicants' engineer,
 18 and it's in the record, we will point this out to you,
 19 where the staff and the applicants are saying that
 20 the -- and I'm quoting them, I'm quoting them -- that
 21 the berms are not sufficient to protect. And that's
 22 just down on the lower level. So when you go to the
 23 higher levels, it's clear from their own testimony, and
 24 we will point this out to you.
 25 **COMMISSIONER FOSTER:** Okay, we'll get to

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1 that. Any questions? All right, thank you. Next
 2 testifier, please.
 3 **RICK OLIVER:** My name is Rick Oliver, I
 4 live at 34880 Danver Street in Anchor Point.
 5 The borough and the Trimbles have, in
 6 their opening statements, claimed that no substantial
 7 evidence was submitted in [sic] the neighboring
 8 property owners to support the Planning Commission's
 9 decision, and I beg to differ.
 10 In your packet, and this is a poor copy,
 11 but it's in your packet, it's a picture taken from my
 12 bedroom window. Grade level from my property is
 13 approximately 20 feet above the grade level for the
 14 mine.
 15 And my house is classified as a
 16 one-and-a-half story with a basement. This will put
 17 the view from my bedroom window at approximately 34
 18 feet above the top of a six-foot berm.
 19 I feel like another nail in the coffin
 20 here, but I think it's important that you guys
 21 understand exactly what we're looking at here, or will
 22 be looking at here if you approve the application.
 23 The view from my living room is
 24 approximately 24 feet from the top of the berm, and I
 25 believe the borough must consider my bedroom as

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1 property in the fact that we do, in fact, pay taxes for
 2 that.
 3 Mr. Wall has been to my property and has
 4 seen this picture. He obviously does not see any dust
 5 or noise or visual impact that may affect my or any
 6 other neighboring property.
 7 My property is located directly across --
 8 directly east of the proposed gravel mine across Danver
 9 Street, which shows through the bottom of that picture.
 10 And although I'm a little bit short of 6
 11 feet tall, I'm carrying a 10-foot board, which will
 12 give you a practical application of just exactly the
 13 view that I'll be looking at should this be approved.
 14 Planning staff has concluded that a
 15 50-foot vegetated buffer and a six-foot berm will
 16 sufficiently minimize the dust, noise, and visual
 17 impact to my property. And I'm incensed, yet again,
 18 that Mr. Trimble has the audacity to state that we
 19 ought to buy heavy curtains to eliminate this
 20 obscenity.
 21 All trees behind me in this picture are
 22 located in the mine area and will be gone. That leaves
 23 one tree within the 50-foot vegetated buffer, and a
 24 six-foot berm to protect my property. I'm also
 25 standing on what would become the primary access road

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1 to the mine, and the potential 5,000 ten-yard dump
 2 trucks in, and the 5,000 ten-yard dump trucks out that
 3 would travel it annually for the next 15 years.
 4 Absolutely no noise impact there.
 5 250 feet behind me is the proposed
 6 location for the rock crusher, which will end up being
 7 about 300 feet from my front door.
 8 The borough and Mr. Trimble apparently
 9 don't consider this to be substantial evidence. I
 10 think I have a reasonable mind to conclude differently.
 11 To approve this application in light of
 12 the substantial evidence would have been a direct
 13 contradiction of 21.29.050(2)(E), which states that
 14 buffer requirements shall be made in consideration of
 15 and in accordance with existing use of adjacent
 16 property at the time of the approval of the permit.
 17 And 21.29.050(2)(C) which states that the
 18 vegetation and fence or berm shall be of sufficient
 19 height and density to provide visual noise and
 20 screening of the proposed use as deemed appropriate by
 21 the Planning Commission or the planning director.
 22 As such, the Planning Commission was
 23 justified in their denial of this application, and
 24 their findings of fact were correct, and I thank you
 25 again for that.

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1 The proposed buffering is neither in
 2 consideration of existing use or of sufficient height
 3 and density to provide visual and noise screening as
 4 required by the code.
 5 One tree does not constitute sufficient
 6 density. Sufficient height cannot be obtained to
 7 visualize the noise or impact for myself. And I'm
 8 certainly not the highest property that's affected by
 9 this application. And that's what I said before in
 10 this paragraph.
 11 All properties that are at higher
 12 elevations in the neighborhood are even more affected
 13 by the visual and noise impact than mine and will
 14 inflict -- because of the fact that the berms and
 15 buffers of any practical height are well below the line
 16 of sight, which will be proven again with more evidence
 17 that we'll provide prior to the next meeting.
 18 Standards 21.29.040(a)(4) and (a)(5),
 19 which are required by the code cannot be met and the
 20 Planning Commission's finding are correct and
 21 appropriate. Thank you.
 22 **COMMISSIONER FOSTER:** Thank you, sir.
 23 Any questions? Thank you. Next testifier, please.
 24 **MICHAEL BRANTLEY:** Good evening, ladies
 25 and gentlemen. My name is Michael Brantley. I'm an

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1 owner of a recently new opened business called the
 2 Anchor River Fly Fishing. It's an RV park and cabins
 3 for fly fishermen.
 4 I have one question, if I may ask the
 5 assembly, and if I can have a response by a show of
 6 hands, I would appreciate that. Do I have permission
 7 to ask a question?
 8 **COMMISSIONER FOSTER:** Not at this time.
 9 You can just ask the question and then we can discuss
 10 it in our discussion, or the staff -- if it's a
 11 question for staff, they will ask at a later time --
 12 answer it.
 13 **MICHAEL BRANTLEY:** Okay. My question is,
 14 how many of you folks actually have taken the
 15 initiative to drive down to the Anchor Point community
 16 and see what's going on in the community besides the
 17 gravel pit, and actually look at the homes of all the
 18 people that have written to you asking you to deny this
 19 permit? There is very obvious reasons, more than what
 20 I can come up with.
 21 If it's permissible, if Mr. Kinneen would
 22 like to take over the rest of my time to speak, I would
 23 allow that, if that's permissible.
 24 **COMMISSIONER FOSTER:** Well, let's hear
 25 from the other folks. If you have something else to

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1 say, you can, that way we just keep moving on.
 2 **MICHAEL BRANTLEY:** Okay. You know, in
 3 all the records and everything that I've read, there is
 4 a certain line that stands out there, and it has to be
 5 the health, safety, and welfare of the community, and
 6 that's what we're talking about here, too. Not just
 7 all the rules and regulations.
 8 I've contacted other departments about
 9 this issue. My opinion is they need to be rewritten,
 10 and these issues need to be applied.
 11 I got a fact sheet here from OSHA. There
 12 is a new standard that came out for the marine industry
 13 for silica. I wanted to read you the definition of
 14 silica.
 15 Crystalline silica is a known carcinogen
 16 found in sand, stone, and artificial stone. Exposure
 17 to silica dust can trigger sarcoidosis, a chronic
 18 disease that involves scarring of the lungs.
 19 OSHA estimates that 2.3 million workers
 20 are exposed to dust involving 2 million in the
 21 construction industry. This new standard went into
 22 effect sometime in February of 2018.
 23 My business is just on the northern
 24 property line -- on the other side of the northern
 25 property line of the pit. The mine's a southern.

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1 Last meeting I had a thumb drive
2 presentation. I would like to leave this with you as
3 evidence. I have drafted this and made it better with
4 wording so you can understand. So you can take this,
5 you can keep it, you can copy it. I don't need it
6 back.

7 You know, these carcinogens and this
8 noise is going to be right there present. I'm staying
9 in my cabins now as it is getting prepped for summer,
10 and I can hear any traffic going up and down that
11 Denver Road. And I think those cabins are pretty well
12 insulated.

13 I've got pictures that I'll present to
14 the next one that's showing people, ladies with baby
15 carriages, single baby, two babies, three babies,
16 sometimes with dogs and --

17 **COMMISSIONER VENUTI:** Sir, can you speak
18 into the microphone so we can hear you, please.

19 **MICHAEL BRANTLEY:** Yeah. I've got photos
20 of mothers with their children in strollers, one
21 stroller, a double stroller, a triple stroller,
22 sometimes with kids, sometimes with dogs walking up and
23 down that traffic, and everybody has to go around them.

24 As described before, that road is in
25 horrendous condition. If they got permitted tomorrow

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1 and they started tomorrow, I would predict that the
2 middle of July that road would be closed to the heavy
3 traffic.

4 The carcinogens will be spread through
5 the air. That embankment is a 2 to 1 slope. It's like
6 a jet engine. When that wind hits that, it's going to
7 go up. It's still going to travel in that direction,
8 but it's going to go up to the higher elevations, come
9 over and settle on my property. And across the road is
10 the bird estuary, and those waters will get
11 contaminated with the carcinogen dust, and therefore
12 that would also flow over into the Anchor River and our
13 sparsely reoccurring salmon return each year. It might
14 get worse.

15 **COMMISSIONER FOSTER:** Can you tie this up
16 now?

17 **MICHAEL BRANTLEY:** Yes, sir.

18 **COMMISSIONER FOSTER:** Okay, thank you.

19 **MICHAEL BRANTLEY:** I want to make
20 perfectly clear, you stated that after I make my
21 testimony today, with this continuation I will be able
22 to make another statement at that time, is that
23 correct?

24 **COMMISSIONER FOSTER:** That's correct.

25 **MICHAEL BRANTLEY:** Okay. My opinion is

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1 that the continuation should be into the latter part of
2 May or the first part of June, that is my
3 recommendation, so we can all prepare ourselves.

4 As stated before, all these folks coming
5 back to the RV village -- you know, I heard a statement
6 back in the room a little bit ago that said, well, you
7 know, those people don't live here.

8 Well, they do live here. They bought
9 here. They are paying taxes for the property that they
10 own here. So don't discourage their wording. You've
11 got to listen to the people. You folks need to come
12 down and see this community, talk to the community. I
13 thank you.

14 **COMMISSIONER FOSTER:** Thank you. Are
15 there any questions?

16 **MICHAEL BRANTLEY:** Any questions, please?

17 **COMMISSIONER BOKENKO-CARLUCCIO:** The only
18 question is, please give Julie your thumb drive. Thank
19 you, Mr. Brantley.

20 **MICHAEL BRANTLEY:** Thank you.

21 **COMMISSIONER FOSTER:** Next testifier,
22 please.

23 **TODD BAREMAN:** My name is Todd Bareman.
24 I live about a mile away from the proposed pit, but I
25 have a business within a half mile. I have the boat

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1 launch down at the end of Anchor Point Road. And that
2 haul road, again, will be on that road, which we're
3 real concerned about.

4 The only reason I think that road hasn't
5 fallen apart more is it's so bad that the motorhome and
6 the boat traffic now have to go real slow down that
7 road.

8 We all know how fast and how heavy gravel
9 trucks are, and that's a big concern to us. You guys
10 have no plans. We've been fighting, this will be my
11 8th summer at the boat launch, and we've been fighting
12 to get that road fixed for -- until I -- since I
13 started down there and before.

14 There is no plans to do it. As far as I
15 know, he's not liable, whoever hauls gravel out of that
16 pit. If that road becomes destroyed so far that we
17 can't safely travel it with motorhomes or boat traffic
18 during the summer, that will impact a lot of businesses
19 down there.

20 I would like to ask for a continuation
21 until the May 28th. I don't feel that April is
22 sufficient time. My peak season doesn't start until
23 the end of May, so I know when the residents are back
24 because I see them, I'm launching their boats. My
25 business starts the end of April down there launching

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1 boats, but there is nobody -- it's just not busy until
 2 the end of May for the summer. So that's why I would
 3 like to ask for a continuance so you can hear from the
 4 people that are there for four months a summer,
 5 whatever they are. They own property in the area.
 6 Another question, we're not hearing from
 7 state parks. I'm trying to get a comment from them.
 8 But I just have a question for you and
 9 I'll close. Vacation time is pretty important to
 10 working families and everybody else, and we have five
 11 state campgrounds down there that are really nice, and
 12 we have three RV parks, and they are all busy for those
 13 three or four months of the summer.
 14 And if you had to wake up with your
 15 family to a gravel crusher, an asphalt plant, dump
 16 trucks running up and down the road, just ask yourself
 17 if you'd come back to any of those campgrounds again.
 18 We're worried about that. This is not a one or
 19 two-year permit, this is a long permit, and that's why
 20 we're concerned about it. It is a big deal. Our
 21 economy is the fishing, the boat launch, the state
 22 parks, and the RV parks. That's a big deal for us
 23 during the summer. So just consider that, thank you.
 24 **COMMISSIONER FOSTER:** Thank you. Next
 25 testifier, anybody else?

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1 **LINDA FEILER:** Hi, my name is Linda
 2 Feiler, I live at 73230 Tryagain Avenue. And I've
 3 lived in Anchor Point for the past 42 years or more.
 4 And Anchor Point is a quiet town. Most
 5 of us moved there because of the river, and that river
 6 is our jewel. If you ask the hundreds of people that
 7 come down from Anchorage, if you ask the people from
 8 Homer who come up to walk the beaches, to fish in the
 9 river, to walk along the river, to walk along the river
 10 road, I personally go down to the beach very often
 11 with -- alone or with my dogs or just with friends, we
 12 go for exercise. We walk along the road because it's
 13 quiet, because it's deserted, because it's lovely, and
 14 that's why a lot of us moved there.
 15 You know, I had Hilcorp moving in next
 16 door. They are going to make a lot of noise. They
 17 weren't required to put in a berm, yet when they made
 18 noise, it vibrated right through our bodies.
 19 We have had other gravel pits, and we
 20 could hear them all the way from -- on the Sterling
 21 Highway you could hear the road crusher.
 22 When I first moved there in '77, I asked
 23 my boyfriend, "What is that?" He said, "Oh, that's a
 24 train that goes to Anchorage," you know, because of
 25 that chug, chug, chug. And I said, "No, it can't be.

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1 There is no train." He said, "Oh, that's --" and the
 2 noises with the beep, beep, beep, every time anything
 3 backs up or goes forward. And in the summertime it
 4 goes for 24 hours.
 5 Now, there is a rumor that Hilcorp wants
 6 the gravel to put their berms up around all the oil
 7 rigs that you're going to start putting in there. We
 8 live in this town. It may be just a town to you people
 9 or some kind of backwoods, podunk area down there, but
 10 a lot of us are very well educated, and we moved there
 11 in order not to be within city limits, in order not to
 12 have dog ordinances and everything else.
 13 But it used to be that if my neighbor's
 14 dog barked or they were shooting off guns, I could call
 15 the police and they would come and say, "No, sorry, you
 16 know, people are trying to sleep, you have to quit it."
 17 Nowadays, I don't know. We don't have
 18 anything that protects us. It doesn't have anything
 19 that protects us, that keeps our home values, keeps our
 20 families, keeps us safe.
 21 We're no longer a part of the Kenai
 22 Peninsula Borough if you're not going to think that we
 23 also live here. And it's very important to us to know
 24 that you care that we are part of the Kenai Peninsula
 25 Borough. That scares me when I hear people speak

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1 about -- when I hear the rumors, perhaps, of what you
 2 talk about when you discuss Anchor Point.
 3 When I moved there, there were 200 of us,
 4 and there is a heck of a lot more now. We all care
 5 about our town, and just because we have a gravel pit
 6 down on Danver, it doesn't mean that it's not going to
 7 affect me and it's not going to affect my neighbors,
 8 because we are walking on that road, we use that road
 9 as our park, our exercise track. And we don't walk
 10 along the river because it's too muddy, but we do walk
 11 in the road because there is no traffic, because it's
 12 lovely.
 13 And I think from now on when something
 14 happens in Anchor Point, that you take into
 15 consideration not the people that live 25 feet or 50
 16 feet from the proposed thing that's going to come in
 17 that's going to affect our town. If you want us to
 18 incorporate, then treat us like you know who we are.
 19 We are a town, and we care about each
 20 other, and many of us take care of each other, and many
 21 of us use the river and the river road.
 22 I'm also worried about the bridge. We've
 23 had it resurfaced, but after you -- you've seen all the
 24 damage from above. But when those trucks come
 25 downhill -- I lived as a trucker for the first 20

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1 years -- and when you come down the hill with a full
 2 load of gravel, or up the hill, that bridge is a
 3 danger, and it's not double wide.
 4 So I hope you take all that into
 5 consideration and remember that we are part of your
 6 community, thank you.
 7 **COMMISSIONER FOSTER:** Any questions?
 8 Yes, Ms. Carluccio.
 9 **COMMISSIONER BOKENKO-CARLUCCIO:** I'm
 10 curious about what rumors you hear about how we speak
 11 about Anchor Point.
 12 **LINDA FEILER:** "That little backwoods
 13 area. That little pain in the neck down there."
 14 We're -- you know, I mean, yes --
 15 **COMMISSIONER BOKENKO-CARLUCCIO:** I'm
 16 sorry, I'm just trying to figure out who --
 17 **LINDA FEILER:** Well, I hope it is a
 18 rumor.
 19 **COMMISSIONER BOKENKO-CARLUCCIO:** -- on
 20 this Planning Commission would say something like that?
 21 I don't think so.
 22 **LINDA FEILER:** Well, we only hear what
 23 filters down, and we hear things at meetings. And so,
 24 you know, it's worrisome.
 25 Because once again, we're not informed

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1 when something happens in our area, okay. All of a
 2 sudden, I go out to take care of my brother and
 3 sister-in-law that died, I come back and I have Hilcorp
 4 right there.
 5 And when they go on, they didn't have to
 6 put up a berm. And a six-foot berm wouldn't help. And
 7 I sleep upstairs in my bedroom. And the vibration that
 8 goes through your chest, and my neighbors who are just
 9 panicked about it, we weren't notified, we weren't
 10 asked how we felt about it. You wouldn't want one near
 11 your house.
 12 You know, noise is a big one, really big,
 13 and we can hear the highway noise. We've stopped Jake
 14 brakes. Remember, you're not allowed to go down the
 15 hill and put on your Jake brake? How far away is a
 16 Jake brake heard?
 17 In Anchor Point, I hear break-up when the
 18 river breaks up, I hear waves crashing, and I'm a good
 19 distance away. I'm up on Tryagain. I'm up on the Old
 20 Sterling, and I can hear the ocean, and I can hear the
 21 river.
 22 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay, I
 23 understand your comments now, but that's not what I
 24 asked you.
 25 **LINDA FEILER:** Right, okay. Okay, sorry.

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1 Well, that's --
 2 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay.
 3 **LINDA FEILER:** I will get you -- if I
 4 ever hear it again --
 5 **COMMISSIONER BOKENKO-CARLUCCIO:** Thank
 6 you.
 7 **LINDA FEILER:** -- I will try to find out
 8 where it's coming from.
 9 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
 10 thanks.
 11 **COMMISSIONER FOSTER:** Thank you. Next
 12 testifier, please.
 13 **ED MARTIN:** Hi, my name is Ed Martin, I
 14 live in Sterling. Just a couple things before I start
 15 my testimony that I think you guys should really know
 16 about from previous testimony.
 17 The aforementioned boat launch was built
 18 with gravel from this site.
 19 I hear a lot about safety. I'm the owner
 20 of Alaska Driving Academy. It's a school that I train
 21 people to obtain their CDLs and become good truckers.
 22 A lot of these people are talking about safety, they
 23 are talking about the width of the road, that they
 24 don't have the room to walk up and down it with their
 25 various baby strollers and whatnot.

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1 One thing you need to keep in mind is
 2 that the typical boat trailer is wider than a dump
 3 truck, is wider than a semi truck, therefore it takes
 4 up more of the road, therefore is less safe if you're
 5 sharing that 12-foot lane on either side of this road.
 6 Wider is worse, right?
 7 Second, another thing that they are
 8 really concerned about safety, yet I hear that they got
 9 Jake brakes banned, and a Jake brake is a safety device
 10 on a truck. So obviously they are willing to trade
 11 safety for noise degradation. As long as it sounds
 12 good, they don't mind not being quite as safe.
 13 Anyhow, now I'll get to my testimony.
 14 I'm the elected president of the Kenai Peninsula
 15 Aggregate and Contractors Association that is in the
 16 process of being formed this week. I represent over 40
 17 contractors and material site operators. I urge the
 18 commission to approve Beachcomber's application based
 19 on the reasons for denial were invalid.
 20 The commission's findings that noise and
 21 visual impact would not be sufficiently reduced are not
 22 a valid reason for denial. I would like to remind the
 23 commission that your power of judgment lies within the
 24 code. You may impose conditions outlined in the code,
 25 but you may not judge their effectiveness or impose

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1 conditions outside of the code. Therefore, you must
 2 approve a permit that has met the standards set forth
 3 in the application.
 4 I urge you to vote in favor of issuing a
 5 CLUP immediately. I believe further public comment
 6 will comprise no new findings, as the public has had
 7 ample time to testify in past meetings. You've already
 8 deliberated on this once, correct? And to not further
 9 burden the applicant.
 10 The construction and development season
 11 is short, and delaying another month will be
 12 detrimental to a material site operator. Thank you.
 13 Any questions?
 14 **COMMISSIONER FOSTER:** Thank you. Are
 15 there any questions? Yes, Mr. Venuti.
 16 **COMMISSIONER VENUTI:** Thank you for
 17 testifying. You might be the right guy to ask this
 18 question.
 19 **ED MARTIN:** Yes, sir.
 20 **COMMISSIONER VENUTI:** What do you know
 21 about white noise back-up alarms, and what's your
 22 opinion on them, and do you think this would be a good
 23 solution for noise at this site?
 24 **ED MARTIN:** Well, white noise back-up
 25 alarms is a give and take. I've researched them

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1 thoroughly. There is actually a couple of studies done
 2 on them. And it's kind of another one of those avenues
 3 where you give up safety for -- a little bit of safety
 4 for a little bit of noise degradation.
 5 So basically what I found out about them
 6 is that they are only effective in certain areas behind
 7 whatever vehicle that they are put on. And they are
 8 only effective if the surrounding noise is -- they are
 9 really only effective if -- say you have one machine,
 10 maybe two machines in a pit. As soon as you put a
 11 screening plant or a crusher or something like that,
 12 that the ambient noise level has gone up dramatically,
 13 then their effectiveness comes way down, extremely
 14 down, versus a multitone alarm, or the old beep-beep
 15 tone alarms. They are actually the most effective.
 16 And there has been studies in laboratories and on --
 17 in-the-field studies of their effectiveness and the
 18 alertness of people to alarm being turned on.
 19 **COMMISSIONER VENUTI:** So is this
 20 something you would recommend an operator to use? And
 21 again, what would be the typical cost to install a
 22 system like that on trucks?
 23 **ED MARTIN:** Typical cost to install a
 24 system like that ranges in between \$4- and \$600 for
 25 your typical setup. I mean, some are cheaper, some are

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1 more expensive, particularly more expensive on the
 2 newer machinery because they are computerized and such.
 3 You can't just hack into the electrical system like you
 4 can an old machine.
 5 But it really depends on the operation.
 6 Like I said, if it was just a gravel extraction
 7 operation where you just had one loader working in a
 8 pit filling up dump trucks, it would be an effective
 9 alarm.
 10 If you have a screening operation or a
 11 crushing operation, it's not really an effective alarm
 12 because of the ambient noise from the other machinery
 13 that's operating in that site.
 14 **COMMISSIONER VENUTI:** Great, thank you.
 15 **COMMISSIONER FOSTER:** Are there any other
 16 questions? Not at this time I guess. Thank you. Next
 17 testifier, please.
 18 **LARRY SMITH:** My name is Larry Smith. I
 19 reside at 320 Artifact Street, Soldotna.
 20 I had hoped to come up here tonight and
 21 testify and give you all the benefit of my knowledge of
 22 gravel pits.
 23 And just as a background there, I've been
 24 in the construction business in Alaska for nearly 40
 25 years. My brother and I own a construction company.

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1 We've built streets, roads, and bridges throughout
 2 Alaska. We're currently under contract with the Kenai
 3 Peninsula Borough to build the North Road extension,
 4 Kenai Spur Highway extension.
 5 That project has approximately 200,000
 6 tons of gravel, which converts to something around a
 7 hundred thousand yards, which converts to, I don't know
 8 how many truck loads. I could tell you if I had my
 9 calculator with me, but I left my smart phone at home.
 10 I'm up here tonight to testify on behalf
 11 of the Trimbles and ask you to approve their permit.
 12 I've bought gravel throughout the state from a number
 13 of different entities. My brother and I currently own
 14 three gravel pits, one in Ninilchik, one in Soldotna,
 15 and one in Nikiski.
 16 I've heard a lot of testimony. I've read
 17 a lot of the letters and e-mails and such in
 18 opposition. I read the hearing officer's decisions and
 19 findings of fact.
 20 And that's what this is all about. This
 21 is all about facts. I've heard a lot of testimony out
 22 there. Long on testimony, short on facts. I saw a lot
 23 of testimony that's long on emotion, again, short on
 24 facts.
 25 The facts in my mind are that Mr. and

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1 Mrs. Trimble have met the requirements of the Kenai
 2 Peninsula Borough ordinances as evidenced by your
 3 staff's recommendation on not one, but two occasions
 4 that you approve this permit.
 5 In reading through this packet today, I
 6 came across something that I would like to read here,
 7 and it's from -- it's on page 72 of 332 of packet No.
 8 2. It has to do with the study of values of homes, and
 9 that's not what I'm here to talk to you about. I have
 10 my opinion as to what happens with the value of homes
 11 near a gravel pit, and it's -- everybody has their
 12 opinion.
 13 What this is is the background, and I'm
 14 going to read, I'm quoting: Odds are that underneath
 15 your feet is a construction material made of sand,
 16 crushed stone, and gravel. And I can guarantee that
 17 under this building is gravel, and under this carpet is
 18 concrete, which consists of gravel and other
 19 ingredients.
 20 These construction materials are an
 21 essential ingredient into nearly ever construction
 22 project from residential housing, office buildings,
 23 retail outlets, entertainment structures, to the roads
 24 that connect them. Sand, rock, and gravel are
 25 literally the foundation of economic development, but

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1 their extraction process can generate dust, noise,
 2 vibration, and truck traffic.
 3 While modern technologies and methods
 4 have greatly reduced quarry's impact -- and when I say
 5 quarries, I mean gravel pits -- the environmental and
 6 economic consequences of quarry operations receive
 7 considerable attention, often in the form of "not in my
 8 backyard," or NIMBY, campaigns opposing quarry
 9 expansions or new sites.
 10 Choosing a quarry site is a delicate
 11 task. While a quarry may be best located far from
 12 residential density on NIMBY concerns, it also needs to
 13 be near the final point of demand due to its high
 14 transportation costs. Quarries, or gravel pits, must
 15 balance the need to be both near and far.
 16 And that's -- I would imagine in a very
 17 perfect world, the Trimbles would love to have their
 18 gravel pit somewhere else where it didn't impact on the
 19 view of their neighbors. But what needs to be kept in
 20 mind is the neighbors' view is not their right. They
 21 don't own the view of the Trimbles' land.
 22 There was talk tonight about putting some
 23 fences up on their property. And I honestly believe
 24 that when we come to some of these conditions for
 25 gravel pits, that that may be some conditions we can

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1 consider; however, that's not what the code allows.
 2 The code allows certain things. The Trimbles have met
 3 those requirements, and I would request that you
 4 approve their permit, thank you.
 5 **COMMISSIONER FOSTER:** Thank you. Are
 6 there any questions? Not at this time, thank you.
 7 Next testifier, please.
 8 **LYNN WHITMORE:** My name is Lynn Whitmore,
 9 I live in Anchor Point, and I'm the next door neighbor
 10 to the proposed gravel pit. And I brought an overhead
 11 presentation to make, but for the sake of expediency,
 12 it seems like it would be redundant to do it now and
 13 then do it again in the future.
 14 So I'd just like to maybe repeat
 15 something I've heard a couple times, in that when we
 16 got remanded back to you guys from this case, on this
 17 case, we asked the planning department to continue this
 18 until we got some of the neighbors back who are
 19 affected by this.
 20 A lot of the people are smarter old
 21 duffers than I am, and they have got their timing
 22 figured out and they are Outside at this time of year,
 23 and they come home. They have got their dream piece of
 24 property up there.
 25 And I think it would be really fair to

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1 get them here to speak their concerns. And we'll try
 2 to talk them into talking about the findings of fact
 3 and not to get too far outside of what we actually need
 4 to address.
 5 And I would hope that we could continue
 6 it to around May 28th and give us a chance to get
 7 everybody together, thanks.
 8 **COMMISSIONER FOSTER:** Thank you, Mr.
 9 Whitmore. Any questions? Thank you.
 10 Any more testifiers? Or do you want to
 11 wait until next time?
 12 **JOSH ELMALEH:** Hi, my name is Josh
 13 Elmaleh, and I live on Seabury Court not far from the
 14 planned gravel extraction site.
 15 There is a few things that I would like
 16 to point out, is you guys made an excellent decision
 17 last time that we had this meeting to deny Beachcomber,
 18 LLC the right to extract gravel, and the reasons for
 19 that were visual and noise impacts.
 20 I cannot see the property from my house,
 21 yet anytime they had a tractor or a Bobcat running, I
 22 was hearing it from my house, and that's over the hill,
 23 through trees, behind other neighbors' houses.
 24 And so normally I can't hear anything
 25 from my house in that distance, but I hear it clear as

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1 day. Whenever you hear a dump truck dump, or if they
 2 are going down a road, you hear their -- you hear their
 3 bed clang and clack and all that. That's going to
 4 happen whether or not it's on their property. It's a
 5 product of their excavation, it's a product of what
 6 they are going through.

7 There is a high wind in that area. That
 8 will kick up the dust that they are going to expose.
 9 That is going to create another visual impact because
 10 you're going to have people driving by, and then all of
 11 a sudden you have a cloud of dust blocking your vision,
 12 not necessarily all of your vision, but it does hinder
 13 it.

14 And then there is an impact on our road.
 15 So that is another visual impact. You're going to have
 16 high wear marks, high things -- a lot of stuff that's
 17 going to be happening. And it's not just that, okay,
 18 maybe they have to fix it on a weekly basis. I don't
 19 know.

20 But I'll tell you, I don't want this to
 21 go in, because it affects me, my family, my wife, my
 22 kids, my dogs.

23 You know, I try to keep my dogs at the
 24 house, you know. They are magicians. They find a way
 25 out. They are going to find a way to that pit. They

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1 are going to find a way, and then somebody is going to
 2 run them over, and I'm not going to have control over
 3 that, you know. I do my best.

4 And I know a lot of people might be
 5 better with their animals, but, you know, I grew up
 6 with them, and I've always learned, do your best and
 7 teach them and love them as best you can.

8 There is many -- in previous
 9 testimonies -- there is many visual impacts that are
 10 going to happen from it. You drive up the road, you
 11 drive down the road, you're going to see what the
 12 Trimbles are doing on that property. Yeah, it's their
 13 property, they should have a lot of rights to what they
 14 do to it.

15 But you guys have your six criteria they
 16 have to meet, you know that, it's redundant. But I
 17 agree with your initial findings of visual and sound
 18 impacts are not going to be met, no matter what they
 19 do, because they are in that bowl, and we all have a
 20 perched view right above them.

21 And there is a lot of people who are
 22 going to be affected, not just the neighbors, but the
 23 tourists, the people that are close by, people coming
 24 through.

25 I'm not going to mention property values,

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1 I'm not going to mention safety because that's all
 2 there, and it doesn't matter according to those six
 3 criteria.

4 And I will say this one thing, if
 5 anything, Mr. Emmitt Trimble has brought the community
 6 together, but not in his favor, but to resist the
 7 health and the noise impact that his proposed mine will
 8 bring about.

9 And a lady came up and she said something
 10 about vibration. That is absolutely correct. Anytime
 11 you have a truck going by, especially in that type of
 12 neighborhood, you're going to have that vibration going
 13 through. I mean, that's a physical impact. You're
 14 being physically impacted when something goes by.

15 You know, maybe sometimes you run fast
 16 and your heart starts beating a little bit. Well, you
 17 kind of get that if all of a sudden, whoa, the ground
 18 is moving. Some people are really affected by
 19 earthquakes. Not me because I grew up in California,
 20 lots of earthquakes, didn't really care about that too
 21 much.

22 So anyways, please stand to your initial
 23 findings, and I hope that you guys will enjoy part of
 24 the piece of Heaven that we have down there.

25 **COMMISSIONER FOSTER:** Thank you, any

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1 questions? Not at this time.

2 **LAUREN ISENHOUR:** I'm Lauren Isenhour. I
 3 live at 34737 Beachcomber Street. I'm just going to
 4 read my statement.

5 I believe that Anchor Point is a
 6 wonderful place to live for all the same reasons as
 7 these people here. I like having privacy and acreage,
 8 I like having control over what I can do on my own
 9 property. I love being able to walk to the beach and
 10 the river with my kids and not to be surrounded by lots
 11 of people.

12 The success and longevity of Anchor Point
 13 is extremely important to me and my family. We
 14 actually depend on it. Maintaining a successful town
 15 structure, meaning keeping businesses open, keeping
 16 Chapman school open, keeping Anchor Point a
 17 recreational destination, keeping property values high,
 18 these things are very important to my family and to our
 19 livelihoods.

20 I believe there is an attainable balance
 21 between keeping Anchor Point the quaint little town we
 22 all love while still allowing for the development that
 23 keeps our community viable.

24 I see the word development used with a
 25 negative connotation a lot, and I truly don't

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1 understand that. We all live in houses and drive on
2 roads, and that's development.
3 Anchor Point, due to its size and
4 economy, can only support a certain amount of
5 development, and I like that. With our construction
6 company, I could hire a crew and build ten houses a
7 year, only there just isn't the population to buy them.
8 In 2018 there were 30 home sales in
9 Anchor Point. That's a really small market. Currently
10 I'm building one to two houses a year, and that size of
11 development is a perfect fit for me and my family.
12 I'm proud of what I'm accomplishing and
13 for what I can help contribute to my town. I don't
14 want to build in Homer or anywhere else. I want to
15 live and work in Anchor Point.
16 At my last build I benefitted from
17 contributions from at least 20 local Anchor Pointers
18 employed through local contractors who work year round
19 and support their families with income they make right
20 here in our tiny town. Those laborers are the backbone
21 of our town. Without their year-round work and their
22 year-round contributions back and our community, our
23 town would dry up.
24 I believe my parents are the perfect
25 people to own this property for my neighborhood. They

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1 bought it because they love it and want to keep it
2 fully intact and want to be able to keep it in the
3 Trimble family for generations. They did not buy this
4 property with plans to develop it, they bought it to
5 keep it. But it's expensive.
6 I would rather see a controlled,
7 small-scale gravel pit that provides needed gravel and
8 jobs to local people and is then reclaimed to the
9 highest standards and be able to stay one large vacant
10 parcel maintained by the Trimble family for generations
11 than I would to see it subdivided. I don't want 27 new
12 neighbors with no regulations to control what they
13 build or do on their new properties.
14 Ironically, my family and the
15 neighborhood who oppose the permit both want the same
16 thing, which is for this beautiful parcel to remain
17 vacant and to remain one large piece of land. Once a
18 parcel is subdivided and homes are built, it will be
19 that way forever.
20 My parents are very interested in keeping
21 property values high. It benefits their real estate
22 business as a whole and benefits their own property
23 investments.
24 I've heard a number of comments that this
25 permit will lower the surrounding property values. I

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1 don't agree with that. There are no regulations on
2 anyone else's properties protecting us from our
3 neighbors potentially having junkyards or tarped roofs
4 or the like that we see. Gravel pits are strictly
5 regulated and monitored and required to be reclaimed.
6 All over Anchor Point are properties that
7 my parents have developed and sold, and without a
8 shadow of a doubt, each one has been radically improved
9 at their hand. This parcel is no exception.
10 Prior to my parents purchasing it, the
11 field behind my house was so littered with stumps and
12 slash you could hardly walk through it. My parents
13 spent over 60 grand to clean it up to the beautiful
14 state it's currently in.
15 That does not lend to the picture their
16 opposition tries to paint of them as greedy destroyers
17 of the land. They have been successful in land
18 development for 40 years, because they are
19 exceptionally excellent at it. They are meticulous and
20 deliberate in their stewardship of the land.
21 I have all the trust and confidence in
22 the world, not because they are my parents, but because
23 of their proven track record, that whatever areas of
24 this permitted land they do extract gravel from, it
25 will be reclaimed to the highest degree.

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1 The engineer who designed this permit
2 application testified that for a large pit in this type
3 of rural area, 10,000 cubic yards is a more realistic
4 amount of gravel to move a year.
5 As I stated before, Anchor Point is a
6 small community that can only support a small amount of
7 development. There just isn't the populous to purchase
8 my potential ten houses a year, and there just isn't
9 the populous to purchase 50,000 cubic yards of gravel a
10 year. That's the number that -- the maximum the permit
11 would allow. That's not a realistic extraction amount
12 in our community.
13 I'd also like to address the safety and
14 condition of the beach access road as stated. I do
15 walk the road with my kids, and during the summer
16 months there is a lot of traffic and boats and RVs,
17 bikes and walkers and constant vehicle traffic.
18 Wide-load boats drive very slowly, RVs drive very
19 slowly, and with a such a constant flow of vehicles,
20 traffic just moves slowly.
21 Gravel trucks also drive that road all
22 the time delivering gravel to the residents, and I
23 believe as a community we all work really well together
24 to keep everyone safe on a road. So yeah, when I'm
25 walking with my kids, we step off into the ditch and

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1 drivers do drive very slowly around us, and we all wave
2 at each other as we do this. And we've worked together
3 to keep everyone safe.
4 Gravel trucks drive no differently than
5 wide-load boats or RVs. And just to be clear, I
6 support the presence of RVs and boats as well as gravel
7 trucks. I believe there is an attainable balance
8 between all of us in the community to keep Anchor Point
9 the quaint town we love, yet also keep the responsible
10 amount of development that keeps jobs in our community.
11 **COMMISSIONER FOSTER:** Thank you very
12 much. Any questions for Ms. Isenhour? Not at this
13 time, thank you.
14 **LAUREN ISENHOUR:** Thank you.
15 **COMMISSIONER FOSTER:** Any more
16 testifiers?
17 **GINA DEBARDELABEN:** You managed to fill
18 up the whole sheet so far.
19 My name is Gina DeBardelaben, I'm with
20 McLane Consulting. Our engineering and surveying firm
21 was hired by Beachcomber, LLC to survey the property
22 and prepare the CLUP permit documents and exhibits.
23 Field work for the permit was completed
24 in May of 2018, and the CLUP application was submitted
25 in June of 2018. Since then -- I mean, that's -- we're

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1 almost working on a year at this point on this
2 application.
3 The site was previously utilized, and it
4 had a driveway on it and still has a driveway and a
5 small gravel pad and some berms established.
6 The material site, or the proposed
7 material site parcel has a lot of relief to it. And it
8 would require any type of -- for any type of
9 development some excavation and leveling for access,
10 residential or commercial construction, all of which
11 could have impacts similar to a material site. Just
12 something to keep in mind, that with an unlevel site
13 you always have larger impacts than a level site.
14 There were a few things brought before --
15 up in this plethora of written comments and public
16 testimony that I want to speak to. I know that some of
17 these are things that I regularly testify or say at
18 Planning Commission meetings for CLUPs, but I think
19 it's important that the commission hears it and the
20 public in attendance hear it.
21 One of them is noise concerns. It's
22 unrealistic to think that buffers will or should fully
23 eliminate impacts of noise or visual impacts. The code
24 and the proposed buffers would minimize or reduce
25 visual impacts and noise, and that's the requirement.

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1 The code provides these tools that are
2 already in the box that are supposed to be used for
3 buffers or barriers, and that's what an applicant has
4 to choose from at this point, and that's kind of the
5 way the code is written. So, you know, an applicant
6 does their best to pick from those tools that are
7 provided.
8 There's additional information provided
9 regarding site minimization by Geovera, so I don't want
10 to -- I'm not going to talk about that too much, but I
11 do want to talk about noise pollution a little more.
12 Noises can be deceiving. ANSI, MSHW, and
13 OSHA, they all have, like, great charts and comparative
14 data and studies on noise. I'm going to site some
15 docs, some noise -- some information on noise abatement
16 and some data, and that's all from a U.S. Bureau of
17 Mines report regarding noise abatement for construction
18 sites.
19 A front-end loader, which is our most
20 common piece of equipment in a material site, emits
21 between 85 and 91 decibels depending on the age of the
22 equipment and the material it's moving. It averages
23 about 88 decibels from where the operator sits.
24 As a comparison, a gas lawn mower
25 operates at 100 decibels, and a blow dryer operates at

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1 85 decibels, and an uninsulated dishwasher in your home
2 operates at 70 decibels.
3 Separation distancing and locating noisy
4 equipment behind a barrier are the two top
5 recommended -- recommendations for noise abatement. A
6 noise barrier, such as a spoils berm, drops the noise
7 level in a curvilinear rate relative to the distance
8 and the noise of the barrier.
9 But noise separation from a -- separation
10 of distance from a noise drops the impacts in a linear
11 fashion. So for every 10 feet of distance, the noise
12 drops approximately six decibels.
13 So between the curvilinear and the linear
14 analysis, a berm in combination with approximately 20
15 feet of separation, drops the decibel levels of a
16 front-end loader to that of a dishwasher. It gives you
17 an idea.
18 Decibels are always something that's a
19 little bit vague and how they drop across air and how
20 barriers affect noise abatement. So I just wanted to
21 bring it a little bit in perspective on what the
22 combination of distance and berms provide.
23 The other thing that's brought up is haul
24 routes. The Anchor River Road and the Old Sterling are
25 state maintained, and those meet what the requirements

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1 of a state road, four feet of road, are. Believe it or
 2 not, that's what the state requires -- that's what the
 3 state has provided, and they meet their standards.
 4 They also -- the Anchor River bridge has
 5 a gross to vehicle -- a GVW listed for it. Right now
 6 it's listed very low because the bridge is near being
 7 condemned or whatnot. It's damaged, and it is slated
 8 for replacement in 2020.
 9 All users of these roads need to abide by
 10 DOT requirements for GVW, speed, proper use of lanes,
 11 shouldering, et cetera. The health of the Anchor River
 12 Road to the borough permit is not -- the health and use
 13 of the Anchor River Road is not applicable to the
 14 borough permitting process.
 15 DOT's letter regarding line of site,
 16 landing length, sweeping, and traffic control permits
 17 are all standard to borough road, to DOT access points,
 18 and industrial traffic use.
 19 All borough material sites are also
 20 required to maintain their borough haul routes, which
 21 would be like a borough gravel road, and dust abatement
 22 for gravel haul routes. The material sites are
 23 required by borough code and by DEC BMPs for material
 24 sites.
 25 Quantity of extraction is another one

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1 that comes up. Gravel extraction per year is based on
 2 an unknown quantity of material sales. This CLUP
 3 application lists 50,000 yards maximum, when in
 4 reality, an extraction from a site like this is likely
 5 not to exceed 10,000 yards a year.
 6 For perspective, a large borough road
 7 capital improvement project, which would be a typical
 8 4,000-foot-long gravel road to be improved in this area
 9 wouldn't exceed 4,000 cubic yards for that project.
 10 Mr. Smith cited a very large project and
 11 cited, you know, 130,000 cubic yards for this whole
 12 project. That's over eight miles of new road
 13 construction. That's a huge project for our borough.
 14 It's not relative to a site like this or a project that
 15 would be supplied by a material site like this.
 16 So the 50,000 cubic yard maximum is
 17 something that we utilize because that's DNR's
 18 threshold for -- determines how material sites are
 19 required to report to the state for extraction and the
 20 state bonding for reclamation.
 21 So that 50,000 yards, if it's above that,
 22 they have different requirements than if it's under.
 23 So it's just kind of a -- it's kind of a cap to say
 24 that we're not going to be this huge extraction mining
 25 site.

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1 Ground water protection. The proposed
 2 extraction area is greater than 100 feet from all
 3 residential wells, surface wetlands, and flood
 4 boundaries as per the borough code. There is no
 5 extraction proposed below the table as part of this
 6 permit. Extraction will remain two feet above the
 7 ground water elevation as per the requirement.
 8 If the owner decides they want to try to
 9 extract below ground water, there's a whole nother set
 10 of requirements that they have to meet and another
 11 planning committee meeting.
 12 **COMMISSIONER FOSTER:** Thank you, could
 13 you tie this up?
 14 **GINA DEBARDELABEN:** I absolutely am, yep.
 15 Really quick, before I offer -- answer
 16 questions, Mr. Keenan [sic] has quoted multiple times,
 17 at least twice in meetings, something in an e-mail
 18 correspondence between Mr. Wall and I about -- and Mr.
 19 Wall asks -- he asked about proposing maybe a higher
 20 berm. And my response was simply after -- you know,
 21 how the vegetation is sparse or some -- there's
 22 vegetation in one corner and not all the way across, is
 23 we could propose a higher berm, but I'm not sure that
 24 makes sense either.
 25 So interpretation of that, of what I had

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1 to say, I guess Mr. Keenan's [sic] interpretation has
 2 been maybe skewed and not what the intent of the
 3 comment or the e-mail was.
 4 **COMMISSIONER FOSTER:** Thank you, are
 5 there any questions? Yes, Mr. Whitney.
 6 **COMMISSIONER WHITNEY:** Yeah, there's been
 7 a couple of comments made about a asphalt plant going
 8 in there. What's -- any word on that? Any truth to
 9 those rumors?
 10 **GINA DEBARDELABEN:** No. There's no --
 11 actually as far as I'm aware of, there is no planned
 12 sale for gravel from this site at all at this point.
 13 **COMMISSIONER FOSTER:** Ms. Ecklund.
 14 **COMMISSIONER ECKLUND:** Thank you.
 15 Through the chair, did you or your firm draft up the
 16 map on page 41.70 of our 332-page desk packet?
 17 **GINA DEBARDELABEN:** I might need help
 18 finding that.
 19 **COMMISSIONER ECKLUND:** Yeah, 41.70 --
 20 **GINA DEBARDELABEN:** Page 40?
 21 **COMMISSIONER ECKLUND:** -- of 332.
 22 **GINA DEBARDELABEN:** I'm getting close.
 23 No, that was prepared by Geovera, and that's another
 24 surveying firm out of Anchor Point.
 25 **COMMISSIONER ECKLUND:** Okay, okay. But

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1 you may be able to answer the question.
 2 **GINA DEBARDELABEN:** Sure.
 3 **COMMISSIONER ECKLUND:** The question I
 4 have is about distance, and the proposed site is how
 5 many miles from the Sterling Highway? How long of a
 6 drive is that? Not the Old Sterling Highway that's
 7 planning to be an exit site, but from the regular
 8 highway out there.
 9 **GINA DEBARDELABEN:** I don't know what
 10 that is. And then there's two routes to get to the
 11 Sterling Highway right now.
 12 **COMMISSIONER ECKLUND:** Right.
 13 **GINA DEBARDELABEN:** You can't take a
 14 loaded truck across --
 15 **COMMISSIONER ECKLUND:** The bridge.
 16 **GINA DEBARDELABEN:** -- the Anchor River
 17 bridge.
 18 **COMMISSIONER ECKLUND:** Right, okay. All
 19 right, thank you.
 20 **COMMISSIONER FOSTER:** Any more questions?
 21 Ms. Fikes.
 22 **COMMISSIONER FIKES:** So this applicant's
 23 proposal is for -- you're saying roughly estimated at
 24 10,000 cubic yards, is that your understanding for this
 25 permit for this location?

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1 **GINA DEBARDELABEN:** Well, the permit says
 2 less than 50,000 yards. In reality, gravel sales are
 3 based on -- excavation is based on gravel sales.
 4 10,000 yards is much more appropriate and likely in
 5 this neighborhood or this area.
 6 **COMMISSIONER FIKES:** And with that
 7 understanding, what would be realistic hours of
 8 operation for this particular site?
 9 **GINA DEBARDELABEN:** I don't know, but,
 10 you know, 10,000 yards isn't -- you know, that would be
 11 over two or three projects, most likely. And maybe a
 12 project would be four to six weeks depending on the
 13 size, and, you know, the crews -- it depends on what
 14 their delivery schedule needs to be.
 15 **COMMISSIONER FIKES:** Okay. Thank you.
 16 **COMMISSIONER FOSTER:** Any other
 17 questions? Not at this time, thank you. Any other
 18 testifiers?
 19 **ELDON OVERSON:** My name is Eldon Overson,
 20 and I have the piece of property that's on the corner
 21 of Danver and Seaward.
 22 So I'd like to thank the commissioners
 23 that on the July hearing that I think correctly denied
 24 the permit. The piece of property that I bought I just
 25 recently started framing up a little cabin to use in

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1 the summertimes, which I halted immediately once I
 2 found out this gravel pit was going to -- was being
 3 planned. So that pretty much halted my intended use of
 4 my property that I purchased that I paid quite a bit of
 5 money for.
 6 Also I'd like to kind of address some of
 7 the, I think, misinformation that you have received
 8 from the opposition.
 9 One, they say they're a mom and pop, you
 10 know, they're just going to take out a few yards here
 11 and there. When they were stopped from doing their
 12 additional two-and-a-half acre permit, they had a
 13 contract with Hilcorp to extract 12,000 yards. And
 14 that same 12,000 yards then was -- when they were
 15 stopped from doing that, was given to another gravel
 16 company, the Schafers, and they did that hauling of
 17 12,000 yards to Hilcorp, which is a, you know, longer
 18 distance away in just under a week-and-a-half. It took
 19 them about nine days.
 20 So the information that I think you're
 21 getting from the opposition is to paint this thing as
 22 kind of a small, no impact.
 23 My property sits exactly at the very top
 24 of the hill, and it is 50 feet above the material site.
 25 And it's also on the face where there is almost no

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1 vegetation. So that 50-foot vegetation buffer and --
 2 will do no good for me.
 3 And also the berm will do absolutely
 4 nothing, because I will have a complete line of sight
 5 of the crusher site and most of the excavation, even
 6 with Beachcomber's proposed moving the berm as they go.
 7 I will have -- I did submit a picture and
 8 kind of a site plan of where my property from -- the
 9 picture from my deck of my cabin that I was building,
 10 and it showed where the gravel pit was going to be.
 11 And a 12-foot berm with no trees in front of me in line
 12 of sight from the gravel pit, I will actually be --
 13 have a complete line of sight.
 14 So her testimony that the berm will knock
 15 down the sound, it won't because I will have a direct
 16 line of sight. It will not be -- the visual or the
 17 noise will not be stopped at my property because of the
 18 berm or the 50-foot buffer.
 19 So I would just hope that you would
 20 consider that and deny their permit again on those
 21 grounds. Thank you.
 22 **COMMISSIONER FOSTER:** Are there any
 23 questions? Not at this time, thank you.
 24 Is there anybody else who wants to
 25 testify at this time?

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1 **GREGG WIESER:** Good evening, my name is
 2 Gregg Wieser. I have two properties on Seabury Road.
 3 I just recently moved to Alaska after visiting for 25
 4 years, nine different vacations. Been all over the
 5 state on those vacations, but I did not go to all of
 6 those locations each and every vacation, or I -- but I
 7 always came back to Homer and Anchor Point every single
 8 vacation.
 9 And I fell in love with it, and I said to
 10 myself, "One day I'm going to live there." And that
 11 was my dream starting the very first time I came in
 12 1995.
 13 Some of the things that attracted me most
 14 to the area are the people and the community, and of
 15 course all of the different adventurous activities and
 16 the nature.
 17 Well, I finally was able to fulfill my
 18 dream, and this past October I purchased my two
 19 properties, which total a little over 10 acres on
 20 Seabury Road, seven-tenths of a mile from this proposed
 21 gravel site. So I was not included in any mailer or
 22 anything like that, because as I understand it, it was
 23 a half a mile, so I missed it by two-tenths of a mile.
 24 I was actually one property over according to the map I
 25 saw, the parcel.

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1 But basically I'm located between --
 2 well, it was a big surprise to me my very first week
 3 here, Hilcorp with their loud noise and wondering if
 4 those are the Northern Lights, but it's actually east
 5 and it was white lights. And that disturbance
 6 eventually stopped.
 7 But I'm closer to this proposed site on
 8 Danver, which would be even more noisy, I would
 9 imagine, with trucks. But now in this -- listening to
 10 everybody, I'm also hearing about, you know, crushing,
 11 and I don't even understand the definition, but it just
 12 sounds more impactful than just trucks going up and
 13 down the only recreational area in that part of the
 14 Kenai Peninsula for five campgrounds and a river with
 15 salmon and ends at a beach where you have thousands of
 16 tourists -- God bless you -- thousands of tourists that
 17 visit, like my son and I did this past July and again
 18 in August before we purchased the property, or I
 19 purchased the property. And went down to that beach
 20 and was able to enjoy low tide, you know, with all of
 21 the bald eagles.
 22 Well, Jean, the Eagle Lady, she's no
 23 longer around in Homer. The eagles left. So I took a
 24 few years since my last time in Alaska. When I was in
 25 Homer I noticed, "Where are all the eagles?" And they

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1 explained to me what happened. You've got to go to
 2 Anchor Point, you've got to go at low tide.
 3 So my son and I went for his 18th
 4 birthday over to Anchor Point low tide. I fell in love
 5 with the area, and I told my realtor, "You know what?
 6 I've been in real estate for over 10 years, and I'm
 7 finally able to retire young, and I'm moving to my
 8 favorite vacation place. My son is moving to the Air
 9 Force, I'm free, I can do what I want, and I'm moving
 10 to Alaska. And I don't have the light pollution, and I
 11 don't have the sound and the traffic and the horns and
 12 flaggers on the road. And I can enjoy clean air. And
 13 then I got bald eagles. And I can walk to the beach
 14 and not have to worry about getting run over by
 15 somebody and -- or -- but it's pretty strange that you
 16 sand the roads here instead of salt. How come?"
 17 "Oh, to protect the vegetation, to
 18 protect the wildlife. It doesn't eat up the roads as
 19 much. You've got to use sand."
 20 So I see the value, without a doubt, of
 21 having a gravel pit, of having sand, of having the
 22 ingredients, as one testifier said. But I think the
 23 location itself is just -- it's just not in the best
 24 interest of the community for those who actually have
 25 invested -- I paid cash. I don't have a mortgage. I

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1 paid it off on the spot. It was the greatest financial
 2 achievement of my life.
 3 But I didn't think that I'd be
 4 questioning whether I should expand and double the size
 5 of the place or triple the size of the place or to
 6 invest in the local business -- in the local Anchor
 7 Point community or not. And now it's a question of "or
 8 not," because it was a surprise with Hilcorp, and then
 9 I understand that stopped.
 10 But now there's the Chapman school that's
 11 maybe a wishy-washy thing on whether that's going to go
 12 through or not and it's going to close, and then now
 13 this. And I'm thinking, geez, all of that is within a
 14 mile-and-a-half of my new home, and that's not what I
 15 want.
 16 So I'm hesitant on reinvesting in my
 17 property, and I'm hesitant on going ahead and starting
 18 up a business in Anchor Point or something on the Spit.
 19 So I understand the facts, and, you know,
 20 emotional and all that, but if it's not on record, if
 21 it's not documented, it never happened. So thank you
 22 for your time and your consideration.
 23 And I definitely agree that there's a lot
 24 of people that maybe are not like me, their first year
 25 and go all out year round. Maybe they're snow birds

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1 and they don't have the opportunity to speak up and
 2 they didn't get the notice. I did not. I found out
 3 through the grapevine. So I think postponing it until
 4 they come back, like some of these experts that have
 5 been here a while know, would be in the community's
 6 best interest.
 7 But thank you for your time.
 8 **COMMISSIONER FOSTER:** Thank you, Mr.
 9 Wieser.
 10 **GREGG WIESER:** Yes.
 11 **COMMISSIONER FOSTER:** Any questions?
 12 Is there anybody else who wants to
 13 testify? And what I should probably ask is how many
 14 more are we going to have? We might have to take a
 15 break. We're going stop this at 11, but hopefully
 16 before that. But we will continue this.
 17 **JOSH ELMALEH:** I had a question -- or an
 18 answer to a question if you want it.
 19 **COMMISSIONER FOSTER:** I don't think right
 20 at this time here. What do you guys --
 21 **COMMISSIONER ECKLUND:** I think he just
 22 wants to respond to how far is the material site from
 23 the Sterling Highway.
 24 **COMMISSIONER FOSTER:** Oh, okay.
 25 **JOSH ELMALEH:** There's two routes one --

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1 **COMMISSIONER FOSTER:** Could you step up
 2 to the --
 3 **JOSH ELMALEH:** Sure. My name is Josh --
 4 **COMMISSIONER ECKLUND:** Specifically along
 5 Anchor Point Road. If you turn on Anchor Point Road
 6 and go to the material site, how far is that?
 7 **JOSH ELMALEH:** From Anchor Point Road to
 8 the material site is, like, three-quarters of a mile.
 9 Now, if you go from where it intersects
 10 with Old -- from the material site to the New Sterling
 11 along the route that you would have to take with a
 12 truck is approximately 10 miles. If you take it across
 13 the bridge, it's one mile. And if you go back to
 14 Anchor Point, it's between 15 and 18 miles.
 15 **COMMISSIONER ECKLUND:** Thank you.
 16 **COMMISSIONER FOSTER:** Well, I'm -- is
 17 there any more?
 18 **UNIDENTIFIED SPEAKER:** (Indiscernible).
 19 **COMMISSIONER FOSTER:** No, you've
 20 already -- you've already testified.
 21 **UNIDENTIFIED SPEAKER:** I just wanted
 22 (indiscernible).
 23 **COMMISSIONER FOSTER:** No, I'm sorry.
 24 You'll have a chance next time.
 25 Anybody new or something new?

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1 I would like to entertain a motion to
 2 continue until brought back by staff.
 3 **COMMISSIONER BOKENKO-CARLUCCIO:** So
 4 moved.
 5 **COMMISSIONER FOSTER:** Is it seconded?
 6 **COMMISSIONER ABRAHAMSON-BENTZ:** ^{Second.}
 7 **COMMISSIONER FOSTER:** Is there any
 8 opposition? Yes, Mr. Whitney, or discussion.
 9 **COMMISSIONER WHITNEY:** Well, the question
 10 is are you setting a date certain or --
 11 **COMMISSIONER FOSTER:** I said brought back
 12 by staff. I figured they'd set the date.
 13 **COMMISSIONER WHITNEY:** I would rather see
 14 a date certain, and I would say May 28th, assuming
 15 that's our meeting date.
 16 **COMMISSIONER FOSTER:** I'll check with
 17 staff on that.
 18 **MR. BEST:** That's correct. May 28th is a
 19 Planning Commission meeting, but it is on a Tuesday.
 20 **COMMISSIONER FOSTER:** Is that a motion?
 21 **COMMISSIONER WHITNEY:** Well, then I'd
 22 amend -- I would amend the motion to May 28th.
 23 **COMMISSIONER VENUTI:** I second that.
 24 **COMMISSIONER FOSTER:** Any discussion?
 25 **COMMISSIONER FIKES:** So we're postponing

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1 this until May, so --
 2 **COMMISSIONER FOSTER:** Not postponing,
 3 we're continuing so that -- we're continuing the public
 4 hearing. It's not even on the table.
 5 **MR. WALL:** Mr. Chairman, if I could add,
 6 I have a concern about May 28th in that I had planned
 7 my vacation schedule. I will be here on the 28th, but
 8 I'll be gone the four weeks prior to that. So I'm
 9 concerned about the continuity in processing the
 10 application if we were to have it on that date.
 11 **COMMISSIONER FOSTER:** So do you have a
 12 recommendation for a continuation?
 13 **MR. WALL:** The April 22nd date would be
 14 my recommendation.
 15 **COMMISSIONER FOSTER:** Yes, Ms. Ecklund.
 16 **COMMISSIONER ECKLUND:** Well, through the
 17 chair to staff, based on the applicant's representative
 18 tonight, they were ready to go forward with their
 19 discussion tonight. I believe we have all of the
 20 application materials prepared. I know we're going to
 21 have a lot more probably come in, maybe another 332
 22 desk packet by then, which we hope to get a little
 23 earlier. But I don't know that most of the work isn't
 24 already done. So take your four-week vacation, and
 25 let's do it on May 28th.

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1 **COMMISSIONER FOSTER:** Well, we have
 2 something on the floor right here, do we not? That we
 3 wanted to move it to the May 22nd and --
 4 **UNIDENTIFIED SPEAKER:** That's what she
 5 said.
 6 **MR. WALL:** May 28th.
 7 **COMMISSIONER FOSTER:** I mean April?
 8 **UNIDENTIFIED SPEAKER:** No
 9 (indiscernible).
 10 **MR. WALL:** No, May 28th.
 11 **COMMISSIONER FOSTER:** No, May 27 -- May
 12 28th? Okay.
 13 **COMMISSIONER BOKENKO-CARLUCCIO:** I think
 14 what she was saying is is that most of the work is
 15 done, that you should be able to prepare everything
 16 before you go on vacation and just slide in to the
 17 meeting.
 18 **COMMISSIONER FOSTER:** That's why I said
 19 let's bring it back when they bring it back to us, but
 20 it sounds like it may be --
 21 **UNIDENTIFIED SPEAKER:** It's too long a
 22 (indiscernible).
 23 **COMMISSIONER FOSTER:** -- too long a go,
 24 yeah.
 25 **UNIDENTIFIED SPEAKER:** Call for the

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1 question.
 2 **COMMISSIONER FOSTER:** Let's call for the
 3 question. We have to vote on whether we want to call
 4 for the question or not.
 5 So all those for calling for the
 6 question -- I guess roll call, please.
 7 **UNIDENTIFIED SPEAKER:** Chair, can you
 8 clarify?
 9 **COMMISSIONER FOSTER:** Yeah, in order to
 10 call for the question, we have to vote on that,
 11 otherwise we can keep the discussion going.
 12 **UNIDENTIFIED SPEAKER:** What are you
 13 calling the question on? That's what --
 14 **COMMISSIONER FOSTER:** That's the May
 15 20 -- the May 28th, bring about -- back for -- continue
 16 is until May 28th.
 17 **THE CLERK:** So this would be to continue
 18 on the May 28th Planning Commission meeting?
 19 **UNIDENTIFIED SPEAKER:** No.
 20 **COMMISSIONER FOSTER:** Yes.
 21 **UNIDENTIFIED SPEAKER:** It's to call the
 22 question.
 23 **COMMISSIONER BOKENKO-CARLUCCIO:** No, just
 24 to call the question.
 25 **COMMISSIONER FOSTER:** That's what the

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1 question is.
 2 **UNIDENTIFIED SPEAKER:** I'm so confused.
 3 **UNIDENTIFIED SPEAKER:** They're voting on
 4 the motion.
 5 **UNIDENTIFIED SPEAKER:** Okay, so...
 6 **UNIDENTIFIED SPEAKER:** We're voting on
 7 the motion, is that -- did that --
 8 **COMMISSIONER FOSTER:** Well, we can cut to
 9 the voting on the motion, yeah.
 10 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
 11 so --
 12 **COMMISSIONER FOSTER:** We're supposed to
 13 vote to decide whether we will vote. Yeah, that's part
 14 of the --
 15 **UNIDENTIFIED SPEAKER:** That's part of it.
 16 **COMMISSIONER FOSTER:** Yeah.
 17 **UNIDENTIFIED SPEAKER:** Yeah, you have to
 18 remember these (indiscernible).
 19 **UNIDENTIFIED SPEAKER:** I know
 20 (indiscernible).
 21 **COMMISSIONER FOSTER:** Yeah, so the idea
 22 is that when you -- when we're having a discussion and
 23 somebody calls for the question, then we have to vote
 24 whether we will stop our discussion and call for the
 25 question.

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1 If we all say yes, then we go for the
 2 vote. If somebody says -- you know, if the majority
 3 says no, then we still discuss.
 4 **THE CLERK:** So do you want to vote on the
 5 question?
 6 **UNIDENTIFIED SPEAKER:** Call for
 7 (indiscernible).
 8 **COMMISSIONER FOSTER:** Call for the
 9 question to vote on the question.
 10 **THE CLERK:** Okay, so call on the question
 11 to vote on the question?
 12 **COMMISSIONER FOSTER:** Yes, as ridiculous
 13 as it is.
 14 **THE CLERK:** All right, Carluccio?
 15 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes.
 16 **THE CLERK:** Fikes?
 17 **COMMISSIONER FIKES:** Yes.
 18 **THE CLERK:** Morgan?
 19 **COMMISSIONER MORGAN:** Yes.
 20 **THE CLERK:** Whitney?
 21 **COMMISSIONER WHITNEY:** Yes.
 22 **THE CLERK:** Bentz?
 23 **COMMISSIONER ABRAHAMSON-BENTZ:** Yes.
 24 **THE CLERK:** Ecklund?
 25 **COMMISSIONER ECKLUND:** Yes.

1 THE CLERK: Ernst?
 2 COMMISSIONER ERNST: Yes.
 3 THE CLERK: Venuti?
 4 COMMISSIONER VENUTI: Yes.
 5 THE CLERK: Foster?
 6 COMMISSIONER FOSTER: Yes.
 7 THE CLERK: Okay, it passed.
 8 COMMISSIONER FOSTER: Now we get to vote
 9 on whether it will be on the 28th.
 10 THE CLERK: Okay, so this is to continue
 11 the public hearing to the May 28th Planning Commission
 12 meeting.
 13 Ecklund?
 14 COMMISSIONER ECKLUND: Yes.
 15 THE CLERK: Carluccio?
 16 COMMISSIONER BOKENKO-CARLUCCIO: Yes.
 17 THE CLERK: Ernst?
 18 COMMISSIONER ERNST: Yep.
 19 THE CLERK: Fikes?
 20 COMMISSIONER FIKES: No.
 21 THE CLERK: Bentz?
 22 COMMISSIONER ABRAHAMSON-BENTZ: Yes.
 23 THE CLERK: Whitney?
 24 COMMISSIONER WHITNEY: Yes.
 25 THE CLERK: Morgan?

1 COMMISSIONER MORGAN: Yes.
 2 THE CLERK: Venuti?
 3 COMMISSIONER VENUTI: Yes.
 4 THE CLERK: Foster?
 5 COMMISSIONER FOSTER: No.
 6 THE CLERK: 2 to 7.
 7 COMMISSIONER FOSTER: So we are continued
 8 to the May 28th meeting.
 9 So at that time the public hearing will
 10 be -- remain open, and you can come back and talk about
 11 that and whatever else is new.
 12 If you have anything to turn in, that's
 13 for both the applicant and -- anything you have to send
 14 in, please get it in early.
 15 10:29:52
 16 (End of requested portion)
 17 10:36:28
 18
 19
 20
 21
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 23
 24
 25

1 CERTIFICATE
 2 I, LEONARD J. DiPAOLO, Registered Professional
 3 Reporter, Certified Realtime Reporter, Certified CART
 4 Provider, and Notary Public in and for the State of
 5 Alaska, do hereby certify:
 6 That the tape recording, CD March 25, 2019 was
 7 transcribed under my direction by computer
 8 transcription; that the foregoing is a true record of
 9 the testimony and proceedings taken at that time to the
 10 best of my ability; and that I am not a party to nor
 11 have I any interest in the outcome of the action herein
 12 contained.
 13 IN WITNESS WHEREOF, I have hereunto set my
 14 hand and affixed my seal this 25th day
 15 of August, 2019.
 16
 17
 18
 19
 20
 21
 22 _____
 23 LEONARD J. DiPAOLO, RPR, CRR, CCP
 24 Notary Public for Alaska
 25 My Commission Expires: 2-3-2020
 #3319

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APRIL 8, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION**LOCATION**

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Monday, April 8, 2019
7:45 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 7, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Syverine Abrahamson-Bentz, Anchor Point/Ninilchik
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Robert Ernst, Northwest Borough
Blair Martin, Kalifornsky Beach
Dr. Rick Foster, Southwest Borough
Diane Fikes, City of Kenai
Virginia Morgan, East Peninsula
Franco Venuti, City of Homer
Robert Ruffner, Kasilof/Clam Gulch
Paul Whitney, City of Soldotna

Staff Present:

Max Best, Planning Director
Julie Hindman, Administrative Assistant
Holly Montague, Deputy borough Attorney
Bruce Wall, Planner
Scott Huff, Platting Manager

Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP

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1 PROCEEDINGS
 2 7:44:58 p.m.
 3 **CHAIRMAN MARTIN:** Good evening, everyone.
 4 I'd like to call to order tonight's meeting of the
 5 Kenai Peninsula Borough Planning Commission for April
 6 8th, 2019. Roll call, please.
 7 **THE CLERK:** Bentz?
 8 **COMMISSIONER ABRAHAMSON-BENTZ:** Here.
 9 **THE CLERK:** Brantley?
 10 **COMMISSIONER BRANTLEY:** Here.
 11 **THE CLERK:** Carluccio?
 12 **COMMISSIONER BOKENKO-CARLUCCIO:** Here.
 13 **THE CLERK:** Ecklund?
 14 **COMMISSIONER ECKLUND:** Here.
 15 **THE CLERK:** Ernst?
 16 **COMMISSIONER ERNST:** Here.
 17 **THE CLERK:** Fikes?
 18 **COMMISSIONER FIKES:** Here.
 19 **THE CLERK:** Foster?
 20 **COMMISSIONER FOSTER:** Present.
 21 **THE CLERK:** Martin?
 22 **CHAIRMAN MARTIN:** Here.
 23 **THE CLERK:** Morgan?
 24 **COMMISSIONER MORGAN:** Here.
 25 **THE CLERK:** Ruffner?

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1 **COMMISSIONER RUFFNER:** Here.
 2 **THE CLERK:** Venuti?
 3 **COMMISSIONER VENUTI:** Here.
 4 **THE CLERK:** Whitney?
 5 **COMMISSIONER WHITNEY:** Here.
 6 **THE CLERK:** A quorum is present.
 7 **CHAIRMAN MARTIN:** Thank you. At this
 8 time I'll entertain a motion for approval of consent
 9 and regular agenda.
 10 **COMMISSIONER BOKENKO-CARLUCCIO:** So
 11 moved.
 12 **COMMISSIONER ABRAHAMSON-BENTZ:** ^{Second.}
 13 **CHAIRMAN MARTIN:** Is there any discussion
 14 or addition? Is there any opposition? Seeing none,
 15 the motion passes unanimously.
 16 That takes us to item D with the public
 17 comment presentations, something not appearing on the
 18 agenda.
 19 (Audio pause)
 20 **CHAIRMAN MARTIN:** Yeah, please state your
 21 name and address at the microphone for the record.
 22 **EMMITT TRIMBLE:** Emmitt Trimble, P.O. Box
 23 193, Anchor Point. I'm not sure that this is the
 24 appropriate place to make this request. I called
 25 earlier today.

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1 At the last Planning Commission meeting,
 2 we had discussed procedures and the possibility of a
 3 continuation, which we were okay with and had talked
 4 about a date, April 22nd, and went into the meeting
 5 with that -- if that was -- that worked for us.
 6 At the late hour that it ended, there was
 7 a motion to continue to May 28th because a couple of
 8 our opponents had said they really wanted to see it on
 9 May 28th. That gave time for the snow birds to come
 10 back from Arizona and California, and they really
 11 needed to testify too.
 12 The motion passed unanimously without any
 13 question to us or finding out whether we were even
 14 going to be in the country at that time, and we're not.
 15 So we're not available for the continuation on May
 16 28th. We are available on April 22nd, which was kind
 17 of our agreement with staff and Mr. Foster, and -- or
 18 May 13th.
 19 So we're just respectfully requesting
 20 that we address that issue and try to change that date.
 21 We aren't going to change the date of our family
 22 vacation.
 23 **CHAIRMAN MARTIN:** Any questions at this
 24 time?
 25 **COMMISSIONER FIKES:** I would just like to

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1 point out it wasn't unanimous.
 2 **EMMITT TRIMBLE:** Thank you.
 3 **CHAIRMAN MARTIN:** Anyone else?
 4 **EMMITT TRIMBLE:** I have one more thing,
 5 if I may.
 6 **CHAIRMAN MARTIN:** Sure.
 7 **EMMITT TRIMBLE:** There was a fairly
 8 vicious attack of one of the planning commissioners in
 9 a written testimony from opponents during the time when
 10 Mr. Brantley recused himself. And it was requested
 11 that Mr. Venuti recuse himself because we were real
 12 estate brokers and he was an inspector.
 13 And I'd just like to apologize for the
 14 majority of Anchor Point for the suggestion that Mr.
 15 Venuti was unethical and nefarious. I was offended.
 16 **CHAIRMAN MARTIN:** Thank you for your
 17 testimony.
 18 Is there anyone else in the audience to
 19 bring up something that's not on tonight's agenda?
 20 So hearing and seeing no further
 21 requests, we'll address the request at this time. Is
 22 that -- Ms. Ecklund.
 23 **COMMISSIONER ECKLUND:** The process, I
 24 believe, to change a date that was a set date at a
 25 meeting is that we have to make a motion to amend after

1 adoption, and the discussion of the change would take
2 place at our next meeting. Not -- we don't make a
3 change to the date tonight, we just make a motion to
4 amend after adoption and then put the item on our next
5 meeting agenda for public notice.
6 **CHAIRMAN MARTIN:** Is now the time to take
7 that motion?
8 **COMMISSIONER ECKLUND:** I move that we
9 amend after adoption the date set for the Anchor Point
10 Trumbly [sic] material extraction site to be publically
11 noticed for discussion at our next meeting.
12 **COMMISSIONER FIKES:** Second.
13 **CHAIRMAN MARTIN:** Mr. Whitney.
14 **COMMISSIONER WHITNEY:** Just a question.
15 Would Mr. Brantley have to recuse himself on this also?
16 **CHAIRMAN MARTIN:** Mr. Brantley.
17 **COMMISSIONER BRANTLEY:** Yes, I would like
18 to recuse myself from this discussion.
19 **CHAIRMAN MARTIN:** So everybody
20 understands the motion? Is there any objection?
21 Hearing and seeing none, the motion passes unanimously,
22 bringing it up for discussion at our next meeting.
23 7:51:09
24 (End of requested portion)
25 7:58:14

1 **CERTIFICATE**
2 I, LEONARD J. DiPAOLO, Registered Professional
3 Reporter, Certified Realtime Reporter, Certified CART
4 Provider, and Notary Public in and for the State of
5 Alaska, do hereby certify:
6 That the tape recording, CD April 8, 2019 was
7 transcribed under my direction by computer
8 transcription; that the foregoing is a true record of
9 the testimony and proceedings taken at that time to the
10 best of my ability; and that I am not a party to nor
11 have I any interest in the outcome of the action herein
12 contained.
13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my seal this 25th day
15 of August, 2019.
16
17
18
19
20
21
22 LEONARD J. DiPAOLO, RPR, CRR, CCP
23 Notary Public for Alaska
My Commission Expires: 2-3-2020
24 #3319
25

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APRIL 22, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION

LOCATION

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Monday, April 2, 2019
7:28 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 23, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Robert Ernst, Northwest Borough
Diane Fikes, City of Kenai
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Paul Whitney, City of Soldotna

Staff Present:

Max Best, Planning Director
Julie Hindman, Administrative Assistant
Jordan Reif, Platting Technician
Tom Dearlove, River Center Manager
Bruce Wall, Planner
Scott Huff, Platting Manager

Others Present:

Emmitt Trimble
Mary Trimble
Pete Kinneen
Rick Carlton
Gary Sheridan
Eileen Sheridan
Hans Bilben

Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP

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1 PROCEEDINGS
 2 7:28:19 p.m.
 3 (This portion not requested)
 4 7:48:14 p.m.
 5 **CHAIRMAN MARTIN:** That will bring us to
 6 I-2 for the consideration of a motion to amend after
 7 adoption.
 8 **MR. WALL:** Yes, Mr. Chairman. This is to
 9 schedule the continuation of a hearing for a
 10 conditional land use permit for a material site. The
 11 applicant is Beachcomber, LLC.
 12 At your March 25th meeting the applicant
 13 had requested the hearing be continued. He had
 14 suggested April 22nd. At the conclusion of the
 15 meeting, the commission had scheduled it for May 28th.
 16 And the borough staff and the commission at that time
 17 failed to check with the applicant about his
 18 availability on that date. He has since indicated that
 19 he is unavailable, that he will be out of the country,
 20 and so the continuation date needs to be rescheduled.
 21 **CHAIRMAN MARTIN:** Okay, thank you. So at
 22 this time, how many people have a comment that they are
 23 interested in presenting tonight? All right, first
 24 commenter, please.
 25 **COMMISSIONER BRANTLEY:** Excuse me.

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1 Before we start, I need to recuse myself from this.
 2 **CHAIRMAN MARTIN:** So noted and ordered.
 3 **HANS BILBEN:** Thank you to the chair and
 4 the commissioners for allowing us to discuss this.
 5 In your packets for tonight you have 19
 6 or 20 letters from Anchor Point residents who are
 7 opposed to the rescheduling of the Planning Commission
 8 hearing to any date prior to the current scheduled time
 9 on May 28th.
 10 The justification given for the
 11 continuance to May 28th was to allow neighboring
 12 property owners who are not available prior to that
 13 time an opportunity to arrange their schedules
 14 accordingly in order to give in-person testimony at the
 15 hearing.
 16 As you can see in the letters that were
 17 submitted, several neighbors have now made their travel
 18 arrangements and will be here by May 28th.
 19 You also have a letter in your packet
 20 from a Kasey Baker [sic] who is the applicant's former
 21 attorney. In her letter she talks about commissioners
 22 who are guilty of delaying, postponing, or rescheduling
 23 the application process because they just don't like
 24 gravel.
 25 Let's talk about delaying. We were all

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1 prepared for the March 25th hearing, we were kind of
 2 looking forward to it. Six days prior to the scheduled
 3 March 25th hearing, Kasey Baker [sic] personally
 4 requested a delay or a continuance for mysterious,
 5 unforeseen circumstances. No reason given. But more
 6 than likely it was because two of the three
 7 commissioners who supported the application at the July
 8 2018 hearing would be excused from the March 25th
 9 hearing.
 10 The delay was requested by the
 11 applicants' attorney; the delay was granted by the
 12 Planning Commission.
 13 Even more mysterious, at the March 25th
 14 meeting, here comes Kasey Baker, the attorney, the
 15 applicants, their out-of-town gravel buddies, they all
 16 showed up ready to proceed.
 17 Which commissioners does she want to
 18 blame for that one?
 19 Postponing. I think she just threw that
 20 one because it sounded good, but I don't recall of any
 21 postponement that's gone on so far in this process.
 22 That leaves rescheduling. We're here
 23 today because of a request from the applicants to
 24 reschedule, not because of a request from anybody on
 25 the commission or anybody that's opposing this. It was

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1 the applicant that requested this reschedule. I don't
 2 believe this request came from any gravel-hating
 3 commissioner, it came from the applicant.
 4 Yes, Kasey Baker [sic] is correct, there
 5 have been delays and a request to reschedule. Both
 6 were initiated by the applicant and/or his attorney.
 7 Kasey Baker [sic] seems to be of the same
 8 mindset as the applicant, in the only -- in that the
 9 only people with rights are material extraction
 10 applicants.
 11 I just want to say thank you to all of
 12 the commissioners who are not willing to rubber stamp
 13 every application that comes before them.
 14 Thank you to those of you who realize
 15 that material site -- a material site that is
 16 improperly conditioned can have long-lasting negative
 17 effects to families, neighborhoods, and communities.
 18 Thank you to all of those who insist that an
 19 application is accurate and that all conditions and all
 20 standards are met before accepting or approving any
 21 permit.
 22 The entire process is unfortunately
 23 stacked against neighboring property owners and in
 24 favor of the applicants, but there are protections
 25 spelled out in the code, and it's the job of this

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1 Planning Commission to ensure that those protections
2 are afforded to neighboring property owners, even if it
3 means denying a permit at some time -- point in time.
4 This hearing should remain on the
5 schedule for the May 28th date, and if the applicant
6 can't find a way to break free from his busy schedule,
7 then it should be moved to June. May 13th will not
8 work for several neighboring property owners who have
9 made travel plans that coincide with the Planning
10 Commission's March 25th decision, and that was to hold
11 it on May 28th.
12 Additionally, on the -- the applicant
13 will likely be pushing for the May 13th Planning
14 Commission hearing. At that hearing we will have
15 neither a planning director or a planner. So who is
16 going to be here to answer technical or procedural
17 questions when the commission has questions or when the
18 opponents or the applicant have questions? So the May
19 13th date does not work.
20 This hearing should either be May 28th --
21 somebody suggested June of 2050, I'm kind of with that
22 one, too, but I don't think we'll go that far. But
23 that's all I have, thank you.
24 **CHAIRMAN MARTIN:** Are there any
25 questions? None at this time. Next, please.

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1 **ILENE SHERIDAN:** I'm Ilene Sheridan, and
2 I live right in the area there. I can't give you --
3 it's 32 -- what's our address? 32860 Seabury Court,
4 and that's -- we're secondary to this area, but we're
5 still within that half mile, and I'm already getting a
6 little dust in our homes from this.
7 We are wishing that you would wait to not
8 change the date to the 20 -- any earlier or later --
9 that May 28th is the date that we've planned on, that
10 we've been working towards, and we appreciate what
11 you've all done for us. Thank you.
12 **CHAIRMAN MARTIN:** Next.
13 **LYNN WHITMORE:** My name is Lynn Whitmore,
14 and I live next door to the proposed gravel pit.
15 And when we set the schedule for May
16 28th, I made business plans for the times prior to
17 that, and those are obligations I'd like to keep. And
18 to have this thing keep moving and keep moving, it
19 makes it really difficult for any kind of planning if
20 you're still doing business.
21 And even though we don't always agree
22 with what the planning department has to say about this
23 whole thing, anything that we do in this approval
24 process, it's going to affect them down the line. So
25 it seems just to make sense to have one or both of

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1 those guys available for decisions that might be
2 upcoming like this one, thanks.
3 **CHAIRMAN MARTIN:** Thank you. Next
4 testifier, please.
5 **EMMITT TRIMBLE:** I'm Emmitt Trimble, the
6 applicant from Anchor Point.
7 We really wanted this to be done back in
8 July when all of these people who are going to be
9 coming this summer were here. Everyone had a fair
10 opportunity to testify at that original public hearing.
11 We wanted it to happen in February.
12 There were scheduling problems for staff, so there were
13 reasons given to us that we had to move along.
14 So on the March 25th, I believe it was,
15 meeting when we came, we had requested -- the attorney
16 had requested postponement, and that wasn't possible.
17 Right away immediately we received a
18 notice from the staff that that was not possible, but
19 what could happen would be a continuation.
20 And so when we came, we were prepared
21 that night to go through with the process of the public
22 hearing.
23 We met prior to the meeting with planning
24 staff, Mr. Best and Mr. Wall, and the acting chairman,
25 Dr. Foster. They'd made some changes to procedures,

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1 and they wanted us to be aware of them.
2 And we listened to that and went away
3 from that meeting of how things were going to go.
4 Regarding scheduling, is that all of the testimony
5 would be allowed, and at the end of public testimony,
6 that they would ask for a continuation, and that that
7 would be the end of the public testimony.
8 And that starting on April 22nd, which
9 was the date that was presented by staff and Dr.
10 Foster, that it would begin with our rebuttal. And all
11 of that sounded fine to us, and so we agreed to that.
12 As often happens at 11 o'clock when
13 everybody is ready to go home, and after lots and lots
14 of redundant testimony, a motion was made to continue.
15 But during the meeting, individual testifiers were told
16 that they would be able to testify again. And that
17 certainly wasn't our understanding.
18 And so I think at least two people said,
19 "Well, we'll hold what we've got to say until the next
20 meeting," for whatever reason. So obviously it wasn't
21 going to start with our rebuttal at the April 22nd
22 meeting. Okay, that's fine.
23 Then Mr. Foster, as he had said he would
24 do, requested a motion for continuation, and that
25 happened. And someone said, "Well, what day?" And

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1 though we had talked about April 22nd, and that wasn't
 2 something we proposed, it was something that staff
 3 and -- proposed, and it was acceptable to us.
 4 But during testimony people were saying,
 5 "Since this is going to be continued, I won't give my
 6 testimony tonight, I'll give it later. And we would
 7 like to see this until at least May 28th so that the
 8 snow birds can be here."
 9 So those are people who don't live here,
 10 but they are people who were here in July in the
 11 original hearing, and they have had a year to testify
 12 in writing, telephonically, many, many opportunities.
 13 So someone said, "Well, let's make it May
 14 28th," because Dr. Foster said we would leave that to
 15 staff, and that's where the April 22nd we supposed
 16 would come from. It didn't happen.
 17 Someone said, "I move that it's the 28th,
 18 because that's what these people said they want for the
 19 snow birds to be able to get here." I thought that was
 20 not a really valid reason for doing that.
 21 That was the vote. Two people voted no
 22 and everybody else voted yes, and that was it.
 23 At the end of that we had no place other
 24 than to stand up and interrupt the meeting to say,
 25 "We're not going to be here on that date." And I don't

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1 know where the conspiracy theories have come of out of
 2 country. Yeah, we have a planned vacation, not out of
 3 country, out of state.
 4 And the next day we talked to staff and
 5 said, "We're not going to be here on that date, you
 6 know, we were -- we had agreed on the 22nd."
 7 "Well, we can't do anything until the
 8 next meeting. You'll have to come and request a
 9 change."
 10 Okay, so we made the trip up here and we
 11 requested that. "No, we can't address that tonight.
 12 You've got to come back two weeks later."
 13 So none of these delays were something we
 14 wanted. We should have had the permit in July. So we
 15 won't be here on May 28th. We will be here on May
 16 13th. And it seems like staff will be here also. So
 17 that would be acceptable to us in case someone had any
 18 concern about whether the applicant would be here or
 19 not, thank you.
 20 **CHAIRMAN MARTIN:** Is there anyone else in
 21 the audience? Seeing none, we'll continue the -- we
 22 have a question for Mr. Trimble.
 23 **EMMITT TRIMBLE:** Yes, sir.
 24 **COMMISSIONER RUFFNER:** Through the chair.
 25 Thanks, Emmitt. So, I mean, you heard the testimony

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1 the same as I did tonight.
 2 **EMMITT TRIMBLE:** Yes, I did.
 3 **COMMISSIONER RUFFNER:** Yeah, so I guess
 4 what I would like to know from you is if -- you know,
 5 none of us have talked to each other, so we don't
 6 know -- we're being pretty careful on this case about
 7 making sure we follow the rules.
 8 **EMMITT TRIMBLE:** Uh-huh.
 9 **COMMISSIONER RUFFNER:** But just if the
 10 discussion comes up about a date later than the 28th,
 11 are you going to be here in June?
 12 **EMMITT TRIMBLE:** That's not acceptable to
 13 me.
 14 **COMMISSIONER RUFFNER:** Yes, so you'd
 15 rather that not happen?
 16 **EMMITT TRIMBLE:** No, I'd rather that not
 17 happen. This has gone far enough.
 18 **COMMISSIONER RUFFNER:** Right. I clearly
 19 get that perspective from you, but I just want to know
 20 if you're going to be here or not.
 21 **EMMITT TRIMBLE:** As far as I know, I'll
 22 be here in June, yeah. Yeah, the season is here, we're
 23 working.
 24 **COMMISSIONER RUFFNER:** Right. Okay, that
 25 was the --

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1 **EMMITT TRIMBLE:** It's just on that -- we
 2 were going to be gone for a week, and that May 28th
 3 happened to be smack in the middle of that. Nobody
 4 asked me.
 5 **COMMISSIONER RUFFNER:** Right, yeah, I got
 6 that part.
 7 **EMMITT TRIMBLE:** I could have said that
 8 earlier.
 9 **COMMISSIONER RUFFNER:** I got that you're
 10 going to be here on May 13th.
 11 **EMMITT TRIMBLE:** Yes.
 12 **COMMISSIONER RUFFNER:** Okay, and that's
 13 your preference?
 14 **EMMITT TRIMBLE:** Yes.
 15 **COMMISSIONER RUFFNER:** Yeah, okay, I got
 16 it.
 17 **EMMITT TRIMBLE:** Thank you.
 18 **CHAIRMAN MARTIN:** Thank you. Discussion
 19 on the date? Ms. Ecklund? Did you miss your chance to
 20 talk?
 21 **UNIDENTIFIED SPEAKER:** He did. I don't
 22 think you closed it.
 23 **GARY SHERIDAN:** Thank you, Mr. Chairman.
 24 I'm Gary Sheridan --
 25 **COMMISSIONER BOKENKO-CARLUCCIO:** Hit the

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1 button.

2 **GARY SHERIDAN:** I'm Gary Sheridan from

3 Anchor Point. And I just want a note of clarification

4 about the dates that are in the staff report that was

5 handed out to us.

6 And I just heard the testimony saying

7 that it appears that May 13th would be acceptable to

8 everybody, and I'd be concerned about that because it

9 says that Max Best, planning director, and Bruce Wall,

10 planner, will both be unable to attend the meeting.

11 And for the efficiency of the whole

12 process we're here, I think both of those gentlemen

13 have a real significant say in clarification of some of

14 the points that will probably come up in some of the

15 deliberations, thank you.

16 **CHAIRMAN MARTIN:** Thank you. Please

17 state your name and address for the record.

18 **PETE KINNEEN:** I just came by to address

19 the motion for reconsideration.

20 **CHAIRMAN MARTIN:** We need your name and

21 address on the microphone.

22 **PETE KINNEEN:** Pete Kinneen in Anchor

23 Point. And I just wanted to express concern about the

24 constant -- it's the applicant, actually, that is

25 pushing the dates back and forth, it's nobody else.

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1 And so I'd like to weigh in on the date

2 being as we set it, the 28th of next month. And if

3 that's not available -- I mean, it is available, but it

4 would either be May 28th or a following date for the

5 reasons that I think some of the other people have

6 already covered. So I just wanted to weigh in on that,

7 thank you.

8 **CHAIRMAN MARTIN:** Thank you. Next

9 person. Was there somebody else?

10 **RICK CARLTON:** Yeah, my name is Rick

11 Carlton. I'm from Anchor Point also.

12 **CHAIRMAN MARTIN:** And your address.

13 **RICK CARLTON:** And I pretty much just

14 have a question, couple questions, actually. We've

15 heard some conflicting testimonies, or things that were

16 said here, and I just would kind of like a

17 clarification.

18 One of which, why would the applicant

19 have not said something at that meeting that he wasn't

20 going to be here when it was passed and approved that

21 they were going to move the meeting to the 28th?

22 That's my first question.

23 And the other question was, when are Mr.

24 Best and Mr. Wall going to actually be here? I've

25 heard that they are not going to be here this date and

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1 they are not going to be here that date. So could we

2 get those two questions answered?

3 **CHAIRMAN MARTIN:** I'm sure that will come

4 up in discussion.

5 **RICK CARLTON:** Thanks.

6 **CHAIRMAN MARTIN:** Thank you. Anyone

7 else? Last call. I'll close public comment, bring it

8 to the commission for discussion.

9 Do we need a motion to get this ball

10 rolling? Ms. Ecklund.

11 **COMMISSIONER ECKLUND:** Do we make a

12 motion to consider a motion, is that the --

13 **UNIDENTIFIED SPEAKER:** You have to amend

14 the motion.

15 **COMMISSIONER ECKLUND:** Okay. I move that

16 we consider a motion to amend after adoption of the

17 hearing continuance date for a conditional land use

18 permit application for material extraction by the

19 applicant Beachcomber, LLC.

20 **COMMISSIONER RUFFNER:** Second.

21 **CHAIRMAN MARTIN:** Now we can discuss it.

22 Ms. Ecklund.

23 **COMMISSIONER ECKLUND:** Yeah, my question

24 was already asked by the public. The dates in our

25 packet lists reasons why April 22nd is not an option

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1 because public notice would not have been able to be

2 provided.

3 May 13th, neither Mr. Best or Mr. Wall

4 will be able to attend the meeting, is that correct?

5 **MR. WALL:** That's correct. We will both

6 be out of town on that date.

7 **COMMISSIONER ECKLUND:** Okay. And on May

8 28th, the applicant will not be available; June 10th,

9 Mr. Best won't be available; and June 24th, Mr. Wall

10 won't be available.

11 That moves it into July when, I believe,

12 the borough attorney, who has been handling this

13 primarily, will no longer be with the borough. So

14 we're just going to have to pick the least worst date

15 it looks like.

16 **CHAIRMAN MARTIN:** Ms. Ecklund stated --

17 Mr. Wall.

18 **MR. WALL:** Mr. Chairman, if I could.

19 **CHAIRMAN MARTIN:** Please.

20 **MR. WALL:** There is no reason for Mr.

21 Best and myself both to be here. So we feel that

22 either of those dates in June would work.

23 **CHAIRMAN MARTIN:** Thank you. Ms. Fikes.

24 **COMMISSIONER FIKES:** Do we have an

25 obligation to take an action, or can we take no action?

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1 What are our options?
 2 **CHAIRMAN MARTIN:** Mr. Ruffner.
 3 **COMMISSIONER RUFFNER:** Thank you, Mr.
 4 Chair. Yeah, no, we could leave it as scheduled on the
 5 28th. So the motion is that we take this up. And so
 6 unless somebody (indiscernible) that they are date
 7 specific, you know, that's where we stand procedurally,
 8 I believe.
 9 So it is possible, but I think, you know,
 10 referencing the dates of who is here and who is not
 11 here and the fact that the applicant is not here is one
 12 of those things we have to consider.
 13 **CHAIRMAN MARTIN:** Ms. Carluccio.
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** Well, I
 15 think that the applicant should be here on the day that
 16 we discuss his application. Normally when we get down
 17 to this, there is some give and take with the applicant
 18 at that time when it comes to some requirements we
 19 want. And it's going to be kind of hard to have that
 20 give and take if he's not here.
 21 So I think that we should consider moving
 22 it forward, even though I know he didn't want us to, he
 23 wanted us to do it on the 13th. Since neither Max Best
 24 nor Bruce Wall are here, I think that it would be -- it
 25 wouldn't be in our best interest to discuss it at that

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1 time. They're our experts on this, and we need at
 2 least one of them.
 3 **CHAIRMAN MARTIN:** Mr. Ruffner.
 4 **COMMISSIONER RUFFNER:** Thank you, Mr.
 5 Chair. So, I mean, I think we all recognize we're in a
 6 little bit of a pickle.
 7 I wasn't here at the last meeting when
 8 the date was set, so, you know, I'm trying to take in
 9 everything that I've heard to decide when the best time
 10 to be -- you know, typically what I recall with other
 11 applications that come in and the applicant requests to
 12 postpone or stuff, we generally honor that. But at the
 13 same time, we've already -- we've also made a statement
 14 as to -- we were scheduled on May 28th, and so that
 15 puts the other side at -- you know, feeling like they
 16 have been disenfranchised by moving the date again.
 17 So I think my preference would be to hold
 18 it on May 13th, but for the fact that both the director
 19 and the planner that have handled this are not here,
 20 I'm going to move to amend the motion to set the date
 21 for June 10th.
 22 **COMMISSIONER BOKENKO-CARLUCCIO:** I'll
 23 second it.
 24 **CHAIRMAN MARTIN:** Discussion on the
 25 amendment? Mr. Whitney.

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1 **COMMISSIONER WHITNEY:** If it is moved to
 2 the June 10th date, would there be public testimony
 3 allowed during that hearing?
 4 **CHAIRMAN MARTIN:** Yes.
 5 **MR. WALL:** We did announce at the last
 6 meeting that we would allow additional public
 7 testimony.
 8 **COMMISSIONER WHITNEY:** Thank you.
 9 **COMMISSIONER FIKES:** Is there anyone from
 10 administration that could step in for Max or Bruce in
 11 their absence?
 12 **MR. WALL:** Marcus Mueller will be here at
 13 that meeting.
 14 **CHAIRMAN MARTIN:** I think the question
 15 was the May 13th meeting? Okay. And what -- you guys,
 16 you feel that Mr. Mueller could fill in in your stead?
 17 **MR. WALL:** He's the land management
 18 officer. He deals with borough lands. He's not
 19 familiar with the material site ordinance.
 20 **CHAIRMAN MARTIN:** Thank you. Further
 21 discussion on the amendment, June 10th? Is there any
 22 opposition to the motion to amend? Seeing none, that
 23 passes unanimously. Therefore the consideration is set
 24 for June 10th.
 25 **UNIDENTIFIED SPEAKER:** Do we need to vote

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1 one more time on that?
 2 (Whispered discussion - indiscernible)
 3 **CHAIRMAN MARTIN:** Mr. Best.
 4 **MR. BEST:** Thank you, Mr. Chairman. The
 5 original motion was to amend the date, is that what
 6 your motion was?
 7 **CHAIRMAN MARTIN:** So we amend the date.
 8 Now we approve the --
 9 **COMMISSIONER RUFFNER:** So the first
 10 motion was consideration of a motion to amend after
 11 adoption kind of just as written in the staff packet.
 12 And so that motion was made, and then I made an
 13 amendment to set a specific date to that.
 14 **UNIDENTIFIED SPEAKER:** Now you need to
 15 vote on that main motion.
 16 **COMMISSIONER RUFFNER:** Yeah, that's what
 17 I thought. And I think the roll call.
 18 **CHAIRMAN MARTIN:** Roll call, please.
 19 **THE CLERK:** This was for a motion to
 20 amend a hearing date after adoption for a conditional
 21 land use permit for a material site for the applicant
 22 Beachcomber, LLC amended to a June 10th hearing date.
 23 Ernst?
 24 **COMMISSIONER ERNST:** Yes.
 25 **THE CLERK:** Whitney?

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**VERBATIM TRANSCRIPT
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JUNE 10, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION**LOCATION**

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Monday, June 10, 2019
7:30 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 172, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Syverine Abrahamson-Bentz, Anchor Point/Ninilchik
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Robert Ernst, Northwest Borough
Dr. Rick Foster, Southwest Borough
Diane Fikes, City of Kenai
Blair Martin, Kalifornsky Beach
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna

Staff Present:

Julie Hindman, Administrative Assistant
Jordan Reif, Platting Technician
Dan Conetta, Land Management Agent
Charlie Pierce, Kenai Peninsula Borough Mayor
Bruce Wall, Planner
Scott Huff, Platting Manager

Others Present:

Emmitt Trimble
Mary Trimble
Stacey Stone
Paul Morino
Judy Aaron
Linda Bruce
Mark Claypool
Christina Elmaleh
Teresa Jacobson
Pete Kinneen
Lynn Whitmore
Allison Trimble Papparoa
Gary Sheridan
Richard Carlton

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1 Others Present, Continued:
 2 Todd Bareman
 3 Ryan Muzzarelli
 4 Ed Martin III
 5 Vickey Hodnik
 6 Rick Oliver
 7 Richard Cline
 8 Charity Jacobson
 9 Jim Reid
 10 Roger McCampbell
 11 Larry Smith
 12 Chris Crum
 13 Hans Bilben
 14 Ann Cline
 15 Lauren Isenhour
 16 Buzz Kyllonen
 17 Tom Clark
 18 Angela Roland
 19 Josh Elmaleh
 20 Katie Elsner
 21
 22 Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP
 23
 24
 25

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1 was conducted on March 25th and continued to this date.
 2 Excerpts from the hearing officer's
 3 decision is included in the staff report, and copies of
 4 the decision is contained in Volume 2 of your packet
 5 beginning on page 2.
 6 All of these other page references that
 7 I'm going to give you are in Volume 1. And because
 8 this is a continuation of the March meeting, there is
 9 not a new staff report done. The staff report from the
 10 March meeting begins on page 222 of Volume 1.
 11 The resolution beginning on page 77 has
 12 been updated to reflect today's meeting. The draft
 13 resolution contains staff recommended buffers. Those
 14 buffers are illustrated on a map on page 238. Staff is
 15 recommending different buffers than what is shown on
 16 the applicant's site plan and different from the
 17 staff's recommendation in July.
 18 On page 18 of your packet -- hang on,
 19 nope, forget that last reference.
 20 A waiver is being requested for the
 21 300-foot processing distance requirement from the
 22 property line. Staff does not recommend approval of
 23 the processing distance waiver request. There is room
 24 elsewhere on the property for processing that meets the
 25 300-foot setback requirement. The draft findings in

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1 PROCEEDINGS
 2 7:28:15 p.m.
 3 (This portion not requested)
 4 7:32: 35 p.m.
 5 **CHAIRMAN MARTIN:** That brings us to item
 6 F-3, continuation of the March 25th, 2019 public
 7 hearing for the CLP in the Anchor Point area. Staff.
 8 **COMMISSIONER BRANTLEY:** May I?
 9 **CHAIRMAN MARTIN:** Yeah, please.
 10 **COMMISSIONER BRANTLEY:** I just wanted to
 11 remind the commission that I've recused myself from
 12 this.
 13 **CHAIRMAN MARTIN:** So noted. Whenever
 14 you're ready, Mr. Wall.
 15 **MR. WALL:** Thank you, Mr. Chairman.
 16 This is an application for a conditional
 17 land use permit for a material site in the Anchor Point
 18 area. It is located at 74185 Anchor Point Road, Parcel
 19 No. Is 169-010-67. The applicant is Beachcomber, LLC.
 20 This application was heard by the
 21 Planning Commission on July 16th, 2018 where the
 22 application was denied approval. This decision was
 23 appealed and was reviewed by a hearing officer.
 24 The hearing officer has remanded the
 25 application to the Planning Commission where a hearing

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1 the resolution support the denial of the waiver.
 2 Julie has provided the commission members
 3 with an index for where other items are located in the
 4 packet. However, if you have difficulty finding the
 5 document during the meeting, feel free to ask me to
 6 help you locate it. It is quite a large volume, so I
 7 understand that it's cumbersome to get through.
 8 The new comments that have come in since
 9 the March meeting begin on page 84. You also have
 10 several letters in your desk packet, including a letter
 11 from an adjacent property owner requesting that his
 12 previous objections to the proposal be disregarded.
 13 There are also two letters on your desk
 14 that came in after the desk packet was published. The
 15 Planning Commission -- or actually make that -- I think
 16 it's three letters that's come in since the desk packet
 17 was prepared.
 18 The Planning Commission should review the
 19 application, site plan, staff report, and comments
 20 received and determine if the mandatory conditions
 21 contained in KPB 21.29.050 will be met.
 22 The planning department recommends that
 23 the Planning Commission deny the processing distance
 24 waiver request, approve the conditional land use permit
 25 with listed conditions, and adopt the findings of fact

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1 subject to the requirements contained in the staff
 2 report. And that's the end of my report.
 3 **CHAIRMAN MARTIN:** Thank you. Before I
 4 open public comment, I'll read the rules by which these
 5 hearings will be conducted.
 6 Anyone wishing to testify must wait for
 7 recognition by the chair and state their name and
 8 address for the record at the microphone provided for
 9 public comment.
 10 Each speaker is limited to five minutes
 11 unless they have a prepared statement, in which case
 12 they may request additional time. All questions will
 13 be directed to the chair. All questions and comments
 14 will be kept to the subject at hand and shall not deal
 15 with personalities.
 16 The public shall maintain decorum at all
 17 times and treat testifiers with respect. No applause
 18 or verbal outbursts will be allowed.
 19 And the hearing procedure -- well, the
 20 chair introduces the agenda item, like I just did;
 21 staff presents a report and a recommendation; and
 22 presentation by the applicant and their
 23 representatives; and then followed by testimony by
 24 members of the public.
 25 Then we go to response by staff and

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1 testimony that was given and an opportunity for the
 2 commission to ask questions of the staff, rebuttal by
 3 the applicant. The applicant can rebut evidence or
 4 testimony but should not present new testimony or
 5 evidence.
 6 The person -- the chairperson closes the
 7 hearing and then entertains a motion. The commission
 8 deliberates and makes a decision.
 9 So I think Mr. Venuti has a comment.
 10 **COMMISSIONER VENUTI:** Mr. Chair, I would
 11 like to make a motion that we limit testimony tonight
 12 to new information rather than rehashing all the
 13 information we received already.
 14 **COMMISSIONER FOSTER:** I'll second that.
 15 **CHAIRMAN MARTIN:** Discussion? Mr.
 16 Whitney.
 17 **COMMISSIONER WHITNEY:** Yeah, I would
 18 object to that. At the last meetings and in previous
 19 meetings, everyone who has testified was told they
 20 would be able to testify again at the next hearing,
 21 being this particular one here, with no limitations or
 22 curtailment of their testimony. So they are being
 23 denied something that basically they walked out of here
 24 with a promise that they would be able to do.
 25 And I have a question of staff. I'm

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1 wondering if the change in the height requirements is
 2 different than the presentation that we had at the --
 3 the recommendations we had at the March 25th meeting?
 4 If so, that's a change to the process.
 5 **MR. WALL:** The staff recommendation has
 6 remained the same from the March 25th meeting. One of
 7 the neighbors has proposed alternate buffers, and maybe
 8 that's what you're thinking of. But the staff
 9 recommendation has not changed from the March meeting.
 10 **COMMISSIONER WHITNEY:** Well, I still have
 11 that objection.
 12 **CHAIRMAN MARTIN:** Thank you. Ms.
 13 Carluccio.
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes, I
 15 wouldn't support that either. Because one of the other
 16 things that was brought up at the last meeting was that
 17 there would be a number of people here tonight who were
 18 not in residence at that time, and they have no idea
 19 what was testified or not testified. And so I think
 20 that telling them that they couldn't repeat something
 21 that they don't even know about is, you know, beyond
 22 what we should do.
 23 **CHAIRMAN MARTIN:** Any other discussion?
 24 Roll call, please.
 25 **THE CLERK:** The motion was to limit

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1 testimony to new information only.
 2 Foster?
 3 **COMMISSIONER FOSTER:** No.
 4 **THE CLERK:** Venuti?
 5 **COMMISSIONER VENUTI:** No.
 6 **THE CLERK:** Brantley -- sorry. Ernst?
 7 **COMMISSIONER ERNST:** No.
 8 **THE CLERK:** Whitney?
 9 **COMMISSIONER WHITNEY:** No.
 10 **THE CLERK:** Carluccio?
 11 **COMMISSIONER BOKENKO-CARLUCCIO:** No.
 12 **THE CLERK:** Fikes?
 13 **COMMISSIONER FIKES:** No.
 14 **THE CLERK:** Bentz?
 15 **COMMISSIONER ABRAHAMSON-BENTZ:** No.
 16 **THE CLERK:** Ecklund?
 17 **COMMISSIONER ECKLUND:** No.
 18 **THE CLERK:** Martin?
 19 **CHAIRMAN MARTIN:** No.
 20 **THE CLERK:** Unanimous.
 21 **CHAIRMAN MARTIN:** Thank you. So at this
 22 time I will open public comment. Please state your
 23 name and address at the microphone provided, and sign
 24 in as well. And push the button at the bottom of the
 25 microphone to get it started.

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1 **EMMITT TRIMBLE:** My name is Emmitt
 2 Trimble --
 3 **CHAIRMAN MARTIN:** Hit the mic, please.
 4 **EMMITT TRIMBLE:** My name is Emmitt
 5 Trimble. I live at P.O. Box 193, Anchor Point. I
 6 personally will be pretty brief because I've lost my
 7 voice.
 8 This is our attorney of record, Stacey
 9 Stone, and we have a video that we hope to be able to
 10 play for you that unfortunately I know that it's hard
 11 for you folks to get down and take a look at sites that
 12 you're talking about.
 13 So you've looked at lots of pictures, and
 14 we just have a little video that may be helpful when
 15 we're having a discussion about things later on.
 16 I personally would like to leave you just
 17 with a couple of thoughts, phrases that are very
 18 relevant.
 19 Substantial evidence; findings of fact.
 20 Like Sergeant Friday said in Dagnet many years ago,
 21 "Just the facts, ma'am."
 22 **STACEY STONE:** Thank you, my name is
 23 Stacey Stone. I'm an attorney at Holmes, Weddle &
 24 Barcott at 701 West 8th Avenue, Suite 700 in Anchorage,
 25 Alaska, 99501.

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1 As you all have before you today, you
 2 have the remand that was passed back from the hearing
 3 officer. Within that remand, she identified the charge
 4 that's before this commission as set forth in the Kenai
 5 Peninsula Borough code.
 6 The charge to this commission is very
 7 limited in scope, and it's set forth in the code
 8 itself. It sets forth what this commission has the
 9 authority to do and what the commission has the
 10 authority not to do.
 11 It also helps to extrapolate on what the
 12 purpose of a conditional land use permit within the
 13 Kenai Peninsula Borough is, because this is not your
 14 standard -- as she referenced, this isn't where we have
 15 a residential property and they are looking for a
 16 conditional land use permit for an exemption to have a
 17 daycare in a residential area where they are running
 18 business; rather this is something that's allowable,
 19 and the borough assembly has chosen to codify how these
 20 are done legally.
 21 Essentially someone has the authority to
 22 do this on the land, and if the government is going to
 23 come in with a restriction, that restriction has to be
 24 limited by law.
 25 The law is set forth. It provides very

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1 specific conditions. If everyone checks -- if the
 2 applicant checks all of the boxes that are set forth
 3 within the code, which indeed my client has done, then
 4 it's up to this commission to look and see if there are
 5 appropriate conditions that need to be placed, and if
 6 there are appropriate conditions, then they need to be
 7 instituted and then the permit needs to be approved
 8 unless it's lacking.
 9 And we maintain that the permit -- every
 10 box has been checked. There are appropriate conditions
 11 that have been set forth, and therefore tonight this
 12 commission should approve the permit for the
 13 conditional land use.
 14 **CHAIRMAN MARTIN:** Thank you. Are there
 15 any questions from commissioners?
 16 **EMMITT TRIMBLE:** Mr. Chairman?
 17 **CHAIRMAN MARTIN:** Yes, sir.
 18 **EMMITT TRIMBLE:** If we could, with your
 19 permission, the video that we would like to play. And
 20 if the sound isn't working, my daughter who took the
 21 video will narrate it for you. And I'm done, with your
 22 permission.
 23 **CHAIRMAN MARTIN:** Yes, sir.
 24 (Whispered discussion off the record)
 25 **MR. WALL:** Mr. Chairman, while that's

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1 coming up -- never mind, it's up. So I'll --
 2 (Whispered discussion off the record)
 3 (Video played - not transcribed)
 4 **COMMISSIONER ECKLUND:** Mr. Chairman?
 5 **CHAIRMAN MARTIN:** Yes? Could you pause,
 6 please? Ms. Ecklund.
 7 **COMMISSIONER ECKLUND:** Yes, excuse me.
 8 When you say, "Looking across," could you say which
 9 direction you're looking, north, east, west -- I mean,
 10 you're saying --
 11 **ALLISON TRIMBLE PAPAROA:** Northwest. So
 12 kind of from the Danver side, like if you're up in the
 13 upper portion -- maybe you can help clarify.
 14 **COMMISSIONER ECKLUND:** The northern
 15 portion of Danver?
 16 **EMMITT TRIMBLE:** She was standing at the
 17 intersection of Kyllonen and Danver. You're looking to
 18 the west here, due west.
 19 **COMMISSIONER ECKLUND:** And that's in this
 20 one. The one where you say you're looking towards your
 21 sister's house --
 22 **ALLISON TRIMBLE PAPAROA:** I was standing
 23 just right over there. If you're looking, I was right
 24 here. So this is --
 25 **COMMISSIONER ECKLUND:** And you were

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1 looking which direction at that point?
 2 **ALLISON TRIMBLE PAPAROA:** I was looking
 3 north.
 4 **COMMISSIONER ECKLUND:** North, okay.
 5 **EMMITT TRIMBLE:** Northwest.
 6 **COMMISSIONER ECKLUND:** Okay, all right,
 7 thank you.
 8 **EMMITT TRIMBLE:** Towards my daughter's
 9 house.
 10 **UNIDENTIFIED SPEAKER:** Yeah, I don't know
 11 where that is.
 12 (Video played - not transcribed)
 13 **EMMITT TRIMBLE:** Here is looking south
 14 again. This is Kyllonen Drive.
 15 (Indiscernible-simultaneous talking while video is
 16 playing)
 17 **EMMITT TRIMBLE:** Looking north on Danver.
 18 There is the berm. You can barely see through the
 19 trees, the vegetated buffer.
 20 This is now the ingress to the pit. This
 21 berm was along there at the request of Mr. Wall and the
 22 reseeding at the request of planning.
 23 **ALLISON TRIMBLE PAPAROA:** Facing north.
 24 **EMMITT TRIMBLE:** Mr. Brantley's
 25 properties are on the other side of that berm. Mr.

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1 Whitmore's properties are right there. Mr.
 2 (Indiscernible) property is right there. This is where
 3 Mr. Bilben and others are, up in that area. This is
 4 the area that was stripped by CIC Construction. And
 5 the floor of the pit would be 25 feet below that level.
 6 This is from the beach road looking south
 7 on Danver.
 8 This is Mr. Brantley's so-called business
 9 where the sign is.
 10 **ALLISON TRIMBLE PAPAROA:** There is one
 11 final one --
 12 **CHAIRMAN MARTIN:** One final one.
 13 **ALLISON TRIMBLE PAPAROA:** That just shows
 14 across the property.
 15 **EMMITT TRIMBLE:** This is the area of the
 16 proposed Phase 2 many years down the road, if at all.
 17 Thank you for your consideration. I
 18 appreciate it.
 19 **CHAIRMAN MARTIN:** Ms. Ecklund.
 20 **COMMISSIONER ECKLUND:** Thank you. If
 21 your daughter would sign in, then she would be a person
 22 of record since she spoke, and that might be beneficial
 23 to you. And I do have some questions for you, Mr.
 24 Trimble --
 25 **EMMITT TRIMBLE:** Yes, ma'am.

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1 **COMMISSIONER ECKLUND:** -- if you don't
 2 find.
 3 **EMMITT TRIMBLE:** I think she's intending
 4 to testify as well.
 5 **COMMISSIONER ECKLUND:** Oh, later on?
 6 **EMMITT TRIMBLE:** Yeah.
 7 **COMMISSIONER ECKLUND:** Okay. Just so
 8 long as you get --
 9 **ALLISON TRIMBLE PAPAROA:** You betcha.
 10 **COMMISSIONER ECKLUND:** -- your record.
 11 **ALLISON TRIMBLE PAPAROA:** Do you have
 12 questions for me as well during this time?
 13 **COMMISSIONER ECKLUND:** No, no thank you.
 14 Mr. Trimble, in that video you were
 15 talking about that you were looking -- or the road was
 16 the beach road. And on the permit maps that are in
 17 this current 400-some page packet, it doesn't show
 18 that.
 19 So my question is, how far is your
 20 property line from beach -- from the beach, from Cook
 21 Inlet, from water?
 22 **EMMITT TRIMBLE:** From the western
 23 boundary of Phase 3 in this permit, it's probably 700
 24 feet to the beach line, more or less.
 25 **COMMISSIONER ECKLUND:** Or to mean high

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1 water, or whatever.
 2 **EMMITT TRIMBLE:** Right, yeah.
 3 **COMMISSIONER ECKLUND:** Thank you.
 4 Through the chair, could I ask some additional?
 5 On your permit application, there was a
 6 spot for listing voluntary permit conditions, and one
 7 thing that we've been asking of past gravel pit
 8 applicants or material site applicants was to
 9 voluntarily use the white noise backup alarms. And
 10 we've talked about this --
 11 **EMMITT TRIMBLE:** Yes, ma'am.
 12 **COMMISSIONER ECKLUND:** -- and it isn't
 13 added into this new application, which I think is your
 14 original. But would you be amenable to adding the
 15 white noise backup to your equipment?
 16 **EMMITT TRIMBLE:** Yes, ma'am, as long as
 17 it's my equipment I have control over. The people that
 18 I've been hiring have had their backup beepers
 19 disabled.
 20 **COMMISSIONER ECKLUND:** Okay.
 21 **EMMITT TRIMBLE:** And I have no problem
 22 with that, no.
 23 **COMMISSIONER ECKLUND:** Additional? Thank
 24 you, chair.
 25 On the map on page 71 of 438, in packet 1

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1 it shows an existing stripped area, which I think was
 2 all you had done at the time you first applied. But
 3 you've received a counter permit since then. So there
 4 is some -- that area is bigger now, the area that's
 5 been stripped with the counter that had approval.
 6 **EMMITT TRIMBLE:** A couple clarifications.
 7 **COMMISSIONER ECKLUND:** Okay.
 8 **EMMITT TRIMBLE:** When I first started
 9 before I even considered a conditional use permit or
 10 anything, we were just under the one-acre thing.
 11 **COMMISSIONER ECKLUND:** Right.
 12 **EMMITT TRIMBLE:** I had moved in in what
 13 looked like uplands. And I've had a delineation done,
 14 by the way, and it is, in fact, uplands.
 15 But Mr. Wall pointed out that that area
 16 that I had built a substantial gravel pad so trucks
 17 could get in and turn around, it's on my property, he
 18 pointed out that the hundred year floodplain map and
 19 the riparian wetlands map, whether or not they are
 20 accurate, that the permit that I got, the counter
 21 permit, required that we stayed a hundred feet away
 22 from those lines.
 23 I said, "Yes, sir. Can I have the
 24 coordinates?" He sent me the coordinates. I said,
 25 "I'm going to do exactly what you tell me." We went

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1 out there, and that's what that one berm was.
 2 And then we reseeded the entire -- we put
 3 four inches of topsoil down and reseeded it, I don't
 4 know, 6- \$7,000 worth of stuff.
 5 **COMMISSIONER ECKLUND:** Okay, let me see.
 6 Oh, one final one. The staff is recommending that we
 7 don't approve your waiver for your processing area to
 8 be less than 300 feet from the property line.
 9 And I see that you've got it marked on
 10 your permit map, but it is 300 feet from, like, the
 11 center of Danver Road.
 12 Would you be able to move that so that
 13 you're within the 300 feet from your boundary, from
 14 your property boundary?
 15 **EMMITT TRIMBLE:** Yes, ma'am. I don't
 16 have any problem with the waiver not being approved.
 17 It was something the engineer recommended. You know,
 18 it's 200 feet from Mr. Brna's property, I understand
 19 that.
 20 As is pointed out in the staff report,
 21 there are many other areas to the west in Phase 2 and
 22 Phase 3 where if there was a need to be 300 feet away,
 23 it's possible. So I don't have any problem with that.
 24 **COMMISSIONER ECKLUND:** Okay. And you
 25 could move that back?

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1 **EMMITT TRIMBLE:** No, I have no problem.
 2 We just haven't changed the application.
 3 **COMMISSIONER ECKLUND:** Right, right. I
 4 just -- based on the staff report, and he -- Mr. Wall
 5 mentioned that, the waiver again --
 6 **EMMITT TRIMBLE:** Yes, ma'am.
 7 **COMMISSIONER ECKLUND:** -- I just wanted
 8 to make sure that you --
 9 **EMMITT TRIMBLE:** No problem.
 10 **COMMISSIONER ECKLUND:** -- were ready to
 11 go forward with changing your processing area.
 12 **EMMITT TRIMBLE:** Sure.
 13 **COMMISSIONER ECKLUND:** Okay, thank you.
 14 **CHAIRMAN MARTIN:** Are there any other
 15 questions for Mr. Trimble? Mr. Whitney.
 16 **COMMISSIONER WHITNEY:** There was some
 17 indication in the material we received that there was
 18 plans to do some rock crushing there. Is that a fact?
 19 **EMMITT TRIMBLE:** There is no plans to do
 20 that now, but it's certainly something that would be
 21 permissible with the permit. It would just need to
 22 have a processing location that met the conditions that
 23 we're willing to agree to.
 24 **COMMISSIONER WHITNEY:** But that's
 25 something that could happen in the future?

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1 **EMMITT TRIMBLE:** Absolutely it could
 2 happen. It's not something I've got planned, but it's
 3 something that could happen.
 4 Normally in a pit this size, if something
 5 happens -- so maybe you have a screen or a crusher -- I
 6 don't have a lot of experience with it -- there will be
 7 some people testifying here that could maybe answer
 8 better than I, but maybe two weeks out of the year.
 9 Very limited situation. This is not a major industrial
 10 pit.
 11 **MR. WALL:** Mr. Chairman, would it be
 12 possible for me to ask a clarifying question?
 13 **CHAIRMAN MARTIN:** Please.
 14 **MR. WALL:** Mr. Trimble, at the last
 15 meeting you talked about the rolling berm, the moving
 16 berm.
 17 **EMMITT TRIMBLE:** Yes, sir.
 18 **MR. WALL:** And the way that the condition
 19 is written in the staff report and in the resolution,
 20 it would require a 50-foot vegetated buffer with a
 21 12-foot-high berm between the buffer and the
 22 excavation. And that would certainly allow the moving
 23 berm, but it doesn't require it the way that it's
 24 worded.
 25 Is it your intention to volunteer that as

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1 a condition, that you will have a moving berm, a
 2 rolling berm so --
 3 **EMMITT TRIMBLE:** Absolutely.
 4 **MR. WALL:** -- it would be --
 5 **EMMITT TRIMBLE:** I think that's the way
 6 to best minimize any effects of any kind, have the berm
 7 close to where you're working.
 8 In a small-scale operation -- I mean, the
 9 area that you saw there that's been stripped is a half
 10 acre. And that would be a long time.
 11 You know, people talk about 50,000 yards
 12 of material. You know, if you sold 10- or 15,000 yards
 13 a year, that's monumental for someone this size. And
 14 we had the opportunity to do that, but it was taken
 15 away from us.
 16 So the rolling berm is -- you'll see
 17 these LIDAR drawings, and they say, "Well, it would
 18 have to be 50 feet if it's over here." Okay, well,
 19 it's not going to be over there, it's going to be right
 20 here. It's going to be right next to where we're
 21 working, and then we would be 25 feet below the base of
 22 that 12-foot berm. So 37 feet.
 23 **CHAIRMAN MARTIN:** Ms. Ecklund.
 24 **COMMISSIONER ECKLUND:** I found one more
 25 note, through the chair, for Mr. Trimble.

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1 Part of the permit process is that you
 2 designate your haul route. And your haul route has
 3 been designated as Danver Street. But then from Danver
 4 then where are you going to go?
 5 **EMMITT TRIMBLE:** Well, I won't go
 6 anywhere.
 7 **COMMISSIONER ECKLUND:** Or whoever is
 8 hauling your gravel.
 9 **EMMITT TRIMBLE:** Yeah. Anyone that's
 10 hauling, unless they were going north up Danver to some
 11 of these folks, they would be going south a few hundred
 12 feet to the intersection, turning right, and going
 13 towards the Old Sterling Highway. At this time you
 14 can't go across the bridge.
 15 **COMMISSIONER ECKLUND:** Right.
 16 **EMMITT TRIMBLE:** Okay, so if anything was
 17 moving that way, it would be moving towards Homer on
 18 the Sterling Highway.
 19 **COMMISSIONER ECKLUND:** Okay.
 20 **EMMITT TRIMBLE:** I mean, that's one of
 21 the things that happened with -- the opposition caused
 22 Hilcorp to pull out of a deal they had with us. And so
 23 instead of running two miles on the beach road and the
 24 Old Sterling Highway, they got them to go 22 miles one
 25 way on the beach road, the Old Sterling Highway, the

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1 new Sterling Highway, and the North Fork Road. Maybe
 2 it wasn't as safe as the other option.
 3 **COMMISSIONER ECKLUND:** Just to clarify,
 4 since I'm not familiar with the area.
 5 You would go always -- if you had to get
 6 out to the new Sterling Highway, you would use the Old
 7 Sterling Highway as the haul route, not Anchor Point
 8 Road?
 9 **EMMITT TRIMBLE:** Yes, ma'am.
 10 **COMMISSIONER ECKLUND:** Okay, thank you.
 11 **CHAIRMAN MARTIN:** Is there any more
 12 questions for the applicant? We're not going to -- we
 13 have to keep the meeting better than this. Everybody
 14 is going to get their turn.
 15 **MR. WALL:** Mr. Chairman.
 16 **CHAIRMAN MARTIN:** Mr. Wall.
 17 **MR. WALL:** Just for clarification. I
 18 think Mr. Trimble misunderstood the question or
 19 something. Because in order to get to the Old Sterling
 20 Highway from Danver Street, you need to go on Anchor
 21 Point Road.
 22 **EMMITT TRIMBLE:** Yes, that's how you get
 23 to the bridge, yeah. Oh, I'm sorry, I misunderstood.
 24 That's obvious. You're going to turn off of Danver,
 25 turn right on the beach road to the Old Sterling

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1 Highway. Thank you for the clarification.
 2 **COMMISSIONER ECKLUND:** Okay, followup,
 3 please.
 4 **CHAIRMAN MARTIN:** Please.
 5 **COMMISSIONER ECKLUND:** How many miles or
 6 feet would you be on Anchor Point Road to get to Old
 7 Sterling Highway.
 8 **EMMITT TRIMBLE:** Less than a mile, or
 9 approximately a mile.
 10 **COMMISSIONER ECKLUND:** Less than a mile.
 11 Okay, thank you.
 12 **CHAIRMAN MARTIN:** Any other commissioner
 13 questions? None at this time.
 14 **EMMITT TRIMBLE:** Thank you, I appreciate
 15 your consideration.
 16 **CHAIRMAN MARTIN:** Next testifier, please.
 17 **PAUL MORINO:** Hello, thank you ladies and
 18 gentlemen. My name is Paul Morino. I reside at Silver
 19 King RV Village at basically the corner of Ann Street
 20 and Anchor Point Road.
 21 I'm one of at least 70 residents that
 22 reside on Anchor Point Road within that one mile from
 23 Danver Street to the Old Sterling Highway.
 24 Silver King RV Village incorporates 88
 25 individual lots with approximately 70 residential

1 owners. Many of us live there throughout the entire
 2 summer and into late September and even in April.
 3 I wasn't at the last meeting, so you
 4 probably discussed the noise concerns earlier, but I
 5 want to bring up something that the applicant's
 6 daughter pointed out of the 27 four-wheelers not going
 7 up and down the road.
 8 One truck going up and down that road
 9 equals the noise of 32 cars, and that was from a study
 10 done in 2000 by the Canadian government. So we may not
 11 have 27 four-wheelers, but there is going to be -- for
 12 each truck going down that road, the noise level is
 13 going to be equivalent of 32 cars.
 14 One thing I'm concerned about is a
 15 statement by the applicant that says that, "Just the
 16 facts." Well, yeah, Jack Webb said, "Just the facts,"
 17 but there is also just the amount of people involved
 18 just on the one mile of the Anchor Point Road.
 19 I don't know how many tourists and
 20 tourist dollars are spent on that one mile of road
 21 alone with the three or four state campgrounds just on
 22 the other side of Silver King RV Village. But if not
 23 over a thousand people, it's got to be close to a
 24 thousand tourists coming there and camping and residing
 25 there throughout the entire summer.

1 **COMMISSIONER ECKLUND:** Yeah, okay.
 2 **PAUL MORINO:** But the other study, if I
 3 could quickly look real quick, it's a Transit Canada
 4 2000 Noise Centre, C-e-n-t-r-e, BC Transit. I didn't
 5 write down the website.
 6 **COMMISSIONER ECKLUND:** Okay, thank you.
 7 **PAUL MORINO:** Yep.
 8 **CHAIRMAN MARTIN:** Any other questions for
 9 our testifier? Seeing none, thank you.
 10 **PAUL MORINO:** Thank you.
 11 **CHAIRMAN MARTIN:** Next, please.
 12 **JUDY AARON:** It was already on, sorry.
 13 My name is Judy Aaron, and I live on 73691 Ann Court.
 14 I also live in the Silver King RV park, and I'm
 15 thankful that you let us speak up today. I was not
 16 able to attend any of the previous meetings.
 17 I share the same concerns about the
 18 amount of noise when it talks especially about the
 19 buffer zones and the noise on the road and the amount
 20 of trucks going up and down. That's a very small road.
 21 And just the maintenance of both -- and then the state
 22 maintenance and the borough maintenance. And that's
 23 all.
 24 **CHAIRMAN MARTIN:** Thank you. Mr. Whitney
 25 has a question.

1 Again, I don't know how big of an issue
 2 the noise is in the scheme of things, but for anybody
 3 who resides right there on that road, the trucks, the
 4 truck noise is going to be pretty loud.
 5 And how many trucks are there going to
 6 be? I mean, the applicant says that there's going --
 7 it's going to be a small operation. What's a small
 8 operation? How many trucks are going up and down that
 9 road? I don't know.
 10 Anyway, that's my major concern is just
 11 the amount of traffic on that roadway and the amount of
 12 noise on that roadway and what it's going to do to all
 13 the people that visit that area, that one small
 14 stretch. That's all I have.
 15 **CHAIRMAN MARTIN:** Thank you. Any
 16 questions? Ms. Ecklund.
 17 **COMMISSIONER ECKLUND:** Do you have the
 18 title of that 2000 study that you referenced?
 19 **PAUL MORINO:** There is a U.S. DOT 1995
 20 noise report that stated one truck traveling 55 miles
 21 an hour equal 28 cars. And the one from --
 22 **COMMISSIONER ECKLUND:** How many miles per
 23 hour, sir, excuse me?
 24 **PAUL MORINO:** 55. And of -- the speed
 25 limit on that road is 25.

1 **COMMISSIONER WHITNEY:** From where you're
 2 located in the RV park, can you hear any of the
 3 operation that's going on in the current gravel site?
 4 **JUDY AARON:** I don't think -- I don't
 5 know if they are really operating right now. But I can
 6 hear the road traffic.
 7 **COMMISSIONER WHITNEY:** Thank you.
 8 **JUDY AARON:** But currently I don't see
 9 vehicles going back and forth for the gravel operation.
 10 **CHAIRMAN MARTIN:** Any other questions?
 11 None at this time, thank you. Next testifier, please.
 12 **LINDA BRUCE:** My name is Linda Bruce.
 13 And let's see if I can't get this done really quick.
 14 And I live at Post Office -- well, I
 15 don't live at Post Office Box. My address is Post
 16 Office Box 39004, and that's Ninilchik, Alaska 99639.
 17 And I have not been at any of the
 18 previous meetings. So I do know some of the input
 19 that's been done, but I -- and hopefully I won't touch
 20 on it, but I haven't -- you know, I haven't been here.
 21 We own property down in Anchor Point,
 22 which is practically adjacent to the gravel pit. We
 23 bought that property from Emmitt and Mary Trimble a
 24 long time ago. And Emmitt -- I'll touch on the
 25 newspaper article, but first I want to touch on the

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1 video.
 2 The video, I'm not sure what the specific
 3 point of the video was, but if it's to show the gravel
 4 pit or what it was there for, but if it was to
 5 demonstrate the pristine and lovely nature of the area,
 6 it did that. And that the gravel pit is right in the
 7 middle of that pristine and lovely area, it succeeded
 8 at that, it was great for that.
 9 But I will touch on the newspaper article
 10 that recently came out that was talking about the
 11 40-year trust that -- and these are quotes from Mr.
 12 Trimble -- the 40-year trust relationship with the
 13 people of Anchor Point, my parents being two of those
 14 people, my husband and I being two more of those
 15 people, and selling and buying property.
 16 And my feeling now is that Mr. Trimble
 17 has broken that trust. And in the newspaper he talked
 18 about the properties, the gravel pit being in an
 19 unincorporated, unzoned area.
 20 You know, I thought that was really
 21 interesting, because that's the very reason that most
 22 of us here bought there. We buy there because it's
 23 outside the city, it's outside all the craziness that's
 24 in Anchorage or Wasilla or Girdwood or wherever, it's
 25 outside all of that. It's outside Soldotna, it's

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1 outside Kenai. And we've had an apartment building for
 2 years in Kenai, and trust me, Ninilchik is a lot
 3 quieter than Kenai.
 4 So I understand the unincorporated,
 5 unzoned area. But then to play that card, to ask for a
 6 permit for a gravel pit in that pristine area is really
 7 an insult. At that critical point in Anchor Point,
 8 it's really an insult to all of us who have put our
 9 trust in Mr. Trimble and then to have a gravel pit in
 10 our backyard. It really is insulting.
 11 And he says that in 15 years they will
 12 rebuild, they will make it all great. Well, some of
 13 the gravel pits around here, in fact, one in Ninilchik
 14 has been going for 40 years. So 15 years is a really
 15 aggressive target, and quite truthfully, some of you
 16 are younger than me, but I can tell you right now, if I
 17 live the 15 years, I may not live long enough to see
 18 that gravel pit be reconstituted to something really
 19 great. And so I don't want to wait 15 years to see
 20 Anchor Point rebuilt to something really great.
 21 So I really -- I mean, I think you would
 22 know that I object to this. But what my question to
 23 you is, do we -- is there a point to public input?
 24 Does public input -- because I saw Mr. Trimble's
 25 attorney get up here and say, "We've met all the

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1 conditions and we should be granted the permit."
 2 So does public input, the letters,
 3 everything, does that really have any bearing on this
 4 process? And I don't know who can answer that or if
 5 all of you can answer that, but does it have any
 6 bearing, or are we all just wasting our time because
 7 the permit is going to be granted because the
 8 conditions have been met? And that's really all.
 9 **CHAIRMAN MARTIN:** Thank you. Any
 10 questions? None at this time, thank you, ma'am.
 11 Next testifier, please.
 12 (Indiscernible - whispered conversation)
 13 **CHAIRMAN MARTIN:** Are we ready for the
 14 video over there? Will you let us know when it's --
 15 your request? Thank you, whenever you're ready, sir.
 16 **MARK CLAYPOOL:** My name is Mark Claypool.
 17 I'm the president of the association at Silver King RV
 18 Village Association. I have two things.
 19 Number one, Mr. Whitney's question about
 20 the noise. We hear the surf from where we're at, so
 21 there is no doubt in my mind we're going to hear what
 22 comes from that gravel pit.
 23 Number two, if the haul road, meaning
 24 Anchor Point river road cannot be safe with these
 25 trucks running up and down and permission not be

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1 granted -- I'm surprised that Mr. Trimble didn't
 2 mention this road, he's lived here for so many years.
 3 But that's all I've got.
 4 **CHAIRMAN MARTIN:** Any questions? Not
 5 now, thank you. Next.
 6 **CHRISTINA ELMALEH:** Hi, my name is
 7 Christina Elmaleh, I live at 34885 Seabury Court, which
 8 is kind of up and above the gravel pit. And I just
 9 want to testify to the noise.
 10 I quit my job about a year ago to stay
 11 home with our then two-month old. We have a couple
 12 kids, and I could hear the noise from the operations at
 13 the gravel pit throughout the day, so much so that any
 14 time my dog could hear it, she was freaking out and
 15 barking, so that just kind of added to it.
 16 But we can definitely hear the noise from
 17 where we're at. It's a bit of, like, an amphitheater
 18 that kind of magnifies it up to our house.
 19 The reason we bought where we bought was
 20 actually to be away from gravel pits. We didn't look
 21 at anything near a gravel pit at the time to keep that
 22 kind of noise away from our young -- two young kids and
 23 to be in a safe, open area. So I just wanted to
 24 testify that we can hear it from our house, and that I
 25 am against the gravel pit.

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1 **CHAIRMAN MARTIN:** Thank you. Any
2 questions? Mr. Whitney.
3 **COMMISSIONER WHITNEY:** How far away from
4 the pit are you actually?
5 **CHRISTINA ELMALEH:** A quarter -- like a
6 quarter mile.
7 **COMMISSIONER WHITNEY:** Okay, thank you.
8 **CHAIRMAN MARTIN:** Any other questions?
9 None at this time, thank you. Next testifier, please.
10 **TERESA JACOBSON GREGORY:** Hi, I'm Teresa
11 Jacobson Gregory, and that poster is a picture of my
12 neighborhood.
13 **UNIDENTIFIED SPEAKER:** Excuse me, Julie,
14 could you just stand it up a little bit more because
15 it's glaring and we can't really see it. Thank you.
16 **TERESA JACOBSON GREGORY:** And if you look
17 in your packet on page 343, there is a map of -- with
18 red area that shows a small portion of this picture,
19 and it also shows where the gravel pit -- the full
20 gravel pit will be.
21 And I just want to thank you all for
22 serving and being a member of this Planning Commission
23 for each of our communities in the Kenai Peninsula
24 Borough. Also being willing and already willingly
25 denying this conditional use permit and then hearing us

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1 again after the appeal.
2 I question the fact that a conditional
3 land use permit was denied and then the director and
4 the planner approved a two-and-a-half acre
5 over-the-counter gravel permit for Beachcomber, LLC
6 immediately after the denial that does not have to
7 require a public comment.
8 There have been several written comments
9 about the Planning Commissioners. On March 25th, 2019
10 at the Planning Commission meeting Mary Trimble stated,
11 quote, "The staff is recommending approval. The
12 planning director Bruce and the borough attorney have
13 all visited the site and saw no issues with our plan.
14 The borough attorney has, in her briefs, interpreted
15 the code and stated case law to back up her position
16 that the permit should be granted.
17 These are professional, educated people
18 who represent the borough interests and who interpret
19 and enforce the code," end quote.
20 And then in -- another letter addressed
21 to you as the Planning Commissioners for this meeting
22 was from Allison Trimble, their daughter. "When the
23 Planning Commission denied the application last year,
24 you did so against the recommendation of the staff and
25 in direct violation of your duties," unquote.

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1 I looked up the Planning Commission
2 administration codes, and 2.4.005 [sic] and 2.4.007
3 [sic], you as Planning Commissioners have investigation
4 and recommendation authority. Also, you have approval
5 or -- you can approve or rejection, you have that
6 authority. So when they tell you that you don't have
7 any right to do these borough codes, that's not so.
8 Now we're back to the main point where
9 the borough ordinances are -- I know that you can only
10 act on certain codes in the borough, which is
11 minimizing off-site dust movement, which, if you go out
12 and look at my car right now, you'll see after the
13 borough graded the roads, we're all yellow from Anchor
14 Point.
15 Minimizes noise disturbance to other
16 properties, minimizes visual impacts, and while the
17 first one was protects against physical damage, which I
18 believe will be physical damage to our property as far
19 as value.
20 The definition of minimize is to reduce
21 something -- especially something unwanted or
22 unpleasant to the smallest possible amount or degree.
23 The codes are set up for guidelines for all of the
24 Kenai Peninsula Borough residents.
25 I live about a hundred feet above this

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1 area for the conditional lands permit, and there is no
2 way that it's possible to minimize the noise
3 disturbance.
4 I called and invited Mr. Wall to come and
5 sit on my deck and listen when they first started back
6 in August after they gave them the two-and-a-half acre
7 permit, but I mostly wanted him to hear the quiet, the
8 sounds of the ocean, and then the racket of the Cats
9 and the trucks moving dirt. He didn't come. And I
10 invite any of you to come to my deck and listen, and I
11 hope at least that you've seen this area for yourself.
12 And as you can see in that picture, there
13 is no gravel pit within a long area of that one.
14 I quote again from Mary Trimble's
15 statement on March 25th of 2019 in the Planning
16 Commission meeting, "Emmitt and I believe in rights and
17 responsibilities. This is a situation where we are
18 agreeing to take on responsibilities in exchange for
19 the right to excavate gravel on our property. The
20 opposition, quote, has the right to protect their
21 property, but are unwilling to accept the fact that
22 they have a responsibility to do what they can to
23 minimize visual and noise, if it is bothersome, by
24 building a fence or a berm on their property or
25 installing blinds that rise up from the bottom so that

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1 they will still have an inlet view. They do not have
 2 right to our land, so we should not bear all the
 3 responsibility for mitigating their perceived
 4 discomfort," unquote.
 5 **CHAIRMAN MARTIN:** Could you please
 6 summarize.
 7 **TERESA JACOBSON GREGORY:** Sure. Mary and
 8 Emmitt do not live on that property. They live five
 9 miles north from this property. And it's been said
 10 many times that this is their legacy property, which
 11 nobody lives on the land right now, and that they
 12 bought it three-and-a-half years ago.
 13 We as residents live on our property, and
 14 it's truly our legacy that we moved there. We bought
 15 here and there was no gravel pits. This gravel pit is
 16 located in our neighborhood, which is beautiful and
 17 pristine, as you can see.
 18 One other point, today, right on the end
 19 of Danver Road where the dump trucks will exit, it
 20 takes 29 seconds to get to the first campground on the
 21 left of Anchor Point Road where I saw a tent just from
 22 me to you.
 23 So I hope you will not let your -- my
 24 husband and I have lived here for 23 years, and during
 25 that time we have met people from all over the world

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1 right here on the Anchor River and the Anchor Point
 2 beach, Finland, Sweden, Germany, China, Japan, many,
 3 many others, all the Alaskans, all the people from the
 4 Lower 48.
 5 Please don't let your names go on record
 6 that you approved this conditional land use permit, and
 7 it stays with this property and will not go away.
 8 Thank you.
 9 **CHAIRMAN MARTIN:** Thank you. Any
 10 questions? None at this time, thanks for your
 11 testimony. Next person, please.
 12 **PETE KINNEEN:** My name is Pete Kinneen,
 13 and I live on Danver. I forgot to sign in here.
 14 **CHAIRMAN MARTIN:** And your complete
 15 address, please.
 16 **PETE KINNEEN:** It's 34969 Danver. And
 17 does the five minutes start when I walk up here? So
 18 the sign-in takes out of the --
 19 **THE CLERK:** No, I paused it while you
 20 signed in.
 21 **PETE KINNEEN:** Huh?
 22 **THE CLERK:** I paused it while you signed
 23 in. But I'll just (indiscernible).
 24 **PETE KINNEEN:** Thank you. I totally
 25 agree with the speaker before me. And frankly this

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1 whole thing is a head-on collision. The tension -- let
 2 me just define it very quickly. The tension is between
 3 the interpretation of the existing law.
 4 The ordinance is very clear, and there
 5 has been a lot of effort to mesmerize you into
 6 believing that the laws -- that the ordinance says
 7 something that it doesn't.
 8 The Planning Commission is a higher
 9 authority. You are the judge, you are the jury, not
 10 the department. They are here to support you, not to
 11 oppose you.
 12 The default position -- this is extremely
 13 important. Almost nothing else really matters.
 14 Everything else is the details, but the clear legal
 15 default position here is denial.
 16 There is a lot of silliness, nonsense
 17 about land owners have rights to extract gravel. That
 18 is absolutely not true.
 19 Land owners have rights to do certain
 20 things. They have rights to do everything that is not
 21 excluded. A land owner, including this land owner,
 22 could put in an automotive junk yard, they could raise
 23 pigs, there is all kinds of different things they could
 24 do.
 25 But under the borough ordinance, living

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1 outside a zoned area is not living in the Old West, it
 2 is not living in unrestricted areas.
 3 The whole reason you're here, the
 4 conditional land use permit, the CLUP, is the people
 5 voting through the assembly to tell you that there are
 6 certain things that are not a right, they are a
 7 privilege.
 8 If they meet certain conditions and come
 9 to you and you agree that they -- that the conditions
 10 meet the standards, then you are authorized to grant a
 11 permit. It is not a default position.
 12 The exclusion anywhere in the borough,
 13 including in the zoned or the outzoned areas, is you do
 14 not have a right to extract gravel. You must come in
 15 and go through this process. You are charged with
 16 looking at the very clear standards written in plain
 17 English that start with the intent. And the intent is
 18 to protect the existing neighborhood.
 19 And if the applicant can meet certain
 20 conditions to meet those standards, then you are
 21 authorized possibly to grant the permit; otherwise,
 22 again, default position is denial.
 23 And that is where we are right now. The
 24 standards cannot be met on this particular site for all
 25 the reasons that have been given to you because of the

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1 topography and the unique geography of it. And you
 2 know that this is not the right place for a gravel
 3 mining operation. You've been quoted as saying that.
 4 And there has been a lot of confusion
 5 about you have to approve this because, as the first
 6 speaker said, the applicant [sic] has been made and the
 7 box has been checked. True, they have. They have been
 8 checked, but they haven't been -- they do not meet the
 9 conditions. They cannot meet the conditions under the
 10 borough ordinance and the definitions of the conditions
 11 meeting the standards.
 12 You're going to find some great
 13 information tonight from the borough's own technology,
 14 which will demonstrate to you that this applicant
 15 cannot meet the conditions or the standards, it must be
 16 denied.
 17 The first attorney who spoke tonight, a
 18 lot of smoke, made a bad conclusion. It's a
 19 misstatement of the law, read it. I mean, I'm happy to
 20 answer any questions into detail of any of that, thank
 21 you.
 22 **CHAIRMAN MARTIN:** Thank you. Any
 23 questions for Mr. Kinneen? Ms. Carluccio.
 24 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes,
 25 thank you. In your speaking and us seeing that graph

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1 up there, is that part of your speech?
 2 **PETE KINNEEN:** That's -- yeah. What that
 3 shows is that when I wake up in the morning, I look out
 4 the bedroom window. And the graphic that was brought
 5 up by the applicant shows a, whatever, a 12-foot berm
 6 or something. I'm 70 feet above that. And I look
 7 right over it as if it wasn't there.
 8 This is the equivalent -- the
 9 amphitheater effect is the equivalent of living in a 7,
 10 8, 10, 12-story building, and there is something going
 11 on right downstairs. You can't put a berm up.
 12 So yeah, to -- under the regulations,
 13 to -- what does that say, the berm would have to be 43
 14 feet tall to meet the conditions, to meet the
 15 standards. And if they want to build that, then you
 16 can authorize it. But a 6 foot or 12 foot or 14 foot
 17 doesn't do anything at all.
 18 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Through}
 19 the chair. One of the things that Mr. Trimble said
 20 when he started off was that from where it is now it's
 21 going to potentially go down another 25 feet.
 22 **PETE KINNEEN:** Right.
 23 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{What}
 24 difference would that make to your graph?
 25 **PETE KINNEEN:** It wouldn't make any

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1 difference. For example --
 2 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Well, if}
 3 he goes -- if he drops down 25 feet --
 4 **PETE KINNEEN:** It's still -- imagine I'm
 5 in a 7th floor apartment and he's just a few hundred
 6 feet out. I'm going to watch him dig down over 15
 7 years, dig down from that elevation to 25 feet deeper.
 8 And the noise is horrendous.
 9 And also the dust -- in his pictures,
 10 he's showing -- to answer your question, he hasn't
 11 vegetated anything, he hasn't thrown any grass seeds
 12 out, and every time the wind blows, it blows the dust
 13 off of that up into the hills and into my house and
 14 everybody else's house. And it's just -- you can't do
 15 it, really.
 16 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{One more}
 17 question. Is how far -- you probably said it, but I'm
 18 sorry, I don't remember -- how far from the gravel pit
 19 are you?
 20 **PETE KINNEEN:** Across the street. I'm on
 21 Danver. So however wide Danver is, I guess, is how far
 22 I am away from it.
 23 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{30 feet?}
 24 **PETE KINNEEN:** Yeah.
 25 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{50 feet?}

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1 **PETE KINNEEN:** 50 -- let's call it 50.
 2 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Okay,}
 3 thank you.
 4 **PETE KINNEEN:** You're welcome.
 5 **CHAIRMAN MARTIN:** Any other questions?
 6 Mr. Foster.
 7 **COMMISSIONER FOSTER:** Sir, Mr. Kinneen, I
 8 don't want to be disrespectful, but I just was
 9 thinking, you know, I wanted an unobstructed view of
 10 the ocean, and the only way I could do that is buy it
 11 right on the bay.
 12 And I was just wondering if -- you
 13 indicated or somebody else said that there is no zoning
 14 against a junkyard or a car lot or something like that.
 15 **PETE KINNEEN:** Right.
 16 **COMMISSIONER FOSTER:** And so if rather
 17 than a gravel pit he had just brought in acres and
 18 acres of pigs, we're going to have a smell, we're going
 19 to have nothing to good [sic] look at, but there is
 20 really nothing you can do here.
 21 Here we do have some little bits of
 22 things that we can try to do, and that's -- just be
 23 aware that we're trying to do everything we can. But
 24 there is not so much you can do with this grand view
 25 that we're looking at.

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1 **PETE KINNEEN:** Wait, with the what?
 2 **COMMISSIONER FOSTER:** A grand view. You
 3 know, you're looking at this from the 7th floor or that
 4 kind of a thing.
 5 **PETE KINNEEN:** Good question, if I can
 6 answer that, thank you. No discussion here about the
 7 grand view. The ordinance is very clear, it's not
 8 about the grand view, it's not about taking their view,
 9 their view shed or anything.
 10 The ordinance speaks entirely to
 11 shielding us from seeing the actual operation, and
 12 that's what the fence is about.
 13 Like on a junkyard you put up a fence,
 14 you drive down, you know there is a junkyard over
 15 there, but you can't see it.
 16 So the only view consideration is to
 17 shield us from the ugliness of this open pit mine. It
 18 doesn't have anything to do with the rest of the view,
 19 which is there.
 20 And the addressing your valid concerns
 21 about, well, he could put in a pig farm. So he's not
 22 putting in a pig farm, so why not just take the gravel?
 23 I wish we were in college and I could
 24 debate you, that would be fun, in that because he's not
 25 cutting off my left arm, it's okay for him to cut off

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1 my right arm? No. Are we in agreement, that's not a
 2 good argument? Okay, all right, then I won't debate
 3 it.
 4 What was your other point?
 5 **COMMISSIONER FOSTER:** That's all.
 6 **CHAIRMAN MARTIN:** Mr. Wall.
 7 **MR. WALL:** Mr. Chairman, yeah, thank you,
 8 Mr. Chairman.
 9 For clarification, Mr. Kinneen, how many
 10 lots are between your residence and the proposed gravel
 11 pit?
 12 **PETE KINNEEN:** How many lots?
 13 **MR. WALL:** Yeah. I mean, you said --
 14 **PETE KINNEEN:** A single lot.
 15 **MR. WALL:** Okay, I just wanted to make
 16 sure that was clarified. Okay, thanks.
 17 **PETE KINNEEN:** Sure.
 18 **CHAIRMAN MARTIN:** All right, Mr. Whitney.
 19 **COMMISSIONER WHITNEY:** Who prepared that
 20 diagram?
 21 **PETE KINNEEN:** I'm sorry?
 22 **COMMISSIONER WHITNEY:** Who prepared that?
 23 **PETE KINNEEN:** Mr. Whitmore, who has got
 24 experience in dealing with this. This is the borough's
 25 technology. We're taking this right from the borough.

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1 And again, you'll see it, it demonstrates
 2 that this mine cannot be permitted under the existing
 3 law. It's very clear.
 4 **CHAIRMAN MARTIN:** Any other questions for
 5 Mr. Kinneen? None at this time, thank you. Mr.
 6 Whitmore.
 7 **LYNN WHITMORE:** It would probably help if
 8 I explain what we have here. This is the borough's GIS
 9 system utilizing their LIDAR. We're going to have a
 10 few more of these to show, so it's probably a good idea
 11 for everybody to understand how I came up with these.
 12 And I worked with Chris Clough back when
 13 he first started to do the GIS, and I worked with him
 14 non-stop. And I've worked with the borough's GIS
 15 system for quite a few years in a professional
 16 engineering business.
 17 So what you do with the borough's system
 18 is you start right here and you run a transect to a
 19 certain point. And it's going to -- you click a
 20 button, and it's going to give you a side elevation
 21 view of that layout.
 22 What I did was converted that to AutoCAD,
 23 and then put it to scale so I could measure things and
 24 put it in the proper perspective.
 25 Each house floor is about ten feet in

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1 height, including the floor trusses -- the floor
 2 joists. And so everything here should be pretty much
 3 to scale.
 4 And as we go on, it probably would be
 5 fair, because there is going to be a moving berm
 6 process here, and we've all talked about that with our
 7 group. And, in fairness, it seems like if I'm going to
 8 demonstrate the moving berm and we're going to talk
 9 about it, it seems like the applicant should be able to
 10 interact somewhat with this, too, to show us what his
 11 plans are. But we haven't had a chance to run that by
 12 everybody yet, and he may not want to, but I suspect he
 13 might. Thank you.
 14 **CHAIRMAN MARTIN:** So is that the end of
 15 your presentation? You're just going to be here in
 16 case you can support some of the other testifiers?
 17 **LYNN WHITMORE:** I don't mean that to be
 18 my presentation, I mean that to be an explanation of
 19 what I have here.
 20 **CHAIRMAN MARTIN:** Okay.
 21 **LYNN WHITMORE:** Thanks.
 22 **CHAIRMAN MARTIN:** So we'll bring up
 23 another testifier.
 24 **LYNN WHITMORE:** Please.
 25 **CHAIRMAN MARTIN:** Yes, ma'am.

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1 **ALLISON TRIMBLE PAPAROA:** My name is
 2 Allison Trimble Paparoa, I live at 3020 Upland Way,
 3 Ferndale, Washington, and I've also recently purchased
 4 a home on Kyllonen Drive. I'm also a, you know,
 5 multiple decade property owner in the borough and
 6 taxpayer.
 7 I'm going to speak to a couple things
 8 that I think I'm qualified to speak to. I've written
 9 more in my letter. The first thing I'm going to speak
 10 to is that on June 1st we opened up the property to the
 11 entire public to be there, to ask questions, to look at
 12 the site, to talk to our family, and to have a good
 13 barbecue.
 14 Three people from the opposition took
 15 advantage of that. None of the three people are in
 16 this room. Of the three parties, two have since
 17 changed their position after being there, and the third
 18 didn't really have a strong position.
 19 What I would like to read from you is
 20 from the letter that was submitted to you by Lee and
 21 Mark Yale. It says, "My wife Lee and I would like to
 22 withdraw our objections to the proposed gravel pit,
 23 which includes all oral and written correspondence.
 24 Through our conversations, we are satisfied that the
 25 KPB will protect our interests as tax paying property

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1 owners.
 2 We also have had several conversations
 3 with Mr. and Mrs. Trimble and took advantage of the
 4 Trimbles' hospitality of the open house on June 1st.
 5 The current berm on the two-and-a-half acres displays
 6 the type of berm and use. I cannot see the surrounding
 7 homes out of the pit as it is now.
 8 Our only other concern was the
 9 reclamation of the property as this could affect
 10 surrounding property values. Upon our tour of the
 11 property, Mr. Trimble showed us where he has reseeded
 12 and reclaimed an area which was done very well. We
 13 also realized to not reclaim this property upon
 14 termination of mining activity would be a mistake as
 15 the property would not have the value as it is in a
 16 pristine location."
 17 We just would like to extend a thank you
 18 to the people who did show up with an open mind, asked
 19 us questions, and were there in the spirit of
 20 compromise, because that really was what we were
 21 attempting to do with that.
 22 We rolled open the doors and invited
 23 everybody to come, and I think the people who came felt
 24 that they were well received.
 25 The other thing I'd like to speak to, I

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1 own a real estate brokerage in Washington state. I am
 2 the president-elect of our Whatcom County Association
 3 of Realtors, and my job as such is to deal with land
 4 use and the loss of private property rights.
 5 In my brokerage I work largely in rural
 6 areas, meaning outside of the city limits, trying to
 7 help property owners navigate the mounting regulations
 8 in order to utilize their properties for even
 9 residential purposes.
 10 What we love about Alaska is the ability
 11 to live and let live and actually own our property, the
 12 bundles of rights attached and intact.
 13 This is a slippery slope, with the next
 14 step being borough-wide zoning with restrictions on all
 15 properties, including residential.
 16 One of the scare tactics that has been
 17 brought up is that there is going to be a devaluation
 18 of property, the property values around a gravel pit.
 19 The borough assessor claims that they have no -- they
 20 do not devalue properties or change the assessments
 21 based on them being located near a gravel pit. And for
 22 their practical use shows that there have been two
 23 sales recently at full asking price in the area, and
 24 there is a third one that's pending.
 25 I called and spoke to the listing agent.

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1 I asked him if there was any impact that he believed on
 2 his sale from the adjoining properties, to which he
 3 asked me, "Do you have the property that has the old
 4 Connex butted up against it?" And I said, "No, we have
 5 the gravel pit down below." And he said, "It was never
 6 mentioned and didn't seem to have an effect on it."
 7 And he did say it was a solid sales price.
 8 You were also provided with a letter from
 9 Marjo Cardon, a realtor at the Kachemak Group, stating
 10 she was solicited by a complainant to give a CMA on
 11 their property because they were intending to sell it.
 12 They led her to believe that she would be listing the
 13 property, but on her arrival only talked about the
 14 gravel pit, twisting it to fit the narrative and did
 15 not list the property. She referred to their tactic as
 16 panic pedalling, and shared with you her experience
 17 with property values next to gravel pits.
 18 So I just want to state that there isn't
 19 any truth to the fact that it's going to devalue these
 20 properties, and as property owners ourselves, that
 21 would be the last thing we would be trying to do in
 22 that area. We have not made our living as gravel pit
 23 owners, we have made it as property owners.
 24 And they pointed out very clearly, we
 25 have sold a lot of the properties in this area and are

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1 very proud of it and have done a good job of being good
 2 stewards of the land.
 3 I really struggled with what to say
 4 because it's really easy to get caught up in trying to
 5 respond to the inaccuracies and misinformation and
 6 defamation from opposition.
 7 What it comes down to is that your duty
 8 and your charge is to deal with what is set forth in
 9 the CLUP, and that's been said. The superseding code
 10 to be met is set forth in this ordinance. In all three
 11 recommendations from staff, my parents have voluntarily
 12 met or exceeded the required standards.
 13 As the Planning Commission, it's a
 14 thankless and difficult position, especially when faced
 15 with these sorts of antics; however, what you're
 16 charged with is to follow the codes and ordinances that
 17 are set for all of us through legislation. In this
 18 situation it's simple. The conditions have been met
 19 and the permit must be issued.
 20 It's also time that this decision is made
 21 tonight to stop unnecessary use of taxpayer dollars and
 22 to end the damages being done to the applicant.
 23 **CHAIRMAN MARTIN:** Thank you. Any
 24 questions? Mr. Whitney.
 25 **COMMISSIONER WHITNEY:** On the Yales'

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1 property on the letter you mentioned, what level are
 2 they -- their property? Is it on the same level as the
 3 pit, or is it up in the -- up above it or just where --
 4 **ALLISON TRIMBLE PAPAROA:** They are on the
 5 same level as the pit, and they would be bordering
 6 Phase 3. So they would have direct impact from Phase
 7 3.
 8 **COMMISSIONER WHITNEY:** So they would be
 9 on the same level, and they would be just looking at
 10 the berm?
 11 **ALLISON TRIMBLE PAPAROA:** Yes, they are
 12 adjoining the property, correct.
 13 **COMMISSIONER WHITNEY:** Thank you.
 14 **CHAIRMAN MARTIN:** Anyone else? No
 15 further questions at this time, thank you. Next
 16 testifier, please.
 17 **GARY SHERIDAN:** My name is Gary Sheridan,
 18 and I'm in Anchor Point. I live at 34860 Seabury
 19 Court, and I'm probably a secondary, you might say, lot
 20 away from the view down into the gravel pit as some of
 21 the other people here.
 22 But there has been quite a bit of back
 23 and forth about statement of fact, and I would like to
 24 present some statement of fact that you can look at.
 25 Earlier I had the clerk hand out a packet

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1 of photos that show the Anchor River Road, and there
 2 are -- some of those photos are in your other packets,
 3 but I just gave you the whole -- all the photos that I
 4 took.
 5 The Anchor River Road is -- which is --
 6 the proposed gravel pit owner will use as part of his
 7 haul route is in terrible condition. In a letter to
 8 Bruce Hall -- Wall, excuse me, Bruce -- KPB Planning
 9 Department dated March 21st, 2019, State of Alaska,
 10 Department of Transportation, Joselyn Bilon, area
 11 planner DOT stated, "Anchor River Road is in extremely
 12 poor condition, and additional heavy truck travel will
 13 only hasten further deterioration." And that letter is
 14 in your packet as well.
 15 The Beachcomber, LLC gravel pit
 16 application states they plan to haul 50,000 cubic yards
 17 of gravel each year for 15 years from the proposed pit
 18 on Danver Road. The only access to other destinations
 19 for Danver Road is the Anchor River Road.
 20 If we estimate the pit operation to have
 21 a five-month season to move 50,000 cubic yards of
 22 gravel, that would equal approximately 5,000 cubic
 23 yards per day, a hundred day season assuming. A gravel
 24 truck will carry in excess of 10 cubic yards per load,
 25 which means the pit operation under the proposed gravel

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1 pit application would haul about 50 gravel truck loads
 2 on the Anchor River Road per day.
 3 In addition, that would mean there would
 4 be 50 empty trucks returning. So that's the number of
 5 a lot of gravel trucks.
 6 Gary Cullip, a long-time highway
 7 construction contractor in Anchorage has stated the
 8 present condition of the Anchor River Road simply won't
 9 hold up to this kind of heavy gravel truck traffic.
 10 In a recent public hearing at the
 11 material site workgroup meeting, the owner of the
 12 proposed gravel pit stated that they decided to limit
 13 their annual production to 10,000 cubic yards of gravel
 14 per season. This is rather curious as their gravel pit
 15 application states that they plan to haul up to 50,000
 16 cubic yards.
 17 But at any rate, 10,000 cubic yards of
 18 gravel being hauled over the Anchor River Road means
 19 that 10 heavily loaded gravel trucks will travel the
 20 Anchor River Road one way each day and return empty for
 21 a total of 20 gravel truck trips per day.
 22 I spoke to Mr. Cullip about the lesser
 23 hauling. He stated that even 20 gravel trucks per day
 24 will seriously further damage the Anchor River Road.
 25 It has been stated in written testimony

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1 by Mary Trimble, Beachcomber, LLC, in a letter May
 2 31st, 2019, the Anchor River Road is not in horrible
 3 condition any more than most paved roads in our local
 4 area, Homer or the road to Anchorage.
 5 Just as an aside, I submit to you that
 6 the pictures I laid out to you there don't look
 7 anything like the road between here and Anchorage.
 8 I took 95 photos of the Anchor River
 9 Road, documented its present condition. I found
 10 serious deterioration the complete length of the road.
 11 Payment slumping along the sides of the road is evident
 12 nearly the whole length. The slumping in the worst
 13 case is about six-inch deep by about two-feet wide.
 14 Concrete slumping is a result of heavy traffic causing
 15 the roadbed to depress below the concrete.
 16 The concrete is broken in many locations.
 17 Significant cracking is noted throughout the roadway,
 18 which will further deteriorate within -- with increased
 19 heavy truck traffic.
 20 Further in the letter to DOT to Bruce
 21 Wall March 21st, it states, "We request the Kenai
 22 Peninsula Borough, Item 4, require pavement repair on
 23 the Anchor River Road by the Kenai Peninsula Borough in
 24 the event truck hauling creates obvious pit holes,
 25 rusting -- rutting, and pavement damage."

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1 The fact that DOT will hold the Kenai
 2 Peninsula Borough responsible for any damage to the
 3 Anchor River Road is rather a sobering fact.
 4 **CHAIRMAN MARTIN:** Could you summarize,
 5 please.
 6 **GARY SHERIDAN:** You bet. We consulted
 7 with a highway construction owner who estimates the
 8 rebuilding of the Anchor River Road could cost KPB
 9 between \$175,000 to \$300,000.
 10 As an aside, just a quick note, the
 11 Department of Transportation recently did some ditching
 12 along the sides of the Anchor River Road and ended up
 13 with a shoulder from 12 to 15 inches wide. So those
 14 people that are concerned about safety have serious
 15 reason to be concerned. Thank you very much.
 16 **CHAIRMAN MARTIN:** Any questions? None at
 17 this time, thank you.
 18 **GARY SHERIDAN:** Thank you.
 19 **CHAIRMAN MARTIN:** Next testifier, please.
 20 **RICHARD CARLTON:** My name is Richard
 21 Carlton. And my wife kind of pulled up lame, so she's
 22 not going to be able to be here. She had something she
 23 wanted to say, so I'm filling in for her.
 24 There was -- somebody said earlier
 25 that -- it's actually 1.2 miles, that road that Gary

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1 was just talking about. And there is five campgrounds,
 2 212 campsites in there, and that's not including the
 3 Silver King homes that are up there on the side of the
 4 hill there.
 5 So the density of people in that area is
 6 really -- can really be high, especially holidays and
 7 things like that. And that little side, 12 to 15
 8 inches that Gary was talking about, is truly a hazard,
 9 because a lot of people use it to walk and, you know,
 10 get to the beach and come back, and of course head down
 11 to go fishing, one thing or the other.
 12 Gravel is something we need, I mean, it
 13 really is. And I can see why our laws -- or the way
 14 everything is worded and everything is that way.
 15 You've had people that -- I mean, we've needed gravel.
 16 I mean, the ground around Anchor Point, my area in
 17 particular, I'm just kind of up on the hill there, and
 18 man, things move around. I mean, it's just like a
 19 peat, I guess you might say, and mud and everything,
 20 and just now is really drying out to where you can do
 21 things.
 22 But so anyway last July the planning
 23 department presented you with an application that was
 24 grossly incomplete due to buffers and berms and were
 25 designed using only subjective guesswork. You

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1 correctly denied the application.
 2 Tonight it's a replay of that submission
 3 because the application again indicates berms that are
 4 totally subjective, arbitrary, and unable to provide
 5 the protections that are mandatory conditions and
 6 standards spelled out in the KPB's code.
 7 By using KPB's own GIS technology, we
 8 have produced substantial evidence to prove that once
 9 again you are being pressured by staff to approve an
 10 incomplete application. Staff seems to be of the
 11 opinion that you should just ignore the obvious, that
 12 being the large percentage of the neighboring property
 13 owners who have little or no screening from the noise
 14 and visual impact, and then vote to approve the permit.
 15 Your function is to act as the judge in
 16 this case and ensure that meager protections afforded
 17 the residents in the Kenai Peninsula are guarded and
 18 upheld.
 19 I have a recording I'd like to play.
 20 Really, I do. Well, it worked earlier. Basically it
 21 was just Emmitt talking about what was previously
 22 stated. It was in print that, you know, really it's up
 23 to the people that live around there to protect
 24 themselves from the offensive -- things that they find
 25 offensive about a gravel pit. That includes building a

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1 fence or buying nice blinds that you can bring up from
2 the bottom to block out the gravel pit and then still
3 see your view. And so it was basically in his own
4 words, but I'm not very good at technology. So that's
5 all I have.

6 **CHAIRMAN MARTIN:** Thank you. Are there
7 any questions? Seeing none, thanks for your testimony.
8 Next, please.

9 **TODD BAREMAN:** Name is Todd Bareman. I
10 live at 73300 Tryagain Ave. In packet No. 1 on pages
11 79 and 80 under findings of fact, 15, the buffer zone,
12 I have some questions that I would like to direct
13 through the chair to Mr. Wall.

14 The following letters -- items mention
15 the word "adjacent," letters B, C, D, E, H, I, and Q.
16 Why would the code require that all property owners
17 within one half mile of a proposed material site be
18 notified when the findings of fact are written by the
19 planning department? It appears that only adjacent
20 property owners will be afforded any of the mandatory
21 protections.

22 The only reference to "adjacent" in KP
23 21.29.040 is the protection against physical damage to
24 adjacent properties.

25 Is it the intent of this application to

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1 only provide visual and noise protections to adjacent
2 properties when the code in 21.29.040, the six
3 standards, specifically says, "other properties."
4 These findings of fact seem to indicate that the
5 planning department has taken it upon themselves to
6 change the code and ignore the other property owners.

7 In this neighborhood there are many other
8 properties that would be severely impacted if buffers
9 and berms are not of sufficient height and density,
10 provide visual and noise screening as required in KP
11 21.29.050.

12 Letter Q in the same section states that
13 each piece of real estate is uniquely situated, and a
14 material site cannot be conditioned so that all
15 adjacent parcels are equally screened by the buffers.
16 The different elevations of the parcels, varying
17 vegetation on the surrounding parcels in the material
18 site, the distance of the material site from the
19 various surrounding parcels necessarily means that the
20 surrounding parcels will not be equally impacted, nor
21 can they be equally screened from the material site.

22 Where in the code does it say that only
23 some of the neighboring properties need to be protected
24 by buffers and berms of sufficient height and density?
25 The applicant has publically declared that neighbors

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1 who don't like what they see and hear coming from his
2 mine should utilize window shades, hearing protection,
3 and fences.

4 Who makes the decision as to who gets
5 sufficient visual and noise screening as is required in
6 the code, and who gets to pull their shades and wear
7 ear plugs in their own homes for the next 15 years?
8 Everything that's spelled out in fact Q
9 is the exact reason that this particular material site
10 application needs to be denied. If mandatory
11 conditions cannot be met, then the commission is
12 required in KP 21.25.050 to deny the permit, not just
13 to disregard the obvious deficiencies in this
14 application and allow an industrial gravel mine of this
15 magnitude in the center of a residential and
16 recreational neighborhood.

17 One last comment. Vacation time is
18 precious to everyone. If you were camping and at any
19 time of the day had to listen to gravel being
20 processed, whether it be screening, crushing, or
21 loading trucks, would you ever come back to that
22 campground or RV park? There is a hundred campsites, a
23 hundred RV sites within earshot of this proposed site.

24 I'm not trying to take away potential
25 income from one man, I'm trying to save a recreation

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1 area that thousands of people use. Unfortunately, this
2 doesn't seem to matter. Thank you.

3 **CHAIRMAN MARTIN:** Thank you. Any
4 questions? None at this time.

5 **RYAN MUZZARELLI:** I'm Ryan Muzzarelli,
6 P.O. Box 170, Anchor Point. One second here. And I
7 live on Kyllonen Drive. I was one of the cabins you
8 could see in the video, just kind of right behind Rick
9 Oliver's, if you look up there. And I'm here just to
10 testify in favor of private property rights and my
11 neighbors' rights to make a living.

12 I've spoken to Emmitt and Mary about the
13 property on multiple occasions, and they are incredibly
14 proud of it, and I'm confident that they will not only
15 maintain the property, but also provide a lot of value
16 to the community. Thank you.

17 **CHAIRMAN MARTIN:** Any questions? Not at
18 this time, thank you. Next testifier, please.

19 **ED MARTIN, III:** Hi, my name is Ed
20 Martin, III. I reside at 37200 Thomas Street,
21 Sterling. I'm the president of the Kenai Peninsula
22 Aggregate and Contractors Association. It's comprised
23 of almost 60 professional contractors all doing
24 business in the KP.

25 Over the past year we've been involved in

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1 scrutinizing the material site regulations for the
 2 borough. I've personally put in hundreds of man hours
 3 in research regarding all the facets that make up our
 4 current code. Tonight I'd like to speak on one
 5 particularly, that is the view.
 6 View shed, the regulation of and the
 7 rights pertaining to it are commonly misunderstood,
 8 also commonly thought of as an entitlement. A good
 9 part of my weeks of research were dedicated to just
 10 this debate. What I found was probably not what many
 11 people want to hear, but it is fact.
 12 There are only three ways a right to a
 13 view can be regulated, taken from, or given to an
 14 individual across this nation. One, the federal
 15 government holds view shed rights for our national
 16 parks; two, some cities and first class governments
 17 regulate view shed over large areas by way of zoning,
 18 including all lots or parcels within that area; and
 19 finally, three, view shed rights may be given from one
 20 entity to another by way of a purchase or contract.
 21 There is no precedence of regulation on an individual
 22 parcel of land. None of these options can apply to our
 23 second class borough.
 24 I have in my possession a copy of the OLR
 25 report in which I provided to all of you. After hours

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1 of research, it is the most complete explanation of the
 2 precedence of these rights. I would like for all of
 3 you to read it. Also, as this issue goes beyond what's
 4 in front of you today, I would encourage all of you not
 5 to take my word for it, but do your own research.
 6 I would ask that you rule in favor of the
 7 applicant tonight as the vast majority of the
 8 opposition is opposed to the application because they
 9 just don't want to see it. I've heard hours of their
 10 testimony stating that sentiment. It doesn't change
 11 the fact that they just don't have the right to the
 12 view over their neighbors' property. It also doesn't
 13 change the fact that that right may not be granted to
 14 them by our current governing body.
 15 I will be encouraging the KPB Planning
 16 Commission and assembly to strike any language of view,
 17 visual impact, or view shed from their current and
 18 future ordinance. Thank you.
 19 **CHAIRMAN MARTIN:** Any questions? None at
 20 this time, thank you.
 21 **VICKEY HODNICK:** Hi, my name is Vickey
 22 Hodnick from Anchor Point. My address is 35031 Moffit
 23 Lane. I really appreciate the fact that you're all
 24 here and that we can be here to present some of our
 25 concepts to you.

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1 I have to take exception to Mr. Martin's
 2 remarks. I've been a resident on the Peninsula for 30
 3 years, and I think I was assessed on my view property
 4 down in Homer.
 5 And this -- the majority of the people
 6 other than the visitors that come during the summer or
 7 come camping and fishing are -- most of us are senior
 8 citizens, this is our final home down there.
 9 And something that's kind of disturbing
 10 is that we're going to spend our final retirement years
 11 being entertained by Caterpillars and gravel trucks and
 12 all the other things that are involved. We can't send
 13 the grandkids out to ride their bike on the road during
 14 the time that they are visiting us.
 15 We certainly believe that you delivered
 16 the correct conclusion on July 16th last year, and
 17 although it was remanded back to you for adequate
 18 findings of fact, we feel that the same evidence
 19 prevails today.
 20 We're here to remind you that we love our
 21 homes. We love our community. There are many
 22 legitimate reasons to not deny this permit, which are
 23 not presently covered in the code. Some of these
 24 things should be covered in the code because there is
 25 very few things that we can find that actually protect

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1 us as law abiding citizens of the borough.
 2 Kenai Peninsula code 21.29.040 states the
 3 standard for the material sites. These material site
 4 regulations are intended to protect against aquifer
 5 disturbances, road damage, physical damage to adjacent
 6 properties, dust, noise, visual impact.
 7 Only the conditions set forth in the code
 8 21.29.050 may be used or imposed to meet these
 9 standards. However, the prelude to these standards is
 10 clarified, which is to protect the existing surrounding
 11 land uses against the negative impacts of material site
 12 operations. A standard is added for providing
 13 consistency with the borough comprehensive plan, which
 14 we're not hearing anything about.
 15 In other planning documents it says land
 16 use regulations are required by the Alaska state law to
 17 be consistent with the borough comprehensive plan. A
 18 simple rule of thumb would be if there is a house,
 19 don't start a gravel pit. If there is a gravel pit,
 20 don't build a house.
 21 We had a -- we spent -- most of us in our
 22 neighborhood spent the last winter going to the
 23 material site meetings as they were developing new
 24 restrictions and regulations for gravel mining. And
 25 there was a gentleman there from the Valley that came

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1 down and said, "Just because there is gravel, it
2 doesn't mean you have to dig it."
3 And I think just because there is a
4 history in a community, like a former gravel pit, it
5 doesn't mean that everybody is entitled to have a
6 gravel pit thereafter.
7 Things change and communities change, and
8 when families move in and create a settlement, even in
9 a residential -- a rural residential area, I think it
10 needs to be considered.
11 This community hosts five state
12 campgrounds, three private campgrounds, 70 or 88 unit
13 summer residential park, and 50 to 60 permanent private
14 homes close to the proposed site, a tractor launch, and
15 an only road that is determined a tsunami exit road.
16 There are also moose, fish, nesting eagles, a rickety
17 bridge, and a narrow road.
18 The DNR recognizes that this site hosts
19 archeological and historical artifacts and cemeteries.
20 The proposed mine site has established homes like --
21 located on three sides of it, and on the fourth side is
22 Cook Inlet itself.
23 A 15-year permit for this gravel pit will
24 drop our property values and disrupt the quality of
25 life for hundreds, if not thousands of people due to

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1 noise, dust, traffic issues, and visual blight.
2 The impact of the health of Anchor River
3 is potentially devastating. It could damage the fish
4 population in the future. Please note that none of
5 these concerns are really noted in the code.
6 The mandate to the Planning Commission as
7 spelled out in the Kenai Peninsula code 21.25.050 is to
8 approve, deny, or modify the application. Approval is
9 only allowed when the minimum requirements of the code
10 are met. Anything short of that would allow the
11 commission to modify the application to a state that
12 would meet the requirements, or to deny the application
13 for the fact it would be considered an incomplete
14 application.
15 In July of last year this commission
16 rightly denied an obviously incomplete application and
17 failed to design a buffer zone that complied with
18 conditions that are set forth in code 21.29.050. And
19 as a result it failed to meet the mandatory standards
20 of code 21.29.040.
21 Tonight, we, the neighboring property
22 owners, are here to prove once again that the arbitrary
23 numbers used to design the buffer zone in this
24 application are totally inadequate resulting in this
25 application being declared incomplete and therefore

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1 should be denied once again. Thank you very much.
2 **CHAIRMAN MARTIN:** Thank you. Any
3 questions? Ms. Fikes.
4 **COMMISSIONER FIKES:** Through the chair.
5 You stated that your view is assessed by the borough.
6 So how many lots are your property --
7 **VICKY HODNICK:** I'm not sure about --
8 what we're on, we're on four acres right now. When I
9 was in Homer I had 30 acres.
10 **COMMISSIONER FIKES:** And do you have
11 waterfront view, is that what the assessment --
12 **VICKY HODNICK:** I did, uh-huh.
13 **COMMISSIONER FIKES:** So what you're
14 referencing is waterfront view?
15 **VICKY HODNICK:** Yes.
16 **COMMISSIONER FIKES:** And you're not
17 certain how many lots are between you and the proposed
18 pit?
19 **VICKY HODNICK:** We are about a thousand
20 feet away, and we're on the same level.
21 **COMMISSIONER FIKES:** Okay, thank you.
22 **CHAIRMAN MARTIN:** Ms. Ecklund.
23 **COMMISSIONER ECKLUND:** Through the chair.
24 Thank you for your testimony. You mentioned the
25 archeological site possibility and a cemetery

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1 possibility --
2 **VICKY HODNICK:** Right.
3 **COMMISSIONER ECKLUND:** -- which we have
4 heard in prior testimony.
5 Have you contacted anyone to look into
6 that and --
7 **VICKY HODNICK:** Yes, I have.
8 **COMMISSIONER ECKLUND:** -- and research it
9 and determine if it is so?
10 **VICKY HODNICK:** It is recorded. And most
11 of the people were thinking I was looking for some kind
12 of a grant in order to save that particular site, and I
13 did tell them it was on private property. And the
14 response from the state and even the national level was
15 a little interesting.
16 But going back to thinking about what we
17 want to keep and the history we want to maintain in the
18 state itself, I think these are important things to
19 think about before just having them dug up and become
20 part of a gravel pit.
21 **COMMISSIONER FIKES:** Thank you.
22 **CHAIRMAN MARTIN:** Any other questions?
23 At this time I'll institute a five-minute recess.
24 We'll reconvene in five minutes.
25 (Recess)

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1 **CHAIRMAN MARTIN:** Are you ready? All
2 right, you're free to go.
3 **RICK OLIVER:** My name is Rick Oliver. I
4 don't live in a Post Office Box. I live at 34880
5 Danver Street, which is right on the corner of Kyllonen
6 and Danver.
7 We've spoken many times to -- as to who
8 can see just what from where and what the setbacks
9 should and could be and how high are the berms.
10 Apparently, this has been considered a
11 subjective subject, and no one here other than Mr.
12 Walls [sic] has come to look, to my knowledge.
13 It appears that the borough's idea of
14 minimizing the view, dust, noise, is a random tree here
15 and there. What we would like to show you here is hard
16 evidence from the data, again provided by the borough's
17 own technology.
18 We have this evening several profiles,
19 one of which is from my house. All the other profiles
20 and most of the affected neighboring properties are at
21 a much higher elevation than mine. We have a visual
22 presentation we can show you, a profile from the
23 affected home sites to areas within the proposed mining
24 site. This will also help to dispel the effectiveness
25 of the ludicrous concept of moving berms as the sight

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1 levels can be shown from all appropriate angles.
2 Hopefully this can minimize the
3 subjectivity and provide clear and indisputable
4 evidence showing this application can never meet all
5 the borough standards.
6 That's really all I have to say other
7 than -- well, speaking to the presentation before by
8 Mr. Trimble, it amazes me to think that -- it is
9 lovely, lovely property, all beautifully maintained,
10 he's done a fantastic job in presenting all of these
11 lovely trees. And where are all these lovely trees
12 going to go when we start mining gravel?
13 And we're going to have a berm
14 that's going to be -- or he's going to be mining 25
15 feet below a berm. Where does the 25-foot hole come
16 from? I don't -- well, I know where it is. But
17 anyway, that's all I have to say.
18 **CHAIRMAN MARTIN:** Any questions? Not at
19 this time, thank you.
20 **RICK OLIVER:** Thank you.
21 **CHAIRMAN MARTIN:** Next testifier, please.
22 **RICHARD CLINE:** First of all, thanks.
23 Good evening, and thanks for your service. We
24 appreciate your time and effort that you have to put in
25 for this.

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1 I'm Richard Cline, my wife and I live at
2 34926 Danver Street. And Lynn has a profile of our
3 spot as well.
4 First, though, I'd like to tell you
5 that -- I like to learn something every day, and today
6 I did learn something. I learned that putting a gravel
7 pit in a neighborhood doesn't decrease property values.
8 I would have never thought that on my own, so I'm glad
9 I came tonight to learn that part.
10 We directly overlook the material site,
11 even though we're not adjacent. So when Todd brought
12 that up about adjacent versus other, that's a very,
13 very meaningful thing to me, because we will see not
14 the view shed, we'll always be able to see Mt. Redoubt
15 and Mt. Iliamna, which is the view shed, our view, but
16 we will see -- we will have a negative visual impact,
17 which is the wording of the code, the visual impact,
18 not the view shed. So we don't have to worry about the
19 national parks guys interfering with anything we're
20 going to do.
21 I do have some questions, and these are
22 hypothetical, just think about them later on. I just
23 want to know why everybody in the borough that I've
24 talked to in the planning department and elsewhere that
25 said the permit is going to be granted. That was right

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1 from day one when I got notified last year that this is
2 in the works.
3 And I call up, I say, "Hey, tell me more
4 about this." They said, "Doesn't matter what you
5 think, what you do, and how much money or time or
6 effort you put into it, just take it for granted that
7 it will be approved." So I just -- that's a question I
8 have, why is that an automatic thing?
9 Which leads to something that's kind of
10 curious to me and something you might want to think
11 about yourselves. If that is true, if no matter what
12 we do here we're just spinning our wheels, then why do
13 you allow us, why does the borough allow us, the
14 commission, the assembly, to waste our time, our
15 effort, and our money in this process at all? It's
16 just curious.
17 It would seem to me that you would be
18 opening yourselves up for liability in that regard
19 somehow. Because as you can tell, we've put a lot of
20 time, effort, and money into it. Doesn't this make you
21 guys susceptible to some kind of liability? Something
22 to think about.
23 No one here denies a need for gravel.
24 We've heard that from everybody, the gravel guys of
25 course, but then us as well. We know what it's all

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1 built on. We just deny that it has to come from the
 2 middle of our well-established and ecologically fragile
 3 neighborhood.
 4 With Lynn's help you can see from our
 5 deck, and I know that Emmitt and Mary are very familiar
 6 with this because my security cameras caught them on
 7 our deck, when we were not there, taking movies and
 8 making snide comments.
 9 And you can see over -- right over the
 10 top of the berm. We basically will need a 43-foot berm
 11 to conceal the -- to basically minimize the visual
 12 impact of just one portion of their pit.
 13 A 43-foot berm -- I'm not an earth mover,
 14 but I'm pretty sure that that's an unworkable berm.
 15 And I kind of like the idea of a 43-foot berm on the
 16 far end with a 25-foot hole behind it, and then I want
 17 to watch how he moves that towards my house in the
 18 rolling berm kind of deal.
 19 Another problem with the topography of
 20 this location, you can see it's highlighted in that
 21 elevation, is that entire area acts like a mega phone.
 22 Everything just blasts up the hills to us, to Rick, to
 23 my neighbor Steve Thompson. And Lynn can put up
 24 Steve's.
 25 Poor Steve, he needs a 53-foot berm to

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1 hide his because he's a little bit closer to it. And
 2 that's just one -- you know, these are just some of the
 3 things, some of the houses that are up the hill from
 4 there.
 5 This is your own technology, this is the
 6 borough's technology. We didn't make this up. This is
 7 not smoke and mirrors, this is math.
 8 Our cabin sits, you know, a bit higher
 9 than Rick's. Poor Rick is right across the street from
 10 it.
 11 One argument that there is no way a berm
 12 could ever work is not really true. They can build a
 13 berm high enough, I guess it's physically possible,
 14 it's just unrealistic, okay.
 15 And if you want to put it -- you know,
 16 the limitations or you want to put some kind of a
 17 modification to the requirements, the mandatory
 18 conditions, then you can say, "Okay, I want a 43-foot
 19 berm or a 53-foot berm." That's going to -- you know,
 20 would that satisfy me? No, obviously. But if it keeps
 21 the pit from being built, then of course it would
 22 satisfy me. But that is within your power. Just
 23 saying no berm would ever do it is not really true on
 24 the face of it, but it's true in the reality of it.
 25 The permit as submitted is flawed, it's

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1 incomplete at the least, and it's totally unacceptable
 2 on its own. We respectfully ask the commission to act
 3 on behalf of not only the small group here -- and I'll
 4 wrap this up -- facing the total destruction of our
 5 neighborhood, but the countless other citizens of the
 6 borough who could soon see the same thing in their
 7 front yard.
 8 We ask that you deny this permit on the
 9 grounds that the true findings of fact, supported by
 10 overwhelming substantial evidence, shows that the
 11 mandatory standards will not be satisfied in this
 12 permit's application. Thank you.
 13 **CHAIRMAN MARTIN:** Thank you. Any
 14 questions? None at this time, thank you.
 15 Next person, please. The young lady
 16 coming towards the back was -- she beat you to the
 17 punch.
 18 **JIM REID:** Oh, I'm sorry, I didn't see
 19 you.
 20 **CHARITY JACOBSON:** Hi. Hi, my name is
 21 Charity Jacobson. I live at 72150 Griner Avenue. We
 22 are about three miles from the proposed gravel pit.
 23 It might not be too relevant, but we can
 24 hear a rock crusher that is seven miles away from us to
 25 the other side out of the North Fork Road. So if this

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1 proposed pit goes in and all the operations were right
 2 in between and -- it's going to be twice as loud.
 3 Also in the ordinances for a gravel pit,
 4 it is not a one size fits all. For each area and
 5 location, this should be looked into as far as
 6 residential areas, recreational areas, state land, you
 7 know, because if it was out in the middle of nowhere,
 8 it wouldn't apply to some of these regulations.
 9 Also it's been stated that a gravel pit
 10 does not have any physical damage on the adjacent
 11 properties, but would you or anyone knowingly purchase
 12 a retirement home with an active gravel pit between a
 13 hundred and thousand feet away from you for the next
 14 foreseeable future? That's all, thank you.
 15 **CHAIRMAN MARTIN:** Thank you. Are there
 16 any questions? None at this time. Next testifier,
 17 sir.
 18 **JIM REID:** I've got to see if there is
 19 somebody else coming down the aisle.
 20 Hi, my name is Jim Reid, and I live at --
 21 where do I live? 73820 Seaward Avenue. Okay, I live
 22 right above it.
 23 Anyway, I only have a couple questions,
 24 but my question would be to the planning staff, maybe
 25 they can answer it. What does a natural berm consist

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1 of? What is a natural berm? What's the definition of
 2 a natural berm?
 3 **CHAIRMAN MARTIN:** Go ahead.
 4 **MR. WALL:** Yeah, and I'm not quite sure
 5 where you're going with that, because our code does not
 6 talk about a natural berm.
 7 **JIM REID:** Let's just put it this way.
 8 Emmitt has already stacked up a bunch of logs and stuff
 9 from -- debris from, looks like, a lot clearing thing.
 10 He stacked it up about 15, 20 feet along Danver.
 11 And I just -- my question was, what does
 12 a natural berm consist of? Because if it consists of
 13 live trees growing, we can all go home because it's
 14 going to be 30 years before he gets to 25-foot trees.
 15 **MR. WALL:** What the code requires is an
 16 earthen berm with a 2 to 1 slope.
 17 **JIM REID:** An earthen berm. Does that
 18 mean it's a bunch of logs and debris and then they
 19 cover it over with some dirt, is that considered a
 20 natural berm?
 21 **CHAIRMAN MARTIN:** Sir, I think your
 22 question has been answered. We're getting -- it's an
 23 earthen berm, not a natural berm.
 24 **JIM REID:** Oh, well, I was told it was a
 25 natural berm, but that's okay.

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1 Anyway, it's an earthen berm, so that
 2 means it has to be dirt, it can't be a bunch of logs
 3 and stuff stacked up and dirt over it?
 4 **CHAIRMAN MARTIN:** Within reason. We're
 5 not limiting it to every last piece of wood, yes, sir.
 6 **JIM REID:** Oh, okay. Well, all right
 7 then.
 8 And you know the other thing, of course,
 9 is I realize the gravel -- I was a builder down south,
 10 so I know we have to have rock and gravel and whatever.
 11 But I don't understand the part when you bring the
 12 gravel in -- we have a gravel pit within two miles of
 13 our house right there up on old Seaward. It's way over
 14 there. But I didn't move next to a gravel pit, because
 15 my theory is if you move next to a gravel pit or you
 16 move next to an airport, don't cry. You knew it, you
 17 moved there. But when a whole residential area is
 18 there and it moves next to you, well, then that's a
 19 different situation.
 20 You know, it's like they said the other
 21 day, all gravel pits can't be under the same rules. I
 22 mean, they are different. This gentleman right there
 23 said, "Hey, you go over on the other side over there,
 24 nobody cares about noise and dust because there is no
 25 houses over there, there is no people."

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1 So here we are in a situation where all
 2 these people live there and use this area and now we're
 3 going to move a gravel pit in. Anyway, that's it. Let
 4 me sign my name.
 5 **CHAIRMAN MARTIN:** Any questions? Seeing
 6 none, next testifier, please.
 7 **ROGER McCAMPBELL:** Let me see if I can
 8 get my technology to work better than Rick. Can you
 9 hear that while I sign my name? Anybody identify those
 10 birds? Excuse me, 7345 -- my name is Roger McCampbell,
 11 I live at 73450 Seabury. My mailing address is still
 12 in Homer. I'll turn this off now. Just about a year
 13 ago I bought this piece of property.
 14 After coming up and looking all over
 15 Homer, I could buy anywhere I wanted in this state.
 16 I've lived in Homer for 31 years. I've loved the
 17 Anchor River valley since I moved down here, and that
 18 area. I spent the night on that front porch for the
 19 peace and quiet over Memorial Day weekend because I
 20 knew that would be the weekend of the most noise and
 21 disturbance.
 22 And the reason I know that is I was the
 23 district supervisory park ranger for the southern Kenai
 24 Peninsula for 31 years, and I kind of know that area
 25 pretty well. I know Emmitt pretty well, a great deal

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1 of respect for him and his family.
 2 But this is the wrong gravel pit at the
 3 wrong place. It's not about -- I don't see it from my
 4 place. I live four-tenths of a mile away from it. I
 5 can hear the waves breaking on the ocean at night or in
 6 the morning when it's peaceful and quiet. Those birds,
 7 most of those are about 150 to a hundred yards away. I
 8 like my peace and quiet. That's why I moved there.
 9 I retired five years ago. It's not about
 10 the scene. I don't see it, I drive by it. I don't
 11 particularly like to look at gravel pits, I don't know
 12 who does, unless they turn into giant swimming and
 13 fishing holes later.
 14 Now, I own a lot of heavy equipment
 15 myself. I run a cattle ranch. My family, we have
 16 cattle ranches down in northern California where I'm
 17 originally from. Everybody says don't Californicate
 18 Alaska, and that's exactly what we're doing. It's
 19 usually from the people that are doing it, because I
 20 grew up there five generations.
 21 Our neighboring ranch has a rock crusher.
 22 I can hear that when I'm down there sitting around my
 23 campfire, and it's 15 miles away. So yeah, I can hear
 24 it, I can hear the rocks, I can tell when the gravel
 25 trucks -- I also own two gravel trucks. I had a couple

1 bulldozers and back scrapers, so, you know, I'm not
 2 opposed -- nobody I think is opposed to gravel pits.
 3 And, in fact, I was looking at several of
 4 the lots around me to buy and develop and do some
 5 rental units, but I've been in the business long enough
 6 and most of the people that I know in the rec -- that
 7 want to come up here and stay in an AirBNB, they want
 8 peace and quiet, too.
 9 Most of those campgrounds, Halibut and
 10 Slide Hole when we developed those, our socioeconomic
 11 look at those was for family camping. People come up
 12 there to -- you know, Memorial Day weakened is crazy,
 13 there is no doubt about it. But after Memorial Day
 14 weekend -- the fishing is lousy, but the beer drinking
 15 is good. So, you know, but after that it pretty well
 16 calms down. There is always a yahoo, there is always a
 17 yahoo on the dirt bike with the muffler off or the
 18 four-wheeler.
 19 By the way, the Anchor Point beach road
 20 is an ominous road. It is state park land at the edge
 21 of the pavement. State Parks allowed DOT to dig out
 22 those culverts this year because of drainage issues and
 23 the saturation underneath the road was causing it to
 24 buckle even more.
 25 But DOT, if anybody is thinking, "Oh, we

1 parcels are less impacted by the material site than the
 2 adjacent (indiscernible) site as sound dissipates over
 3 distance. Yeah, but not four-tenths of a mile, not 15
 4 miles.
 5 So I think it's rather disingenuous to
 6 say that these buffers -- it's just going to echo up.
 7 If I can hear waves breaking and the seagulls down on
 8 the beach, then I've certainly -- I've already heard
 9 the -- speaking of which, Old Sterling is right behind
 10 my house. So when the gravel trucks go out, go down
 11 the beach road, then they turn around and they come
 12 right up behind. So I can hear Jake brakes, I can hear
 13 anybody messing around behind there, too. So it's a
 14 noise issue for me. Thank you.
 15 **CHAIRMAN MARTIN:** Any questions? None at
 16 this time. Next, please.
 17 **ROGER McCAMPBELL:** Very good. I hate
 18 answering questions.
 19 **LARRY SMITH:** My name is Larry Smith. I
 20 reside at 320 Artifact Street, Soldotna.
 21 I thought this was an opportune time for
 22 me to come up here because Mr. McCampbell mentioned the
 23 Slide Hole Campground. I constructed the Slide Hole
 24 Campground in 1992 back before the Anchor Point Road or
 25 the anchor beach road or whatever it's called today was

1 can now excuse to widen that road and make it safer,"
 2 you're going to have to battle with DNR and State Parks
 3 on that, because that easement is only pavement to
 4 pavement, it is not an extended easement off that.
 5 You know, since we permitted Todd years
 6 ago, or long before him for the tractor launch
 7 operation, it increased the visitation on the beach
 8 area, a lot more charters, and they are not little
 9 charter boats, they are 32 foot, 10-foot beams, and
 10 that's a wide load. And trying to pass on that road,
 11 trying to have kids ride their bike, walk up and down
 12 that road.
 13 Now, it would be nice if the borough and
 14 the city or -- Anchor Point community has been fighting
 15 for a pedestrian path and bike path down there. That
 16 would be really nice, that would take some of the
 17 pressure off. I'm the first one to admit that.
 18 But I don't want to hear it, that's my
 19 simple point. There is more to visual. I don't care
 20 about views. I own view property. I never looked at
 21 it, I'm too busy. You know, I'm doing things. I'm out
 22 in the view, that's where I want to be.
 23 But I like to sit on my front porch at
 24 night and not hear -- oh, you're -- let's see, Item 15
 25 on this whereas and wherefore document, Item E, these

1 paved. It was a narrow, nasty little gravel road back
 2 then, but we bought our gavel from Mr. Kyllonen at the
 3 little gravel pit at the top of the hill, and we
 4 constructed the campground. And we didn't hear a lot
 5 of opposition back then to the gravel trucks traveling
 6 down the Anchor Point Road or anchor beach road.
 7 Anyway, just so there is no mistake, I'm
 8 here to support Emmitt and Mary Trimble in their
 9 request for this gravel material site application.
 10 I have spent a great deal of time in the
 11 last year or so studying the Kenai Peninsula Borough
 12 gravel ordinances, and I've got a real education. I
 13 thought I knew something about gravel. I own a
 14 construction company, I own three gravel pits. I
 15 bought gravel from most or many of the gravel owners
 16 throughout the borough, including the State of Alaska,
 17 U.S. Forest Service, Kenai Peninsula Borough.
 18 I was born in Seward and raised in Cooper
 19 Landing, and back when I was a young man, gravel wasn't
 20 a dirty word. It seems to have become a dirty word
 21 now, even though every one of us is in a building
 22 that's built out of concrete that has gravel.
 23 We traveled on paved roads that are --
 24 the asphalt is made out of gravel. Our foundations of
 25 our houses are made out of gravel, or under our houses.

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1 Our driveways are made out of gravel. There is no
 2 doubt that gravel is important to all of our lives. It
 3 always has been, always will be. But I don't think Mr.
 4 and Mrs. Trimble should be penalized for asking for a
 5 gravel pit on their property.
 6 I agree with Mr. Martin who was up here
 7 before me. View shed, visual impact, I know that's
 8 some language that's inside the borough ordinance, and
 9 it's a feel-good term. But there is no -- there is no
 10 case law having to do with -- or very little, I won't
 11 say no -- there is very little case law having to do
 12 with view shed and visual impact.
 13 I happened to ask Mr. Kinneen at a
 14 meeting earlier this year if he had the right to the
 15 view shed over his neighbors' property, and he told me
 16 he did, it was an absolute right. I don't believe
 17 that.
 18 I certainly empathize with those who
 19 don't want to look at a gravel pit. And this is not
 20 going to be a popular comment, but if you don't want to
 21 look at the gravel pit, buy the land. Offer Emmitt and
 22 Mary Trimble some money for their property and then it
 23 can become your property and you can turn it into a pig
 24 farm or a junkyard or a car junkyard or whatever you
 25 want to turn it into.

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1 And the other last thing I want to
 2 comment on is if you don't like the ordinance, change
 3 the ordinance. But the ordinance as it exists today,
 4 the requirements for the material site have been met.
 5 I believe it's the duty of the Planning Commission to
 6 approve that application.
 7 And I'm a realist. You have a thankless
 8 job, because I believe that no matter what you do, this
 9 is going to end up in litigation. But anyway, I would
 10 urge you to support their application, thank you.
 11 **CHAIRMAN MARTIN:** Thank you. Any
 12 questions? Mr. Whitney.
 13 **COMMISSIONER WHITNEY:** I want to make
 14 sure I heard you right. You said you built the
 15 campground in 1992, was that it?
 16 **LARRY SMITH:** I believe it was 1992. We
 17 built the -- we had a contract with DNR, Parks and
 18 built the Slide Hole. It was an addition to the Slide
 19 Hole Campground.
 20 **COMMISSIONER WHITNEY:** Using Anchor --
 21 the --
 22 **LARRY SMITH:** Using gravel -- Mr.
 23 Kyllonen had a gravel pit right up the Anchor River
 24 Road, across the bridge, above the bridge, right above
 25 the bridge. And we bought gravel from him and we built

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1 the campground.
 2 **COMMISSIONER WHITNEY:** Was the area as
 3 built up then as it is now?
 4 **LARRY SMITH:** Pretty much, yeah, it
 5 was -- well, I guess not.
 6 Well, you know, here is the thing. You
 7 know, we're talking about safety and about all this
 8 stuff on this road, and these 40-foot motor -- you
 9 know, diesel powered land yachts that they come up here
 10 with from the Lower 48, Anchor Point Road is a
 11 dangerous road, but it's not going to be any more
 12 dangerous with the gravel trucks than it is to all the
 13 tourist traffic that's going on today. Thanks a lot,
 14 Mr. Chairman.
 15 **CHAIRMAN MARTIN:** We want to keep a
 16 polite meeting. This is the second warning, that we
 17 need to maintain decorum. Everybody deserves respect.
 18 Next testifier, please.
 19 **CHRIS CRUM:** Hi, my name is Chris Crum.
 20 I live at 72485 Ester Avenue in Anchor Point. My
 21 husband and I and our five children have lived there
 22 since 1987.
 23 Like I said, we raised five kids there.
 24 I taught school at Chapman school for 25 years, since
 25 retired. All of our children went to Chapman school,

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1 graduated from Homer High School, went outside to
 2 college, and came back to Alaska because there is no
 3 other place. And they all have employment in Wasilla,
 4 unfortunately, but if they could, they would be down
 5 here. They absolutely love it.
 6 My husband and I have done nine
 7 transactions with Emmitt and Mary through Coastal
 8 Realty over the last 25 years. And I just want to say
 9 that they are very professional, and they got what they
 10 wanted and we got what we wanted. So all the
 11 disparaging comments about them and their
 12 professionalism, like Larry said and Roger said, they
 13 are very, very nice people.
 14 I've sat through two hearings, and I came
 15 to the realization that this is really not about a
 16 permit. Emmitt and Mary and Beachcomber, LLC, I've
 17 read all of the regulations, read the codes. They have
 18 done everything that has been required of them and gone
 19 beyond. And this is about "not in my backyard." And I
 20 understand that, I certainly do I understand that.
 21 It's also about private property rights.
 22 So I just -- thinking about this, I was
 23 thinking what I've heard so far about the rock crusher.
 24 One of the meetings there was a rock crusher, a D9
 25 dozer, a grizzly, and a big operation, which was not

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1 factual, there has never been.
 2 Every day I go down to feed my horses on
 3 that property. So I go down there on Beachcomber road,
 4 I pass Danver, and there has never been anything like
 5 that down there.
 6 The second thing is, yes, the road is in
 7 bad shape. We have lived in Anchor Point for 30 plus
 8 years. It's always been sort of a dangerous road, you
 9 know, for kids, and moms and babies pushing -- moms
 10 pushing strollers. There is no sidewalk.
 11 But the road started to deteriorate 15 or
 12 20 years ago when the tractors came in and took over
 13 our beach. We have huge charter boats, 10-plus wide,
 14 up to 11 wide traveling on that road every single day
 15 of the summer starting May, ending around Labor Day.
 16 Yes, they are big. They should not be
 17 going across the bridge, some of them. People are
 18 concerned about trucks on the road and the bridge. The
 19 bridge is rated for 11 tons. Loaded gravel trucks
 20 should not be on that bridge. They have to turn right
 21 and go around on the Old Seward Highway. That is what
 22 they are going to be doing. So that's a fact.
 23 I also want to give a shout out to the
 24 truck drivers in Anchor Point. The majority of the
 25 business, the majority of the employment in Anchor

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1 Point, majority meaning over 50 percent, is trucking,
 2 hauling dirt, gravel, and gravel pits. We need the
 3 business, we need the money. We can't live without it.
 4 So those people that are saying the
 5 business is going to be deteriorating in Anchor Point,
 6 it will be -- it will be increasing if you have more
 7 trucks hauling gravel and dirt.
 8 I just want to say the Trimbles have done
 9 what you required of them. Gravel pits are regulated
 10 by the Kenai Peninsula Borough and your statutes, the
 11 State of Alaska, and MSHA, which is Mine Safety and
 12 Health Administration. They have good policing
 13 abilities. The noise, the dust, and the safety all
 14 have to be complied with in a gravel pit.
 15 So in closing, I know it's going to be a
 16 hard decision. You have the ordinances and the
 17 regulations in front of you. You have the application
 18 for the permit. I'm just asking you to weigh heavy on
 19 how it's been written, how it's been followed, what's
 20 been done, and do the right thing.
 21 **CHAIRMAN MARTIN:** Thank you. Any
 22 questions? None at this time.
 23 **HANS BILBEN:** Hi, my name is Hans Bilben,
 24 35039 Danver Street in Anchor Point. Rick Carlton was
 25 having some trouble with his audio. I'm going to see

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1 if I can do it for him here.
 2 (Audio played - not transcribed)
 3 **HANS BILBEN:** Okay, that was the
 4 applicant telling us how we could protect ourselves
 5 from his gravel pit. So who gets to do that? I don't
 6 know, but I don't want to have blinds closed, I don't
 7 want to wear hearing protection in my own house, and I
 8 don't think I need to build a fence to protect myself.
 9 A couple corrections. The applicant
 10 talked about a 25-foot deep hole. The application
 11 calls for an 18-foot excavation, 20 feet to water.
 12 He's got to stay two feet above it.
 13 Yes, he's checked all the boxes, but he
 14 hasn't met the conditions of the code. So that's what
 15 we're trying to decide tonight: Has he met the
 16 conditions of the code?
 17 You talk about a charter boat going
 18 across the bridge. I ran a charter boat for 16 years.
 19 A heavy charter boat would be about 10,000 pounds
 20 versus an empty dump truck at about 22,000 pounds, and
 21 you double that for a loaded dump truck.
 22 Last July you correctly voted to deny
 23 this application, and you made the findings of fact
 24 that said the noise will not be sufficiently reduced
 25 with any buffer or berm that could be added. The word

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1 "any" there is kind of the key.
 2 While the intent of these findings is
 3 abundantly clear, they are lacking any reference to
 4 specific sections of the code that define the mandatory
 5 conditions, and they are lacking supporting evidence.
 6 The hearing officer on appeal ruled that
 7 the commission exceeded the scope of its authority in
 8 denying this permit based upon its determination that
 9 the conditions would not afford adequate protection
 10 from noise and visual blight.
 11 I absolutely agree with the hearing
 12 officer. The findings of fact had some problems. The
 13 planning department seems to be of the opinion that
 14 because the hearing officer said that, that this is
 15 proof positive that you as commissioners must approve
 16 this application.
 17 To the contrary, the hearing officer did
 18 not rule that the commission lacked the authority to
 19 deny the application. To do so would be counter to the
 20 code, which in KPB 21.25.050 says that you have three
 21 possible outcomes. You can approve, deny, or modify an
 22 application.
 23 A very important point here is that she
 24 did, in fact, affirm the denial. She did not say give
 25 them the permit. She affirmed the denial, and here we

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1 are today.
 2 The authority granted to the commission
 3 in 21.29.050 is to ensure that buffers and berms are of
 4 sufficient height and density to provide visual and
 5 noise screening of the proposed use. That's what we
 6 need to determine tonight. Are they of sufficient
 7 height and density to provide visual and noise
 8 screening of the proposed use? And if it can't do
 9 that, then you can't approve it.
 10 Buffers and berms are the industry
 11 standard, and if properly designed they should protect
 12 neighboring properties from noise and visual blight.
 13 The key words here are "properly designed." That's
 14 what this GIS technology is all about.
 15 You guys have a heck of a job if you're
 16 trying to determine what are these buffers and berms
 17 all about. Because every time they come in they say,
 18 "Six-foot berm, 50-foot buffer." Okay, what does that
 19 do? Well, you don't know what it does.
 20 With that technology that is borough
 21 technology, all you have to do is look at it and say,
 22 "Yeah, it works," or, "No, it doesn't work." I don't
 23 know why the borough is so hesitant to get into that.
 24 Yes, you probably exceeded the scope of
 25 your authority by saying that there wouldn't be any

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1 buffers and berms that could screen the proposed use,
 2 but you did not exceed the scope of your authority by
 3 your denial.
 4 A better finding of fact might have been
 5 that the application was not of sufficient height or
 6 density to provide visual and noise screening. You
 7 needed to tie your findings of fact to the code, and
 8 that's what we're here for today.
 9 So the hearing officer sent us back here
 10 tonight, and this is what she wanted us to do, list
 11 findings of fact referencing the mandatory conditions
 12 listed in KPB 21.29.050 and detail the substantial
 13 evidence that supports those findings.
 14 The evidence we're going to give you
 15 here, the findings of fact are in your packet, and
 16 another person will speak to that.
 17 Obviously, we feel that putting this
 18 large-scale mining operation in the heart of a
 19 recreational and residential area should be denied for
 20 a multitude of legitimate reasons, but more important
 21 it must be denied because it doesn't meet the mandatory
 22 conditions of the code.
 23 In KPB finding of fact 15 Q, it states
 24 all of the reasons that this can't meet the code. One
 25 of the previous speakers talked about 15 Q in the

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1 findings of fact from the staff. They are basically
 2 saying a large percentage of the neighbors in that area
 3 cannot be protected, but yet they want to give you --
 4 issue this permit anyway.
 5 Just in closing, what the applicant
 6 claims -- or the applicant claims that this is just a
 7 mom and pop operation and that they are not going to --
 8 maybe move maybe 10,000 yards a year.
 9 But what they say or may not say is
 10 irrelevant. What is relevant is the fact that this
 11 permit, if approved, would allow for mining of up to
 12 50,000 cubic yards per year for 15 years on 27 acres of
 13 commercial mining that cannot be sufficiently screened
 14 from neighboring properties.
 15 Like most of us, they are claiming this
 16 is a legacy property. Well, like most of us in this
 17 room, our home, property, and quality of life is our
 18 legacy, and we would like to protect it. Thank you.
 19 **CHAIRMAN MARTIN:** Thank you. Any
 20 questions?
 21 **HANS BILBEN:** I had to go pretty fast on
 22 that.
 23 **CHAIRMAN MARTIN:** Good job, thank you.
 24 **HANS BILBEN:** That's your pen.
 25 **CHAIRMAN MARTIN:** Next, please.

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1 **ANN CLINE:** Good evening. My name is Ann
 2 Cline. My address is 34926 Danver. I'm a Cline, so --
 3 oh, well, you're quick.
 4 My husband and I purchased two lots from
 5 the Trimbles in order to build a cabin for our
 6 grandchildren, and we created a trust for our
 7 descendants to enjoy the piece and serenity that is
 8 there.
 9 I wrote a detailed letter based on my
 10 research of mining operations in the United States and
 11 Canada, and I'm hoping you have that in your packet.
 12 Ann Cline.
 13 I addressed the findings of fact, and in
 14 particular the noise decibel research that has been
 15 conducted both in Canada and in the United States
 16 regarding mining operations and excavations.
 17 Regarding one of the previous speakers,
 18 some of us, myself included, are not financially able
 19 to offer the Trimbles enough money to satisfy them in
 20 order to buy that land so that we could keep it as a
 21 park land or a campground or whatever. We're not able
 22 to do that. So thus we need your help in controlling
 23 the use of the property.
 24 And regarding the freedom of decision, as
 25 a previous testifier said, and I agree, if you want to

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1 have peace and quiet, don't buy a home next to a gravel
 2 pit. If you want to have a gravel pit, don't put it in
 3 the middle of an existing neighborhood.
 4 I implore you to please help us, the
 5 Anchor Point community, which is these folks here. Not
 6 all of us are speaking out of respect for time, but we
 7 would really humbly request that you consider
 8 thoughtfully and uphold and affirm your denial of this
 9 permit. Thank you very much.
 10 **CHAIRMAN MARTIN:** Thank you. Any
 11 questions for Ms. Cline? Seeing none, thanks for your
 12 testimony.
 13 **ANN CLINE:** Thank you.
 14 **CHAIRMAN MARTIN:** Next testifier, please.
 15 **LAUREN ISENHOUR:** Hello, I'm Lauren
 16 Isenhour, I live at 34737 Beachcomber Street. And
 17 tonight I would like to talk about sound. I'd like to
 18 talk about sound and the claim from the opposition that
 19 hearing sounds from gravel pit activity will destroy
 20 the value of their property.
 21 Private property rights in our area are
 22 very important to all of us who chose to live in Anchor
 23 Point. Many of us utilize our acreage for activities
 24 that are not allowed within the city ordinances of
 25 Homer and the like: ATVs, snowmachines, chainsaws for

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1 firewood, free range dogs, livestock, home improvement
 2 projects and mowing our lawns.
 3 ATV's sounds range from 90 to a hundred
 4 decibels; snowmachines and motorcycles are around a
 5 hundred decibels; chainsaws around 110 decibels; and
 6 riding law mowers are around a hundred decibels.
 7 From my research, construction tools such
 8 as chopsaws, sanders, drills, et cetera, operate
 9 between 90 and a hundred decibels. My diesel truck is
 10 over 90 decibels at 50 feet away.
 11 These are all activities and machines
 12 that are routinely operated in my neighborhood and are
 13 acknowledged as socially acceptable by everyone. None
 14 of these activities or machines are restricted by
 15 borough regulations to only operate during particular
 16 hours and are not required to mitigate the sound
 17 created by their usage.
 18 After researching decibel levels of these
 19 common activities, I was surprised to learn that the
 20 sounds created from gravel equipment is notably less
 21 than the items I've spoken of. A backhoe from 50 feet
 22 is 80 decibels, a hundred feet is 74, at 300 feet it's
 23 65 decibels.
 24 A bulldozer from 50 feet is 85 decibels,
 25 from a hundred feet is 79 decibels, 300 feet is 70

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1 decibels.
 2 A dump struck from 50 feet is 84
 3 decibels, from a hundred feet is 78, and from 300 feet
 4 away is 69 decibels.
 5 So gravel equipment ranges from 65 to 85
 6 decibels, while my common use home tools range from 90
 7 to 110 decibels.
 8 My family camped over Memorial weekend on
 9 the Anchor River, and I was genuinely surprised at the
 10 high levels of sound created by the campers. ATVs,
 11 motorcycles, and dirt bikes ripped up and down the
 12 beach road late into the night. Trailers running
 13 generators in the campground, which operate at around
 14 68 decibels, lots of dogs, music, and general camper
 15 noise.
 16 Regular vehicle traffic on the beach
 17 access road is quite noisy. Since virtually all the
 18 campsites are right along the road, I needed ear plugs
 19 to be able to sleep at night.
 20 There was zero gravel pit activity during
 21 those three days I was camping. It was not quiet or
 22 tranquil, but the campground was full of people having
 23 a lot of good family fun.
 24 The Beachcomber gravel pit has now been
 25 operational for about one year, and prior to that the

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1 prior existing use gravel pit on Danver Street across
 2 from the Beachcomber pit was operational for around 15
 3 years.
 4 So anyone who has recreated on the Anchor
 5 River or camped in that campground within the last 15
 6 years has done so in conjunction with an operational
 7 pit. We can and have been coexisting there.
 8 The opposition has noted that they would
 9 rather this property be developed into a subdivision
 10 than a gravel pit, and I find this very curious. If
 11 this 27 acres was divided into 27 new home sites, the
 12 amount of sound created would surpass the sound of
 13 sporadic seasonal gravel activity.
 14 The access roads to develop 27 new lots
 15 would be extensive and require a lot of gravel and
 16 equipment. Building roughly two houses a year would
 17 take nearly 15 years to develop, and the sound from
 18 trucks, cement trucks and dump trucks, delivery trucks,
 19 well drilling rigs, and general construction tools as I
 20 mentioned before range from between 90 to a hundred
 21 decibels, would operate five to seven days a week for
 22 the life of the development.
 23 But then at the end of that subdivision
 24 project, the property would not be reclaimed as it
 25 would for gravel development. After 15 years of

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1 construction sounds, we would now have sounds from 27
 2 new neighbors with loud trucks and barking dogs and
 3 lawn mowers and chainsaws and all the other sounds that
 4 come from a rural neighborhood.
 5 I read all the letters submitted, and I
 6 would like to comment on Phil Brna's statement to the
 7 Planning Commission claiming that sounds generated from
 8 the gravel pit would destroy both his ability to enjoy
 9 his property as well as the general value of his
 10 property.
 11 My property neighbors, Phil is on his
 12 other side separated by Beachcomber Street and a line
 13 of trees, and there is nothing to regulate me from
 14 mowing my lawn at a hundred decibels or operating my
 15 chainsaw at 110 decibels or running any number of my
 16 power tools, ATVs or snowmachines as we often do at any
 17 time of day or night.
 18 Despite my best efforts, as all my
 19 neighbors know my dogs bark quite a lot during the
 20 night. There is no regulations here in Anchor Point to
 21 stop or control any of these activities that I
 22 routinely do on my property. Phil has never complained
 23 to me that my activities have jeopardized his property
 24 value or enjoyment.
 25 There are too many inconsistencies with

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1 the argument about sound being a detriment to the
 2 neighborhood for it to be considered a viable argument.
 3 I can create more sound at higher decibels for longer
 4 durations on my private property without having to
 5 abide to any regulations.
 6 If an individual feels so strongly that
 7 the value of their property can be destroyed by the
 8 activity of their neighbors, then that individual needs
 9 to purchase a parcel larger than an acre to be able to
 10 personally ensure adequate distant from neighborly
 11 activities that they might find displeasing or move to
 12 an area with ordinances and zoning that control all
 13 residents' activities. Thank you.
 14 **CHAIRMAN MARTIN:** Thank you. Any
 15 questions? None at this time.
 16 **LAUREN ISENHOUR:** Thank you.
 17 **CHAIRMAN MARTIN:** Next.
 18 **BUZZ KYLLONEN:** Good evening,
 19 commissioners. Mr. Mayor, nice to have you here. My
 20 name is Buzz Kyllonen, 74200 Seaward Avenue. You've
 21 heard the name Kyllonen used many, many times.
 22 I'm here in support of the Trimbles'
 23 rights to extract gravel from their property. I'm
 24 actually a property rights person, and my real fear is
 25 what's going to happen to this borough.

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1 The ordinance as it's drafted, the
 2 protective conditions that are there are, for the most
 3 part, unfounded, and what it's doing is inviting people
 4 to band together against neighbor. And if this
 5 continues, I can't imagine anybody wanting to file for
 6 an application for a material site permit. No one
 7 wants to go through the expense and the vitriol that
 8 comes from a mob-type reaction to a legitimate
 9 activity.
 10 Now you might ask, who am I? Well, I'm
 11 Buzz Kyllonen. I'd like to think I'm an expert. I
 12 don't know what the definition is, but I began
 13 developing property in Anchor Point 40 years ago. Over
 14 30 subdivisions, 500 lots. Aggregate of about \$50
 15 million in assessed value. None of which I could have
 16 been able to do under the current ordinance.
 17 I've owned and operated 12 gravel pits or
 18 more within Anchor Point, within shouting distance of
 19 most everyone here. Most everyone here is a
 20 beneficiary of one of my subdivisions. That's what I
 21 do and that's what I did for a living until the
 22 ordinance was enacted, and that put me out of business.
 23 Let me explain why.
 24 According to the ordinance, if you export
 25 material from your property A to property B and it

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1 enhances the value of property B, you will be required
 2 to file for an application for a material site permit
 3 to do that. There is precedence set for that, and I'm
 4 here to acknowledge that.
 5 If Mr. Trimble wants to use any of the
 6 gravel, had he not had a permit that he has right now,
 7 he would not be able to transport that material to
 8 another one of his properties without applying for a
 9 material site permit. He has no choice. He has to
 10 apply for this material site in order to use the
 11 material that he currently owns.
 12 As far as the harm and the catastrophic
 13 effects of having a gravel pit are totally unfounded.
 14 No one has complained about the 12 gravel pits that
 15 I've had in Anchor Point, at least no one has looked me
 16 in the eye and said so.
 17 So what Mr. Trimble is doing is basically
 18 a developer gravel pit. There is a difference between
 19 industrial and developer use. You have an industrial
 20 use right here in the heart of Soldotna not very far
 21 from here. A huge facility, they produce asphalt. How
 22 long have they been there? I'm not sure, but a long
 23 time. Everyone is still alive, no one has died from
 24 respiratory disease. Anchorage Sand & Gravel in the
 25 middle of Anchorage, they function. Life goes on. We

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1 have an industrial site in Anchor Point.
 2 Interestingly, the Trimbles are
 3 beneficiaries of hundreds, if not thousands, of truck
 4 loads of gravel that go right by their Coastal Realty
 5 office every day. It's endless. Homer was built with
 6 Anchor Point gravel. Believe it or not, gravel is
 7 where Mother Nature put it, not where you want it to
 8 be. We should all be supporting the Trimbles for
 9 opening up some priceless resource like gravel so that
 10 it's available.
 11 I promise you, I'm a supporter, because
 12 who would complain more than me? I own property on
 13 both sides, substantial property that borders this
 14 property. Even more important, I'm the original Anchor
 15 Pointer. No one alive in Anchor Point has been there
 16 longer than me. I date back to 1945.
 17 The homestead property that Mr. Trimble
 18 owns is sacrosanct to me. That's where the material
 19 site will be. If anyone should complain, I should lead
 20 the parade. And with that, if you have any questions,
 21 I'd be more than happy to answer.
 22 **CHAIRMAN MARTIN:** Ms. Ecklund, did you
 23 have a question?
 24 **COMMISSIONER ECKLUND:** Thank you for your
 25 presence here tonight. Since you have the longest

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1 history in that area, I'd appreciate an answer to a
 2 couple of questions.
 3 When you had the gravel pit, which has
 4 been referenced several times by name, operating in
 5 that area, how many campgrounds or campsites were in
 6 the area?
 7 **BUZZ KYLLONEN:** I developed all those
 8 campsites.
 9 **COMMISSIONER ECKLUND:** So they didn't
 10 have the use --
 11 **BUZZ KYLLONEN:** With the exception of the
 12 state.
 13 **COMMISSIONER ECKLUND:** The state, the
 14 five state ones?
 15 **BUZZ KYLLONEN:** The gravel came from my
 16 gravel pits right there. Tens of thousands of yards,
 17 thousands of truck loads.
 18 **COMMISSIONER ECKLUND:** So currently it's
 19 been stated that there are five state campgrounds and
 20 three private ones and 200 campsites in the Silver King
 21 site.
 22 So were any -- you built all of those
 23 except the state ones?
 24 **BUZZ KYLLONEN:** Over 30 subdivisions,
 25 both sides of the river have my fingerprints on most of

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1 them. Most of the folks are beneficiaries, a lot of
 2 them are very close friends, hopefully they will still
 3 remain friends.
 4 **COMMISSIONER ECKLUND:** How many people
 5 lived in the area when you were operating your gravel
 6 pit?
 7 **BUZZ KYLLONEN:** It's evolved over the
 8 years. It was extremely busy in the mid '80s.
 9 **COMMISSIONER ECKLUND:** Your pit was busy?
 10 **BUZZ KYLLONEN:** There was a depression in
 11 property sales. Interestingly, the reason that I went
 12 out of business, out of the development business, was
 13 because of the ordinance. Because I was issued a cease
 14 and desist when I used material from my golf course,
 15 which I created, to develop what is now the trooper
 16 building. And the code compliance officer from the
 17 borough came down and said, "No more, you can't do
 18 that. You must get a material site permit to build the
 19 golf course." I had no choice. I had a half a million
 20 dollars in the golf course. To continue, I couldn't
 21 afford not to apply for a permit, so I did.
 22 Now that put me in the category of a
 23 gravel pit, which subsequently I was fined by the
 24 borough \$20,000, \$10,000 in attorney fees because I
 25 exceeded the artificial boundary they imposed.

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1 So I have a major heartburn about the
 2 ordinance.
 3 **COMMISSIONER ECKLUND:** Yes.
 4 **BUZZ KYLLONEN:** I would like to see it
 5 scrapped, and I would also like to see it rewritten
 6 focusing on the -- what should be the intent of
 7 reclamation and prudent and proper extraction.
 8 **COMMISSIONER ECKLUND:** Thank you for your
 9 input.
 10 **BUZZ KYLLONEN:** You're welcome.
 11 **CHAIRMAN MARTIN:** Any other questions?
 12 Ms. Fikes.
 13 **COMMISSIONER FIKES:** Yes. With your
 14 history in the area and your history of the operation
 15 of a pit in the area, speaking to the transfer from you
 16 to the next owner of the pit, what was your experience
 17 with the reclamation, and how much of that did you
 18 perform during your operation?
 19 **BUZZ KYLLONEN:** Well, I think that's the
 20 key issue. You would be hard pressed to find where
 21 I've had a gravel pit. They have all been reclaimed.
 22 **COMMISSIONER FIKES:** Were there ever any
 23 complaints about water table contamination during the
 24 time?
 25 **BUZZ KYLLONEN:** That's what's an

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1 unfounded allegation. That is not possible to happen.
 2 Evaporation maybe, ditching only. Digging in the water
 3 table, that was one of my key things. I have several
 4 lakes where I dug in the water table, and that was one
 5 element of this ordinance that I would like to see
 6 revisited, because it does virtually no harm to the
 7 environment. It offers a place for the moose and the
 8 ducks.
 9 Just yesterday two moose were learning
 10 how to swim in my golf course lake. I have pictures of
 11 that. I was quite fascinated by that. Ducks are there
 12 all the time. I love the water. Excuse me, I didn't
 13 mean to expand on that.
 14 **COMMISSIONER FIKES:** So then also
 15 expanding on that, during the operation, were there
 16 ever any complaints for noise, or were there ever any
 17 complaints --
 18 **BUZZ KYLLONEN:** Not to me directly, no.
 19 Over the 500 properties, I'd say 499 are close friends.
 20 **COMMISSIONER FIKES:** So was there any
 21 agency that contacted you with a direct complaint --
 22 **BUZZ KYLLONEN:** No.
 23 **COMMISSIONER FIKES:** -- due to your
 24 specific operation?
 25 **BUZZ KYLLONEN:** No. I might want to add

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1 one more thing because it was mentioned several times,
 2 the beach road, the Anchor Point Road.
 3 **COMMISSIONER FIKES:** Uh-huh.
 4 **BUZZ KYLLONEN:** No one has driven a dump
 5 truck over that road probably more than me, thousands
 6 of times, thousands of times prior to when it was
 7 paved.
 8 One of the stars in my crown is when I
 9 was on the assembly, I got that road paved. The
 10 definition by the state was if you can give me \$200,000
 11 from the mayor at the time, (indiscernible), we will
 12 paint that road black. Not today. \$200,000
 13 transferred from the borough to DOT, and they painted
 14 it black. I didn't know what that meant at the time.
 15 Basically what that means is literally
 16 paint it black. And that's why the road is in the
 17 condition it is, because they had no money to improve
 18 the subsurface.
 19 So -- and I might also add that it was on
 20 the state agenda to revisit that in 2020. If it hadn't
 21 been for my efforts on the assembly, we would still be
 22 waiting for the state to do an assessment. So --
 23 **CHAIRMAN MARTIN:** 11 o'clock is coming up
 24 soon.
 25 **BUZZ KYLLONEN:** Okay, I'm sorry.

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1 **CHAIRMAN MARTIN:** Any -- other question.
 2 **COMMISSIONER FIKES:** I have one more
 3 question. Switching gears to safety.
 4 Again, in your experience, and also it
 5 sounds like you live in that specific area, during that
 6 time are you aware of any school activity disruptions
 7 with school buses or folks waiting for buses or --
 8 people have spoke or testified tonight and previous
 9 nights about the activity and the trucks passing and
 10 going.
 11 In your experience, again, going back to
 12 have you actually heard of or received any written
 13 complaints that would speak to that matter?
 14 **BUZZ KYLLONEN:** Three of my gravel pits
 15 are within rock throwing distance of the existing
 16 school in Anchor Point. Zero, none. Truck drivers are
 17 professional. Someone was referencing the motorhomes.
 18 Those people don't go to school to drive motorhomes,
 19 but truck drivers do. And believe me, it's not easy to
 20 get that license.
 21 **COMMISSIONER FIKES:** Thank you.
 22 **BUZZ KYLLONEN:** You're welcome.
 23 **CHAIRMAN MARTIN:** Any further questions?
 24 None at this time, thank you. Anyone else here wishing
 25 to testify?

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1 **PETE KINNEEN:** I've already testified,
 2 but --
 3 **CHAIRMAN MARTIN:** Yeah, you have not been
 4 recognized by the chair.
 5 **PETE KINNEEN:** Point of order.
 6 **CHAIRMAN MARTIN:** We have not -- everyone
 7 gets one chance to speak, sir.
 8 **PETE KINNEEN:** Except my testimony was
 9 slandered, and to the degree that my testimony has some
 10 effect here, am I not entitled to address it?
 11 **CHAIRMAN MARTIN:** We're keeping the ball
 12 rolling. Everybody gets one turn.
 13 **PETE KINNEEN:** So it's going to be come
 14 up and done?
 15 **CHAIRMAN MARTIN:** That's correct. And as
 16 far as the -- is there anyone else in the audience
 17 wishing to testify? Mr. Whitmore has some
 18 presentation, or at least has his hand going.
 19 **LYNN WHITMORE:** Sure. This is my two
 20 bits worth, and then hopefully that will lead into
 21 questions from you guys on the berm.
 22 So I guess a rhetorical question is, when
 23 you are supposed to be hidden from the construction
 24 site by the berm, is that berm also supposed to hide
 25 you from the remnants of the pit behind you?

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1 So as we practice with a moving berm, the
 2 question I want you to kind of pay attention to is what
 3 are they going to look at as the berm moves closer to
 4 the homes?
 5 And the berms, because the homes are
 6 situated in roughly a 90 degree angle looking down,
 7 then it seems like the berms are going to have to cover
 8 the full 90 degrees from the people on one side of the
 9 hill and the people wrapped around to the other side of
 10 the hill, so that's something to keep in mind when you
 11 talk about berms.
 12 And I keep -- I hear a developer gravel
 13 pit being stated and that it's just going to be one of
 14 those. But as near as I can tell from everything I've
 15 read, the moment that they get a permit, they can sell
 16 it and somebody else in a larger capacity could come
 17 along and mine the entire 27 acres. So the developer
 18 gravel pit changes immediately upon sales, and that
 19 permit goes with the property as I understand it.
 20 And so with that, we could work our way
 21 through the berm question if you guys have some.
 22 **CHAIRMAN MARTIN:** My question for
 23 clarification is, is the berm ordinance intended to
 24 obscure the view 100 percent, or is our ordinance
 25 written to minimize impact, not bring it to zero, but

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1 to minimize impact?
 2 **LYNN WHITMORE:** Sure. As I'm seeing
 3 this, the question I have is, as we move the 12-foot
 4 high berm closer to these houses that are way up
 5 higher, the remaining pit behind that berm becomes more
 6 visible the further you move that berm toward those
 7 homes. And maybe we can display that or look at that.
 8 I don't know that a 12-foot berm doesn't
 9 work because I haven't heard from the other side on how
 10 they intend that to work. But I'd work with them if
 11 they wanted to.
 12 **CHAIRMAN MARTIN:** I guess our definition
 13 is what does "work" mean? Because I think our
 14 ordinance means mitigate, it doesn't mean eliminate.
 15 **LYNN WHITMORE:** I agree.
 16 **CHAIRMAN MARTIN:** Next testifier.
 17 **TOM CLARK:** You can start the clock so we
 18 can get done. Tom Clark, Box 962, Anchor Point.
 19 **CHAIRMAN MARTIN:** Hit the microphone
 20 button, sir.
 21 **TOM CLARK:** Tom Clark, Box 962, Anchor
 22 Point. Thank you, Blair, appreciate it.
 23 I sat on this body for six years, I sat
 24 on the Board of Adjustment for seven years. Heard I
 25 don't know how many of these. Three of the members

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1 here were there when I was there.
 2 Most of those that were appealed were
 3 sent to the assembly, which acted as Board of
 4 Adjustment at that time. All the decisions in the
 5 affirmative were upheld. Any of those that were
 6 rejected by the Planning Commission were denied by the
 7 BOA at that time.
 8 Our BOA listened to several appeals, some
 9 that you had affirmed, some that you had rejected. All
 10 of those passed this ordinance in full. Two lawsuits,
 11 the judge ruled in favor of the borough, the way the
 12 borough handles their buffers, the way they handle
 13 their sound, the way everything gets handled.
 14 I know this is all new, these folks are
 15 upset, I get it, I live there. This is not in my best
 16 interest. It's in my best interest that this pit goes
 17 away and the price of my gravel goes up.
 18 But as it is today, they are legal, this
 19 is allowable, and it's been proven in court.
 20 Questions?
 21 **CHAIRMAN MARTIN:** Any questions? Thank
 22 you. Next.
 23 **ANGELA ROLAND:** Hi, my name is Angela
 24 Roland, and I own property at the Silver King fish camp
 25 as well as property on Thurmond Avenue.

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1 Today I spoke to the parks department
 2 about their concerns, since they are property owners as
 3 well as run the state recreation area. They said they
 4 sent a letter May 1st, and their concerns were dust,
 5 safety, and noise.
 6 I did some research into dust, as well as
 7 there has been a letter already sent. I don't mean to
 8 run over this too often, but crystalline silica is as
 9 fine as asbestos, and this is a particulate that is
 10 emitted whenever rock is crushed or screened and
 11 excavated. It also travels a great distance, and it
 12 can reach the school. It builds up in buildings, it
 13 gets clogged into ventilation systems, and yes, it does
 14 cause respiratory diseases. You can verify this at the
 15 EPA as well as other OSHA websites. I'm sorry, I said
 16 EPA, I meant OSHA websites as well as other well
 17 established information.
 18 I don't know what size dust mask you need
 19 to wear in order to mitigate that, or eliminate it
 20 rather.
 21 When it comes to safety, we've talked
 22 about this quite a bit; however, there has been
 23 statistics showing that heavy truck accidents have gone
 24 up. The last year that the information was available
 25 was 2016/2017. And on this narrow road, yes, like

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1 everyone else has said with boats, RVs, kids on bikes,
2 and also tourists who don't know where they are going,
3 and I don't know if you've noticed, there are a lot of
4 people who look down with their cell phones wandering
5 around trying to figure out -- well, I don't know what
6 they are doing, but anyway, they walk around looking
7 down at their cell phones.

8 So I suppose going as fast as you can to
9 deliver your haul and get back and deliver more, I hope
10 the truck drivers are as careful as they can be.

11 When it comes to decibels, we've been
12 talking a lot about -- or rather when we talk about
13 noise, we've been talking about decibels. And yes it's
14 true that some -- there is some sounds that sound just
15 simply worse than others. So I guess the analogy would
16 be if you could imagine your favorite song at a hundred
17 decibels, that would be fine; your least favorite song
18 at a hundred decibels would be misery. It would also
19 be misery as a lower decibel if you really didn't like
20 the song. So that's one aspect of it to remember.

21 And then as far as the Trimble family
22 member living next to it, to their ears I suppose that
23 sounds like a cash register running.

24 And it just so happens that my father
25 owned an excavation business. He built a golf course

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1 and he ran heavy equipment as well. I know the dust.
2 We wound up having a dog with one leg, too. He wound
3 up, you know, camping out underneath one of the trucks
4 and it couldn't be helped. So it is a dangerous
5 business.

6 There is also potential for all kinds of
7 accidents to occur, from spilling fuel, oil, all those
8 kinds of problems.

9 One of the things that we haven't talked
10 about is where are we at right now when it comes to the
11 health of the community? We've talked about Anchor
12 Point being so common with gravel pits everywhere, but
13 are we really a healthy community?

14 We have a school right there, and a lot
15 of people -- I'm finding that even though this has been
16 the way we've done things for a long time, we also have
17 science and technology that tells us now that
18 particulates, small ones like that, can harm you, they
19 can cause respiratory problems.

20 The last point -- well, maybe not the
21 last one -- how much time -- okay, I did contact the
22 EPA, and on their website you can easily see that this
23 portion of the Kenai Peninsula does have one endangered
24 species, the Stellar's eider, if I'm saying that right,
25 and I don't know if that was the bird that was singing

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1 that he was playing, but that is something that should
2 be considered, is that if we're harvesting gravel and
3 using it here on our state roads and on our borough
4 roads with gravel that comes from an area, we don't
5 know if there is eiders on there right now, but no
6 study has been done.

7 So we destroy their habitat, and the
8 federal law, you know, is opposed to it, in other words
9 they have laws against it. And then we take the gravel
10 and we put it on our roads and on our borough roads and
11 our state roads, and I don't think that we should have
12 a supply chain that's questionable. Thank you. Do you
13 have any questions?

14 **CHAIRMAN MARTIN:** Thank you. Do you have
15 any questions? Seeing none, thank you for your
16 testimony.

17 **ANGELA ROLAND:** Okay, thank you.

18 **CHAIRMAN MARTIN:** Next testifier, please.

19 **JOSH ELMALEH:** Hi, my name is Josh
20 Elmaleh. I live at 34885 Seabury Court just over the
21 hill. My wife testified earlier, she had to leave.

22 We're about a quarter mile from the site,
23 and currently there is -- has been the -- or just
24 recently there has been the road construction to
25 elevate -- or improve the drainage for the sides of

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1 Anchor Point Road, and we've been hearing that a lot.
2 Well, our dogs are normally peaceful and
3 quiet, and they let us know when there is animals out
4 that we should know about, neighbor dogs, neighbors,
5 moose, keep our -- help keep our kids safe, so we hear
6 things.

7 When they were running that equipment,
8 our dogs have been going crazy. They have been barking
9 non-stop. We go out there, we tell them to be quiet,
10 we encourage them when they are quiet. They have
11 just -- going non-stop. There isn't anything we can do
12 about that.

13 When -- in the event that the Trimbles
14 have their pit, we're going to be faced with that for
15 however -- whenever they decide to excavate gravel.
16 Maybe it's daily, maybe it's weekly, maybe it's every
17 once in a while, who knows, but only they do.

18 I'm here to say I don't agree with it, I
19 don't want it on there. I would advise you guys to go
20 in there and check it out. It's an amphitheater. We
21 hear things, we hear the waves, we hear the birds.

22 I go down to the eagles -- my dad came up
23 last year, I hadn't seen him in ten-plus years. He
24 walked to the beach. He got to see the eagles. He
25 said it's the million dollar view. I don't believe him

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1 for one second, but at the same time, it's a view not
2 to be messed with.

3 They have the right for their own
4 property, I have the right for my property, I agree
5 with that. And if they don't get it and they develop
6 their own thing, then they develop their own thing, but
7 we don't want a gravel pit.

8 My wife and I two years ago bought our
9 place. We didn't know about it. We looked at another
10 place that was twice the size and only about \$20,000
11 more than our current house. It would have fit our
12 family a lot better, but it was right next to a gravel
13 pit.

14 And we decided, okay, we're not going to
15 get this one, we're going to go to the one that's going
16 to be a lot nicer. So we went there, sure enough we
17 bought it, bickering back and forth with the seller,
18 and finally he got what he wanted and we got a place.

19 So I encourage you, the sound is not
20 going to be improved. It doesn't matter how big the
21 berm is, it's not going to be improved. I can hear a
22 half mile away, a mile away. I can hear dump trucks
23 going on the Old Sterling Highway. So it's what's
24 there. Please help us, thank you.

25 **CHAIRMAN MARTIN:** Thank you. Next.

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1 **KATIE ELSNER:** Hi, good evening. My name
2 is Katie Elsner. I'm an attorney in Kenai. Our
3 address is 215 Fidalgo Avenue, Suite 201. And I have
4 been helping several of the neighbors that are opposed
5 to this gravel pit. And I want to first address Mr.
6 Martin's question.

7 The borough code uses two words in
8 defining what to do with this, both "minimize" and
9 "sufficient," and I just quickly Googled the definition
10 of minimize, which is to reduce something to the
11 smallest possible amount or degree.

12 So the code doesn't call for you to make
13 sure that there is some separation, some barrier or
14 some reduction in the visual impact, it calls on you to
15 actually reduce it to the smallest possible amount or
16 degree. And it further calls on you to ensure that
17 that reduction, that smallest possible amount, is
18 sufficient to address the visual impact.

19 And so, you know, when it comes to Mr.
20 Whitmore's presentation, as far as I can tell with this
21 rolling berm that they are proposing, one of two
22 options are going to come into play. Either the berm
23 is going to start closer to the property, and I think
24 we can move it up, right, so we can move the berm to
25 sort of demonstrate that.

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1 So either it starts closer to the
2 property, at which point there is more or greater
3 visual impact, because you can see -- I mean, it would
4 have to be taller in order to negate it because you're
5 getting closer to the higher elevation, and then it
6 moves back leaving all of the excavated property in its
7 wake; or it starts in that position where it could
8 potentially cause some sort of reduction and visual
9 impact, because at that point farthest away, the angle
10 or elevation allows it to be sufficiently tall.

11 But then as it moves closer and closer
12 and closer and closer to the impacted and affected
13 properties, all you see from behind -- first, of all
14 the same height berm becomes less effective, and all
15 you can see in the background is the excavated pit in
16 its wake.

17 And so, you know, at this point where the
18 GIS LIDAR profile mapping is set by Mr. Whitmore, and I
19 believe you guys all have the examples in your packet,
20 is at, you know, the most likely proposed site for it.

21 And we did propose findings of fact, and
22 I'm going to talk to you in just one minute about that,
23 but those findings of fact are based on that spot and
24 geography and what berm would be sufficient there.

25 But when it comes to these rolling berms,

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1 I think that makes your job even more difficult because
2 the rolling berms would have to vary in height in order
3 to minimize or sufficiently address the visual impact
4 as they moved in geographic proximity to the subject
5 parcels. So I just wanted to address that one point.

6 As I mentioned, we did propose findings
7 of fact for the commission to consider in the event
8 that they are assisting -- or they are assistive to
9 you.

10 There is two alternative proposed
11 findings of fact, you can find them on pages 89 and 92
12 of Volume 1 of your packet. They present under two
13 separate factual scenarios. The first one is if the
14 commission were interested in an outright denial of the
15 application; the second one is proposing a modification
16 to the buffer and berms that are submitted in the
17 application that, based on the objective data based on
18 the GIS LIDAR profiling, would be required in order to
19 minimize and interfere with that visual impact.

20 I do want to make one scrivener's error.
21 Mr. Wall snuck a change in on me that I didn't catch.
22 On page 92, you would actually have to replace finding
23 of fact 15, because that is the one that addresses the
24 buffer and berming. And in the new resolution it's no
25 longer a finding of fact 14.

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1 However, our position is that these
2 findings of fact are sufficiently detailed and follow
3 and track the law, and you have them here so you can
4 read them. I'm not going to go through them again in
5 order to -- in either scenario that the Planning
6 Commission were interested in considering would support
7 the findings.
8 Because while you've heard that you don't
9 have the authority to deny this permit application, I
10 would just remind you that, in fact, nowhere -- nowhere
11 in the code does it say that you're not allowed to deny
12 an application. Nowhere in the code does it say that
13 as long as an application parrots the language in the
14 ordinance, the Planning Commission must approve it
15 regardless and without any consideration of how it
16 impacts and whether or not that question of your
17 discretion as to what is sufficiently minimized plays
18 out in reality. It's not enough in this scenario that
19 he states the requirements of the code, the minimum
20 requirements of the code. I will wrap it up.
21 The question for you is whether or not
22 it's sufficient. And what the code does is expressly
23 grants, and in fact mandates authority on this body to
24 either approve the permit if you find that those berms
25 represent, as proposed in the application, sufficient

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1 visual and noise barriers; or you can modify it, if in
2 fact you find that, based on the objective evidence,
3 significantly higher berms are going to be required in
4 order to minimize that impact; or you can deny it.
5 And in this instance we would urge you to
6 exercise that authority to either deny or modify it
7 based on the fact that this is a gravel site, it's in a
8 depressed elevation surrounded by neighboring
9 communities in a recreational area. And I'm happy to
10 answer any questions to the extent you have any.
11 **CHAIRMAN MARTIN:** Thank you, any
12 questions? None at this time.
13 **KATIE ELSNER:** Thank you.
14 **CHAIRMAN MARTIN:** Mr. Wall.
15 **MR. WALL:** Could I get some clarifying on
16 the findings that you drafted?
17 **KATIE ELSNER:** Sure.
18 **MR. WALL:** And I guess because I have
19 some concerns with some of the language in there. I
20 want to get your feedback on it.
21 In the -- what you're proposing in the
22 denial findings is that it be denied because it is
23 incomplete because they have not provided -- they
24 haven't included a vegetation and fencing plan that are
25 sufficient height and so forth.

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1 But I struggle with that idea that the
2 application is incomplete, because the applicant can't
3 know at the time of application submittal what the
4 Planning Commission will deem as appropriate. Because
5 the code specifically says that the Planning Commission
6 gets to determine what is sufficient height and density
7 for the vegetation and fence.
8 So can you elaborate on how that would be
9 an incomplete application with the -- if the applicant
10 doesn't know up front what the Planning Commission
11 would want?
12 **KATIE ELSNER:** Absolutely. An
13 application must, in order to be approved, must meet
14 the standards, and the standards are complied with by
15 meeting the conditions.
16 And in this instance, one of the
17 conditions for a complete application is that the berms
18 and buffers are of sufficient height and density in
19 order to mitigate and minimize, sufficiently minimize
20 the visual or voice impact. That's the way the
21 ordinance --
22 **MR. WALL:** As deemed by the Planning
23 Commission.
24 **KATIE ELSNER:** -- is written. And so the
25 Planning Commission makes that determination. And in

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1 the event that that determination is made in the
2 negative, the application is almost necessarily
3 incomplete, because a complete application, an
4 approvable application requires compliance with those
5 conditions.
6 **MR. WALL:** So you're saying the
7 application be incomplete after the fact?
8 **KATIE ELSNER:** The application is not
9 complete and approvable until this body says and deems
10 it so.
11 **MR. WALL:** Now, the other thing is that
12 the -- and you pointed out in your findings that the
13 code also provides for the applicant to submit an
14 alternate buffer plan.
15 **KATIE ELSNER:** Yes.
16 **MR. WALL:** So could not that be construed
17 as an alternate buffer plan and therefore the
18 application is complete?
19 **KATIE ELSNER:** In the event -- I
20 understand -- you'll have to forgive me, you have way
21 more experience with these than I do.
22 But my understanding is there is
23 oftentimes some degree of back and forth between the
24 applicant and the Planning Commission, and I think the
25 code does allow for that type of flexibility and that

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1 type of working through as the process goes on.
 2 However, that does not change the fact
 3 that in the event that we have an application that --
 4 or a scenario after the back and forth, after the
 5 voluntary conditions at the time that the commission is
 6 tasked to rule on this decision, that does not meet the
 7 mandatory condition, cannot be found to sufficiently
 8 minimize the visual and noise impact.
 9 The way I read the code says that that's
 10 incomplete at that point in time. It doesn't meet the
 11 mandatory and required conditions.
 12 And nevertheless, even if you didn't view
 13 it that way, it still must be denied because the
 14 Planning Commission must deny applications, must deny
 15 these material site permits when they don't comply with
 16 the minimum standards.
 17 **MR. WALL:** Okay. And another question
 18 there is that the code talks about the vegetation and
 19 fencing needs to be of sufficient height and density,
 20 but it doesn't talk about that in regards to berms, but
 21 yet you seem to be applying it to berms as well.
 22 **KATIE ELSNER:** I do. It's in the same
 23 paragraph. It's in the same section read together. It
 24 seems clear to me, and the interpretation I've taken on
 25 this is that it refers to the same types of

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1 impact-mitigating tools or mechanisms that are
 2 available to the Planning Commission and to applicants
 3 under the code.
 4 **MR. WALL:** Switching to the other set of
 5 findings that you drafted --
 6 **KATIE ELSNER:** Ouch. Okay.
 7 **MR. WALL:** -- you proposed a 43-foot berm
 8 and a 53-foot berm. And actually one of the testifiers
 9 basically came to the same conclusion as me, is would
 10 that not, in effect, be a denial in that a 43-foot berm
 11 and a 53-foot berm would not pass any reasonable test
 12 or reasonable standard?
 13 **KATIE ELSNER:** Well, except I don't
 14 believe that there is a reasonable test or a reasonable
 15 standard written in the code.
 16 I mean, the proposition that an
 17 application has to be denied despite its ineffectual
 18 conditions to meet the standards in the code is just
 19 not consistent with the language of the code. It's not
 20 consistent with the intent of the code. It's not
 21 consistent with the fact that we have a material site
 22 ordinance in the first place.
 23 And so there has to be a mechanism to
 24 address ineffective conditions. And it's certainly not
 25 by imposing a world of conditions that exist outside of

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1 the ones allowable in the code. And so what the code
 2 allows is for the Planning Commission to modify until
 3 they think that it's of sufficient height and density.
 4 And so, you know, in the event that you
 5 want to build a gravel site in a place where visual
 6 impact mitigation or minimization requires a 43-foot
 7 berm, that's the decision of the applicant. And I
 8 don't think it's the Planning Commission's
 9 determination to decide whether or not the applicant
 10 ultimately goes forward. The question is whether or
 11 not they can approve a permit that complies with both
 12 the conditions insofar as it allows the conditions to
 13 meet the standards. Anybody else?
 14 **CHAIRMAN MARTIN:** Thank you. Next
 15 testifier, please. Is there anyone in the audience
 16 wishing to testify? Last call.
 17 Hearing and seeing no further requests, I
 18 will close public comment and bring it to the
 19 commission for continuing discussion. Ms. Ecklund.
 20 **COMMISSIONER ECKLUND:** Thank you. I have
 21 so many notes floating around my desk. But --
 22 **MR. WALL:** I'm sorry, Mr. Chairman, the
 23 rules that you read at the beginning, the procedures
 24 allow for the applicant to give a rebuttal as long as
 25 he's not providing any new information, just rebutting

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1 the testimony that's been given.
 2 **CHAIRMAN MARTIN:** That's why I called
 3 everybody, and nobody spoke up.
 4 **MR. WALL:** Okay.
 5 **CHAIRMAN MARTIN:** Would you like to make
 6 a rebuttal?
 7 **STACY STONE:** Yes, I do, Mr. Chair. As a
 8 matter of procedure, I apologize because I was not
 9 making a further public comment but rather rebutting
 10 testimony offered.
 11 Now, Ms. Elsner got up and spoke and said
 12 that the application before you is incomplete, and
 13 that's incorrect. Because if you go back to 21.25.050
 14 which provides for permit considerations and when a
 15 public hearing is required, it's up to the planning
 16 director and the designee to review and determine
 17 completeness of an application.
 18 The application is not forwarded to this
 19 body until such time as the planning director has said
 20 to this body, "This is a complete application," or,
 21 "This is an incomplete application."
 22 At such time, if there is an incomplete
 23 application, the planning director can go back to the
 24 applicant and say, "Hey, this is not complete, and we
 25 should work to fix it," or it can go straight to this

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1 body for a hearing. And this body could then
 2 determine, "Yes, we agree with the staff, it's
 3 incomplete, and we're going to deny it." Hence the
 4 reason why you have the ability to deny an application.
 5 Now, there has been several comments
 6 today about why does public testimony matter. Why is
 7 there a public process involved in this?
 8 Now, when you read through the code
 9 provisions, and the code has to be read in total, there
 10 are several words, and we've heard the value of words
 11 today, and the important thing is public comment does
 12 matter, because it informs you of what conditions you
 13 need to be paying attention to. If there was no public
 14 comment, for instance, the person could apply, the
 15 planning director could approve and say, "This is a
 16 complete application," pass it to the Planning
 17 Commission, and it could be passed off wholesale.
 18 But the neighbors and the residents have
 19 brought concerns about noise. There is a provision in
 20 here that allows for voluntary conditions to be imposed
 21 by this body.
 22 We talked earlier today about white noise
 23 monitor -- or excuse me, white noise machines being
 24 added to these heavy equipment to help reduce the sound
 25 impacts, and my client today testified that he would do

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1 so voluntarily. And these are the types of things that
 2 all of these people here informing you that noise is a
 3 concern of them allow you to thread this needle and try
 4 and find a balance.
 5 Because you're a government entity,
 6 you're imposing a restriction on the free enjoyment of
 7 someone's land. And in order to do so, it must be
 8 narrowly tailored. And the assembly has taken great
 9 steps to ensure that this fine balance between
 10 government intervention and the public being allowed to
 11 freely exercise on their private property, that that
 12 balance is struck.
 13 Now, there are standards in the code, and
 14 we heard a lot about the standards just a few moments
 15 ago about how they are set to minimize impact. And
 16 what does it mean to minimize impact?
 17 Well, the code itself helps us define
 18 what we can do to minimize the impact. It says only
 19 the conditions set forth in 21.29.050 may be imposed to
 20 meet these standards.
 21 And then when we look further at the
 22 standards, they further guide your deliberation here
 23 tonight. There is words such as "buffer zone shall
 24 provide and retain a basic buffer." And that buffer is
 25 to be at -- if you look, it shall be maintained around

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1 the excavation permitter or parcel boundaries.
 2 We've heard a lot about the rolling berm
 3 today. But that meets exactly with the code, and it's
 4 a compliance to try and make sure that the excavation
 5 perimeter is as protected as possible to minimize the
 6 impact, to meet with that definition of the code.
 7 So again, as we stated at the beginning
 8 of the day today before we heard all the public
 9 testimony, my client submitted an application, it was
 10 reviewed by the planning director, there was a site
 11 visit, there was recommendations to revise the
 12 application, the application was revised, it was
 13 forwarded to this body as complete. This body has
 14 heard public testimony, it's heard the concerns, it has
 15 the ability to institute certain conditions and modify
 16 that application in order to approve it.
 17 But, again, we maintain that there is no
 18 reason for this body to deny the permit, but rather to
 19 institute those conditions that have been agreed to and
 20 that this body is allowed that are reasonable and
 21 necessary under the circumstances to find that strict
 22 balance between someone's right to enjoy their own
 23 property and government intervention.
 24 So we ask that you respectfully approve
 25 the permit.

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1 **CHAIRMAN MARTIN:** Thank you, and I
 2 apologize as well, because the rebuttal phase just kind
 3 of comes naturally. In strict legalese, you did the
 4 right thing.
 5 **MR. WALL:** Mr. Chairman.
 6 **CHAIRMAN MARTIN:** Yes.
 7 **MR. WALL:** It's 10:59.
 8 **CHAIRMAN MARTIN:** Yep. We've been
 9 discussing this -- we're going to have to vote for a
 10 continuation.
 11 **UNIDENTIFIED SPEAKER:** By suspending the
 12 rules?
 13 **CHAIRMAN MARTIN:** Suspending the rules.
 14 So I'm going to entertain a motion for suspending the
 15 rules.
 16 **COMMISSIONER BOKENKO-CARLUCCIO:** So moved
 17 for -- do you want a time period?
 18 **CHAIRMAN MARTIN:** Please.
 19 **COMMISSIONER BOKENKO-CARLUCCIO:** 15
 20 minutes.
 21 **CHAIRMAN MARTIN:** I heard 30 in the
 22 whispers.
 23 **COMMISSIONER BOKENKO-CARLUCCIO:** You
 24 think 30? Okay, 30.
 25 **CHAIRMAN MARTIN:** Yes, we should be able

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1 to get this done in 30 minutes. And the second?
 2 Discussion? Yes, Ms. Ecklund.
 3 **COMMISSIONER ECKLUND:** I believe we were
 4 in the same place the night we denied this, and we were
 5 accused of hurriedly denying it without adequate
 6 discussion. And I want to make sure that we're not
 7 accused of that again. So I don't know if we want 30
 8 minutes or -- I mean, I've got the longest drive.
 9 **CHAIRMAN MARTIN:** Yes, ma'am.
 10 **COMMISSIONER ECKLUND:** So it might take
 11 longer.
 12 **CHAIRMAN MARTIN:** No sense in rushing to
 13 the finish line prematurely.
 14 **COMMISSIONER ECKLUND:** No, no. I want to
 15 deliberate.
 16 **CHAIRMAN MARTIN:** We're just going to
 17 take it at 30 minute bites at a time.
 18 **COMMISSIONER ECKLUND:** Okay, we can make
 19 another motion at 30 minutes?
 20 **CHAIRMAN MARTIN:** Yeah.
 21 **COMMISSIONER ECKLUND:** Thank you.
 22 **CHAIRMAN MARTIN:** So are we all in
 23 agreement that we're going 30 minutes at a time? The
 24 motion passes.
 25 Now, discussion. Ms. Ecklund --

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1 **COMMISSIONER ECKLUND:** Do we need to have
 2 a motion to put it on the table?
 3 **COMMISSIONER BOKENKO-CARLUCCIO:** I was
 4 going to say, don't we need a motion?
 5 **CHAIRMAN MARTIN:** Let's get this --
 6 **COMMISSIONER ECKLUND:** Don't we still
 7 have the motion live from the last time we took it up?
 8 **CHAIRMAN MARTIN:** No, we're start -- I
 9 think we're starting over. This is kind of a rare
 10 bird.
 11 **COMMISSIONER ECKLUND:** So we need a
 12 motion to approve this, correct, to put it on the floor
 13 for discussion? All right, I'm going to try to find
 14 that number again.
 15 I move to approve a conditional land use
 16 permit application for Beachcomber, LLC for discussion
 17 purposes.
 18 **UNIDENTIFIED SPEAKER:** (Indiscernible).
 19 **COMMISSIONER ECKLUND:** Thank you.
 20 2018-23 is the resolution number for the record.
 21 **COMMISSIONER BOKENKO-CARLUCCIO:** I'll
 22 second it.
 23 **CHAIRMAN MARTIN:** Yes, ma'am.
 24 **COMMISSIONER ECKLUND:** Through the chair.
 25 We work for you, all of you. We work for the assembly.

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1 And I think the main goal for all of the residents of
 2 the Kenai Peninsula is balanced development, a balance
 3 between economy and residents living their values,
 4 their life values.
 5 It is sad to say that people want to put
 6 a gravel pit in a residential area, and if you knew it
 7 was there at the size this one is, or if the number of
 8 you that purchased property there knew it was coming,
 9 you probably wouldn't purchase property there.
 10 Several things have been brought up
 11 tonight that this ordinance doesn't address. It
 12 doesn't really say we can do anything if it's not safe.
 13 And I've brought that up several times in past gravel
 14 pit permits, the safety, site triangles, school bus
 15 stops, traffic on the road coming and going at the
 16 ingress and egress.
 17 But that's not -- it doesn't really allow
 18 us to say, "Oh, it's not safe, we can't do that." I've
 19 been given reasons like, "Oh, school bus stops always
 20 change," and stuff like that.
 21 That's -- and we hoped to have a gravel
 22 material site extraction ordinance done a year ago, I
 23 believe, or less than a year ago, June sometime at
 24 2018. And it has been in committee, and it's, I guess,
 25 coming out of committee soon. We've had some

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1 discussions of it.
 2 I do have some questions for staff, so to
 3 Mr. Wall. I believe that the permit that's in the
 4 packet tonight in packet 1, I've heard that that's not
 5 correct anymore, because I've heard through public
 6 testimony -- and that may be -- that now instead of
 7 50,000 cubic yards, he's going to only extract 10,000
 8 cubic yards a year, and then the application says
 9 50,000.
 10 It also says that the one test hole
 11 that's been dug says that the groundwater is at 18
 12 feet -- or at 20 feet, and he was going to only dig to
 13 18. And his own testimony was tonight that he was
 14 going to dig 25 feet down.
 15 So do we need a new application?
 16 **MR. WALL:** What you need to base your
 17 decision on is the application that was submitted
 18 and -- yeah. He hasn't changed -- except for the
 19 volunteered conditions, the application has not
 20 changed.
 21 **CHAIRMAN MARTIN:** Maybe for
 22 clarification. The 50,000 is a threshold. So you can
 23 do less than 50,000 without changing the application?
 24 **MR. WALL:** Right. In other words, I
 25 guess what I'm trying to say is that what he intends to

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1 do in the foreseeable future and what he puts on the
 2 application are two different things. What you're
 3 approving is what's on the application.
 4 **COMMISSIONER ECKLUND:** Followup through
 5 the chair to Mr. Wall.
 6 So if we had a gravel pit permit approved
 7 and then they wanted to dig into the water table,
 8 wouldn't they have to come back and ask for permission
 9 to do that?
 10 **MR. WALL:** Yes, the code specifically
 11 requires that.
 12 **COMMISSIONER ECKLUND:** So we'll be seeing
 13 him come back if we approve this? He'll have to come
 14 back since he's now going to dig 25 feet down?
 15 **MR. WALL:** He will not be able to
 16 excavate within two feet of the water table without
 17 coming back to the commission.
 18 **COMMISSIONER ECKLUND:** Through the chair.
 19 I only see one test hole on the site map that says the
 20 groundwater at whatever date it was dug was at 20 feet.
 21 Is that how you read the application?
 22 **MR. WALL:** Yes.
 23 **COMMISSIONER ECKLUND:** I'll allow the
 24 rest of the commission deliberation.
 25 **CHAIRMAN MARTIN:** Ms. Bentz.

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1 **COMMISSIONER ABRAHAMSON-BENTZ:** A
 2 question for staff through the chair. The letter from
 3 the DOT about requiring KPБ to repair any impairments
 4 in the road. The letter that is in page 172 of our
 5 packet, can you confirm that it would be the
 6 responsibility of the borough for any repairs to
 7 that -- that road?
 8 **MR. WALL:** That road is under the
 9 jurisdiction of the state, and they are responsible for
 10 maintenance. The borough has no intentions of doing
 11 any maintenance on that road.
 12 **COMMISSIONER ABRAHAMSON-BENTZ:** So
 13 followup. That statement from DOT would be erroneous
 14 as far as their concerns about this application?
 15 **MR. WALL:** Yes, Ms. Bentz. Mr. Chairman.
 16 I believe that the point that they were trying to
 17 emphasize is that they also have no intentions of doing
 18 repairs upon that road.
 19 **CHAIRMAN MARTIN:** Ms. Carluccio.
 20 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes. I
 21 wanted to ask you -- I saw some information in there
 22 about the parks, the state parks. And I just wanted to
 23 know if you had anything in writing from DNR or the
 24 Division of Parks and Outdoor Recreation whether they
 25 were in favor or opposed to this, or have you heard

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1 back from them at all? Or were they contacted?
 2 **MR. WALL:** Yes, Mr. Chairman, Ms.
 3 Carluccio. I have talked to State Parks several times,
 4 and they have talked about getting a letter to me.
 5 I've never seen that, though.
 6 **COMMISSIONER BOKENKO-CARLUCCIO:** And in
 7 your conversation with them, what were they saying?
 8 **MR. WALL:** I don't think that they -- I
 9 think they just mentioned that they may have some
 10 concerns because of the proximity of the parks. I
 11 don't think they were specific. They were just talking
 12 more about the deadlines for getting the comment letter
 13 to me and things of that sort.
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** And
 15 apparently they have missed the deadline?
 16 **MR. WALL:** Yeah, they missed several
 17 deadlines. I have not seen a comment letter from them.
 18 **CHAIRMAN MARTIN:** Mr. Ecklund.
 19 **COMMISSIONER ECKLUND:** I want to follow
 20 up on the letter from the Department of Transportation
 21 and Public Facilities that, number one, they had five
 22 things that they listed. And number one was that they
 23 wanted someone to verify the site triangles at the
 24 Danver Street stop sign either by an engineer, a
 25 surveyor, or a borough public works official. KPБ

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1 public works can coordinate with the DOT Public
 2 Facilities maintenance and operations when reviewing
 3 sight triangles. Has that been accomplished?
 4 **MR. WALL:** It has not, or at least that
 5 information has not been passed on to me.
 6 I did talk to the roads department about
 7 that. We were not able to connect and get out there.
 8 But I didn't pursue it further because there is not any
 9 conditions or standards in the code that would relate
 10 to that.
 11 **COMMISSIONER ECKLUND:** Again, another one
 12 of those safety issues that I was hoping we would see
 13 in the new ordinance and I hear has not been included
 14 in the new ordinance.
 15 So when that comes forward, I think there
 16 will be some amendments hoping that we can add some of
 17 these safety elements, you know, shoulders of 12 inches
 18 to 14 inches, that kids walk on and bikes go on and
 19 sight triangles. That's come before us, and I had
 20 mentioned it in the past.
 21 So I just -- I'm concerned that a state
 22 organization is asking us to verify some things and
 23 that we're not. Because I thought we could do more
 24 than the state asked of us, but we can't do less. So
 25 is it only if we see it in a state --

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1 **UNIDENTIFIED SPEAKER:** In statute.
 2 **COMMISSIONER ECKLUND:** -- in the
 3 administrative codes and in statute. So they would
 4 have had to reference a statute to make us act?
 5 **MR. WALL:** Yes, there is nothing in
 6 the -- there is no state requirement that we check site
 7 triangles on approaches to state roads.
 8 **CHAIRMAN MARTIN:** Mr. Ernst.
 9 **COMMISSIONER ERNST:** Yeah, this is to the
 10 staff through the chair. I just need some
 11 clarification.
 12 I'm looking at the findings of fact on
 13 page 80, 15 Q, and it says -- I just need to understand
 14 this a little bit, because when I look at the GIS
 15 evidence, if you will, it doesn't seem like there is
 16 any way -- let's see, it says, "Each piece of real
 17 estate is uniquely situated, and a material site cannot
 18 be conditioned so that all adjacent parcels are equally
 19 screened by the buffers."
 20 Well, in this unique situation, we have a
 21 pit that's in the lowlands surrounded by affected
 22 properties. Is there any possible buffer that could be
 23 reasonably used to protect the, you know, the noise
 24 levels and visual impact of this pit since there are so
 25 many parcels around it?

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1 **MR. WALL:** And one thing that was asked
 2 earlier that I did want to answer, somebody from the
 3 public asked, and that is that they were talking about
 4 adjacent parcels versus other parcels in the vicinity.
 5 And the code does say that the buffer
 6 requirements shall be made in consideration of and in
 7 accordance with existing uses of adjacent property. So
 8 that is in the conditions in 21.29.050.
 9 So that's why in the staff report I put
 10 particular emphasis on the adjacent parcels, because
 11 that's what the decision needs to be based on as
 12 concerning buffers.
 13 And even at that, not all of those
 14 parcels -- and I think that that 15 Q, really all it's
 15 saying is that not all -- some parcels are going to get
 16 better screening than others. And so it's not a matter
 17 of eliminating the visual impact or the noise impact,
 18 it's a matter of minimizing it.
 19 **CHAIRMAN MARTIN:** Mr. Ernst, followup.
 20 **COMMISSIONER ERNST:** I'm sorry, a
 21 followup.
 22 So equal protection under this law
 23 doesn't apply? I mean, I'm looking at that, I'm
 24 looking at this.
 25 **MR. WALL:** The way that I'm reading the

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1 ordinance is that all adjacent properties need to be
 2 minimized. The impacts need to be minimized for all
 3 adjacent properties.
 4 **COMMISSIONER ERNST:** So some properties
 5 are more minimized than others?
 6 **MR. WALL:** That's the way that I -- yeah,
 7 I would have to agree with that statement.
 8 **COMMISSIONER ERNST:** Okay, that's
 9 interesting.
 10 **CHAIRMAN MARTIN:** Mr. Foster.
 11 **COMMISSIONER FOSTER:** Mr. Wall, I had a
 12 little concern over adjacent and adjoining. And I
 13 remember back when I was with Homer that that came up,
 14 that adjoining means next to and touching and adjacent
 15 means nearby. Is that correct?
 16 **MR. WALL:** And I did spend some time
 17 looking at various definitions. And as it relates to
 18 property, generally it means adjacent or just separated
 19 by a roadway.
 20 It seems to be more specific than just
 21 nearby, although elsewhere in the code the word
 22 "adjacent" is used, and it appears to be referencing
 23 nearby in that it talks about wells within 300 feet on
 24 adjacent properties. Well, not all wells are
 25 on adjacent -- all wells within 300 feet are on

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1 adjacent property.
 2 So in that context it appears to be
 3 referencing nearby, or in close vicinity. I took it as
 4 adjacent properties to be immediately adjacent or
 5 separated by a roadway, which is a common definition I
 6 read as it relates to property.
 7 **CHAIRMAN MARTIN:** Thank you. Ms.
 8 Ecklund.
 9 **COMMISSIONER ECKLUND:** The specific code
 10 on that is 21.29.050 permit conditions (2)(C). And
 11 it's "The Planning Commission or planning director
 12 shall designate one or a combination of the above as it
 13 deems appropriate. The vegetation and fence shall be
 14 of sufficient height and density to provide visual and
 15 noise screening of the proposed use as deemed
 16 appropriate the Planning Commission or planning
 17 director."
 18 And I don't see where it says "adjacent"
 19 on that or on the buffer zone above it. If somebody
 20 sees where it says "adjacent," it just says --
 21 **MR. WALL:** (2)(E).
 22 **COMMISSIONER ECKLUND:** -- deemed.
 23 Right, in (2)(E), "At its discretion, the
 24 Planning Commission may waive buffer requirements where
 25 the topography of the property or the placement of

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1 natural barriers makes screening not feasible or not
 2 necessary. Buffer requirements shall be made in
 3 consideration of and in accordance with existing uses
 4 of adjacent properties at the time of the approval of
 5 the permit. There is no requirement to buffer the
 6 material site from use which commenced after the
 7 approval of the permit."
 8 So existing uses of adjacent property.
 9 We have residential and recreational are the adjacent
 10 properties, is that correct?
 11 **MR. WALL:** Yes.
 12 **COMMISSIONER ECKLUND:** Thank you. And
 13 then one last, if I may. 14 of 21.050 permit
 14 conditions reads that, and I'm going to take a point
 15 out of there, "It's at the best interest of the borough
 16 and the surrounding property owners."
 17 So there is these references to existing
 18 uses of adjacent properties and the surrounding areas
 19 and the surrounding property owners. But we let them
 20 all come and talk, but we have no meat to help them in
 21 this ordinance, because we are -- we can put buffers,
 22 we can put vegetation, and we can put fences, but who
 23 are we going to ask to put a 53-high earthen berm. I
 24 mean, we all know that's ridiculous.
 25 **UNIDENTIFIED SPEAKER:** Well, we can't

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1 even (indiscernible).
 2 **CHAIRMAN MARTIN:** Because, Mr. Wall,
 3 correct me if I'm wrong, the buffer is vegetative or a
 4 fence or a six-foot berm. Unless we want to jack
 5 the -- do we have the power to jack the berm up taller?
 6 **MR. WALL:** Yes. The code says minimum
 7 six-foot high fence --
 8 **CHAIRMAN MARTIN:** Minimum.
 9 **MR. WALL:** -- or minimum six-foot high
 10 berm or a 50-foot vegetated buffer.
 11 **CHAIRMAN MARTIN:** Thank you.
 12 **UNIDENTIFIED SPEAKER:** Minimum?
 13 **CHAIRMAN MARTIN:** Yeah, minimum. Ms.
 14 Carluccio.
 15 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes. Or
 16 it also says a combination. So we could require a
 17 buffer, a berm, and a fence. Under C, designate one or
 18 a combination of the above as it deems appropriate.
 19 **CHAIRMAN MARTIN:** If you can justify it
 20 with findings.
 21 **COMMISSIONER BOKENKO-CARLUCCIO:** But,
 22 what I also see here is that the minimum six-foot
 23 earthen berm -- okay, it says minimum. So we could
 24 actually make the berm taller?
 25 **COMMISSIONER ECKLUND:** Yep.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** Like 53
 2 feet.
 3 **MR. WALL:** Yes, and staff did -- and
 4 staff did propose a 12-foot berm in most locations.
 5 **COMMISSIONER BOKENKO-CARLUCCIO:** But is a
 6 12-foot berm enough to minimize visual and noise
 7 effects?
 8 **CHAIRMAN MARTIN:** It depends on what --
 9 your definition of minimize. Because it will bring it
 10 less. I mean, he can show us a picture of a six-foot
 11 berm or a 12-foot berm, and it will reduce the area of
 12 the triangle in the line of sight, but will it be
 13 adequate?
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** But is a
 15 the minimization adequate, and that's what the question
 16 is.
 17 **CHAIRMAN MARTIN:** Ms. Ecklund, you have
 18 your hand up.
 19 **COMMISSIONER ECKLUND:** I asked the
 20 planning staff earlier today if they could share some
 21 information about how many gravel pits we've actually
 22 denied in the ten years I've been on this commission.
 23 Mr. Wall, did you say we've denied a couple over the
 24 last ten years or so?
 25 **MR. WALL:** Yes, there has been two

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1 denials done by the Planning Commission.
 2 **COMMISSIONER ECKLUND:** And the hearing
 3 officer overturned both of them?
 4 **MR. WALL:** Yes. And actually one was
 5 overturned by the hearing officer and the other was
 6 overturned with the Board of Adjustments. There was a
 7 transition period about that time, but yes.
 8 And then there was a couple of other
 9 cases where a modification to a permit was denied, and
 10 in that case that I'm thinking of, that was upheld.
 11 **COMMISSIONER ECKLUND:** But how many have
 12 we approved? We are not against gravel pits, and I
 13 think it's been kind of put upon us that we are against
 14 them. I mean, my dad was an operating engineer for 40
 15 years. I lived at a gravel pit. I had a CDL, I know
 16 you're safe drivers out there. We're not against
 17 gravel pits. But in the middle of a recreational and
 18 residential area, it just doesn't seem right.
 19 And a couple years ago, I -- or over the
 20 last year or two I've looked at how much money the
 21 borough actually gains from gravel pits, like how much
 22 sales tax or something they get off of them. And there
 23 is other economic entities and industries in the
 24 borough that make a lot more money.
 25 So -- and I know we need gravel. I drive

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1 to Anchorage twice a week, and I drive to these
 2 meetings twice a month. You know how much construction
 3 there is out there? Do you know how much gravel and
 4 rocks are going on those roads? Tons and tons, and I
 5 know we need these, but not in the middle of a
 6 recreational and residential area.

7 **CHAIRMAN MARTIN:** Mr. Whitney.

8 **COMMISSIONER WHITNEY:** Well, I think this
 9 is one of the more unique gravel pit permits we've
 10 looked at. It seems like most of them that I can
 11 remember over the last five or six years I've been on
 12 the commission, they are usually more in a flat land
 13 area where you can put up a six-foot berm or a 10-foot
 14 berm or whatever and lose your visual impact.

15 This is a little bit unique. It sits
 16 down low and there is adjoining properties, adjacent
 17 properties, whatever you want to call them. They are
 18 all close by, they are looking down into that area.

19 So I just don't think the berms that are
 20 proposed and anything that's going on here is adequate
 21 to control the visual impact that everyone is going
 22 to -- the adjoining property owners are going to
 23 suffer.

24 As far as noise, you know, we've heard
 25 lawn mowers make more noise than the equipment does and

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1 hand drills and everything else. The difference with
 2 that is they don't run for 10 or 12 hours a day. Your
 3 lawnmower is going to be going for a couple of hours,
 4 and, you know, we all listen to that, even here in the
 5 city.

6 So the heavy equipment, I think they are
 7 going to be able to hear it because most of the wind
 8 comes -- direction is coming off the water. That has
 9 an effect on noise, it makes it travel. I live two
 10 miles away from Fred Meyers, and I can hear trucks
 11 going down the hill slowing down. So I think those
 12 people that are living above that are going to continue
 13 hearing noise no matter what.

14 So right now I've listened to I don't
 15 know how many hours of testimony, read hundreds and
 16 hundreds of pages, and I still think my decision is
 17 still going to be the same as it was in July of last
 18 year, and I'll vote against this.

19 **CHAIRMAN MARTIN:** Mr. Venuti.

20 **COMMISSIONER VENUTI:** Boy, I feel
 21 fortunate I live in a community that has planning and
 22 zoning. You know, if nothing else that comes out of
 23 this, is this is a good argument for local option
 24 zoning. And I hope no matter what comes out of this,
 25 that this community -- and it's really great that this

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1 has brought you all together, but I think that you
 2 should really consider local option zoning so that
 3 something like this won't happen in the future.

4 I know gravel is an important commodity,
 5 and I know that it's a big industry in Anchor Point.
 6 I'm in the construction industry. Every project I work
 7 on has gravel, and all of it comes from Anchor Point.
 8 So I know there is real value, but I'm glad that there
 9 is not a gravel pit next to me. And I understand where
 10 you guys are concerned about.

11 But the idea that we can deny an
 12 individual the right to develop their property doesn't
 13 sit well with me. I know that if I want to control
 14 what's happening on the property next to me, I better
 15 buy it.

16 So I'm uncomfortable with the way this
 17 has transpired. Like Mr. Whitney, I've read thousands
 18 of pages of -- hundreds of pages of testimony, heard a
 19 lot about your concerns. I hope you guys will consider
 20 local option zoning, thank you.

21 **CHAIRMAN MARTIN:** Ms. Bentz.

22 **COMMISSIONER ABRAHAMSON-BENTZ:** So I have
 23 maybe a question for staff or just an observation about
 24 the idea of a rolling 12-foot berm. And this goes back
 25 to some discussion we've been having at the material

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1 site code revision workgroup.

2 And a lot of -- some of what we talked
 3 about is alternative post-mining land uses and when
 4 does a pit stop being a pit and it starts being a
 5 reclaimed area that's a pasture or a meadow.

6 And I'm looking at these profiles that
 7 have been drawn using the LIDAR of the area and
 8 thinking about the reclamation plan that's outlined in
 9 our packet, and this idea of a rolling buffer -- or a
 10 rolling berm, excuse me, and if extraction could be
 11 pursued in a way that that rolling berm only was
 12 minimized -- or basically minimizing visual impacts
 13 from a narrow swath of land that was currently being
 14 excavated, and that annually or every couple years the
 15 applicant would be reclaiming in its path, so it would
 16 be marching along through the site reclaiming as they
 17 went, which I think is what they plan to do in their
 18 application, and leaving behind a reclaimed natural
 19 area that was topsoil and seeded and reclaimed, similar
 20 to the images that were shown earlier tonight.

21 So I'm just trying to wrap my head around
 22 that, how this rolling buffer -- this rolling berm
 23 could be an effective way to minimize visual impacts to
 24 adjacent properties.

25 And maybe the question for staff is,

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1 looking at the reclamation plan and this idea of a
 2 rolling 12-foot berm, would that be feasible -- would
 3 that provide greater reduction of impact for at least
 4 visual screening for neighboring properties if
 5 extraction was pursued in that manner?
 6 **MR. WALL:** Yes. And I think that what
 7 you're referring to also is some comments earlier
 8 about, yeah, if that berm moves then all you're seeing
 9 is the scar on the land. But no, he would be required
 10 to reclaim as he goes for the exhausted areas of the
 11 material site.
 12 **COMMISSIONER ABRAHAMSON-BENTZ:** And I
 13 didn't -- just followup through the chair -- I didn't
 14 see a schedule for reclamation in -- or maybe I missed
 15 that in the packet. Do you have the page number for --
 16 I know annually 50,000 yards, but I'm not sure if there
 17 was an area plan to reclaim every year.
 18 **MR. WALL:** It mentions two to five years,
 19 but that's really going to depend on how much material
 20 is extracted. So the intent is to reclaim a
 21 significant amount. In other words, if more than 2 or
 22 5 acres are excavated, there is going to be some
 23 reclamation done.
 24 **COMMISSIONER ABRAHAMSON-BENTZ:** So just
 25 maybe a followup in the way of explanation.

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1 So looking at these profiles, the whole
 2 pit area wouldn't be a active excavation area as far as
 3 line of sight goes, it would be the line of site only
 4 within the currently excavated area, which would
 5 hopefully be protected by that 12-foot berm.
 6 **CHAIRMAN MARTIN:** Ms. Ecklund.
 7 **COMMISSIONER ECKLUND:** To follow up on
 8 the conversation about the rolling berm and the line of
 9 sight, as I understand it, most of the visual impact is
 10 along the east side and south side of this site where
 11 the topography goes up?
 12 In their Phase 1, 2, and 3 in the
 13 processing area are going the other direction, so I
 14 don't know how -- I mean, it's almost like they would
 15 have to start on the Phase 3 and roll back towards the
 16 hillside for that to work for a rolling berm. But it's
 17 a good thought. I mean, maybe they could start on the
 18 west side of Phase 1 and go that direction, and -- if
 19 this is going to be approved.
 20 **CHAIRMAN MARTIN:** We have a point of
 21 order. It's 11:30. Ms. Ecklund.
 22 **COMMISSIONER ECKLUND:** I move that we
 23 continue the discussion for a maximum of another 30
 24 minutes.
 25 **COMMISSIONER BOKENKO-CARLUCCIO:** Second.

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1 **CHAIRMAN MARTIN:** Does that mean that
 2 you're going to give us a count down so we can
 3 deliberate and vote precisely? The maximum -- you
 4 know, what's minimize versus maximize?
 5 **COMMISSIONER ECKLUND:** The midnight hour
 6 I turn into a pumpkin, so let's --
 7 **MR. WALL:** Mr. Chairman, there is nothing
 8 saying that a decision needs to be made tonight. We've
 9 closed the hearing. You can continue your deliberation
 10 at the next meeting.
 11 **CHAIRMAN MARTIN:** Does anyone feel that
 12 at this hour the human factor is weakening our ability
 13 to make a decision? Continue discussion. Ms.
 14 Carluccio.
 15 **COMMISSIONER BOKENKO-CARLUCCIO:** This has
 16 been an awful lot of information to read over and
 17 understand, and there are a number of things that I
 18 have read over where originally I thought I understood
 19 it, and then I read it over and it didn't quite match
 20 up to what my first impressions were.
 21 I would not be unhappy with continuing
 22 the deliberation at the next meeting. No more public
 23 testimony, just deliberation and then findings of fact.
 24 **CHAIRMAN MARTIN:** Mr. Foster.
 25 **COMMISSIONER FOSTER:** I was ready to vote

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1 when I got here tonight, and then I heard -- I took
 2 down seven pages of notes, and I would not be opposed
 3 to continuing this so I could review these -- this
 4 information.
 5 **CHAIRMAN MARTIN:** Could anyone state that
 6 in the form of a motion? Ms. Bentz.
 7 **COMMISSIONER ABRAHAMSON-BENTZ:** I have a
 8 question before we make that motion. The original
 9 motion that's on the floor, did we attach staff
 10 recommendations and findings or voluntary conditions?
 11 **UNIDENTIFIED SPEAKER:** No.
 12 **UNIDENTIFIED SPEAKER:** No.
 13 **COMMISSIONER ABRAHAMSON-BENTZ:** And I
 14 don't know -- just an order -- point of order. Do we
 15 want to do that today?
 16 **CHAIRMAN MARTIN:** I think so. I think
 17 the maker of the motion and the second could easily
 18 come to a concurrence on that, I hope. Mr. Whitney, do
 19 you have a comment?
 20 **COMMISSIONER WHITNEY:** I just have a
 21 quick question for staff. What does the agenda look
 22 like for the next meeting? Is it going to be a --
 23 **THE CLERK:** Through the chair. The
 24 agenda is not completely set right now. I do know the
 25 material site is coming to that meeting. I'm trying to

1 remember what else. If you give me a minute, I can
 2 check.
 3 **CHAIRMAN MARTIN:** I know I could benefit
 4 from coalescing the notes and collecting my thoughts.
 5 Ms. Carluccio.
 6 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{The only}
 7 thing is I guess where we are now, we would have to do
 8 a up or down, a yes or no on what we have so far;
 9 whereas, I don't know if we're interested in asking the
 10 applicant to voluntarily add some things to this -- to
 11 his application.
 12 **CHAIRMAN MARTIN:** Did you have something
 13 creative in mind, or is this hypothetical?
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{I don't}
 15 have any -- no, I don't have any. And I don't have
 16 much creative at 11:35, but I'm just saying that
 17 that's -- that would be one of the negative things.
 18 **CHAIRMAN MARTIN:** But it also could be --
 19 it also could be handled with -- if you did come up
 20 with some great idea in the interim --
 21 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Right.}
 22 **CHAIRMAN MARTIN:** -- you could pass it on
 23 to Bruce, and he could discuss it with the applicant,
 24 and we could be prepared.
 25 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{That's}

1 **UNIDENTIFIED SPEAKER:** The voluntary
 2 conditions?
 3 **CHAIRMAN MARTIN:** The voluntary
 4 conditions were only discussed. But once the applicant
 5 is questioned and -- because Ms. Ecklund I think said,
 6 "Did you agree to this?" And he said, "Yes." That's
 7 in the motion.
 8 **COMMISSIONER ECKLUND:** Right.
 9 **MR. WALL:** Just for some clarification,
 10 Mr. Chairman, is that those volunteered conditions need
 11 to be accepted by the commission, and there needs to be
 12 findings that those conditions are in the best interest
 13 of the borough and in the surrounding properties.
 14 **CHAIRMAN MARTIN:** Yes.
 15 **COMMISSIONER ECKLUND:** Through the chair.
 16 So the voluntary conditions that I brought forward was
 17 the white noise back-up alarm, and Mr. Trimble agreed
 18 to that. And I believe --
 19 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{For his}
 20 vehicles.
 21 **COMMISSIONER ECKLUND:** For his vehicles,
 22 not for any contractor that was in the pit, but for his
 23 vehicles. So he volunteered that condition. And I
 24 guess that's the only one I can remember.
 25 **MR. WALL:** The other one was the --

1 true.
 2 **CHAIRMAN MARTIN:** It wouldn't be a dead
 3 end.
 4 **THE CLERK:** Through the chair.
 5 **CHAIRMAN MARTIN:** Yes.
 6 **THE CLERK:** So for the 24th meeting we
 7 have a right-of-way vacation, the ordinance for the
 8 material site, and then the review of a plat committee
 9 approval.
 10 **CHAIRMAN MARTIN:** Sounds like a light
 11 agenda. Ms. Ecklund.
 12 **COMMISSIONER ECKLUND:** So I don't really
 13 find a staff agenda statement, but I guess the findings
 14 are on the resolution. And if you wanted me to attach
 15 those to the main motion, just so that we have a
 16 complete motion, and then we make a decision on if
 17 we're going to wait and deliberate at our next meeting
 18 or not.
 19 **THE CLERK:** Through the chair. When you
 20 made the motion earlier, you did reference the
 21 resolution, just to be clear.
 22 **COMMISSIONER ECKLUND:** Okay, so that
 23 should take care of it, all right, thanks.
 24 **CHAIRMAN MARTIN:** Badda bing, badda boom,
 25 okay.

1 **COMMISSIONER ECKLUND:** Rolling berms?
 2 **MR. WALL:** -- the rolling berms, yes.
 3 **COMMISSIONER ECKLUND:** The rolling berms,
 4 okay.
 5 **UNIDENTIFIED SPEAKER:** And the
 6 processing.
 7 **COMMISSIONER ECKLUND:** And I believe that
 8 the finding is that the white noise back-up alarms
 9 would minimize noise impact, and the rolling berm would
 10 hopefully minimize visual impact. Are those enough
 11 findings, or do I need to quote code verbatim? Code
 12 1 -- do you want me to do that?
 13 **MR. WALL:** No, that is --
 14 **COMMISSIONER ECKLUND:** Okay, good.
 15 **MR. WALL:** -- sufficient.
 16 **COMMISSIONER ECKLUND:** I just want to
 17 make sure we're sufficient tonight and not -- that was
 18 not made based on fear. Okay, thank you.
 19 **THE CLERK:** I'm sorry.
 20 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Yes, I}
 21 second.
 22 **THE CLERK:** Can I have a point of order
 23 of exactly what are we -- are we amending something
 24 here or --
 25 **COMMISSIONER ECKLUND:** They wanted to get

1 the voluntary conditions added to the main motion so
 2 that they were in the record, and that was for the
 3 white noise back-up alarms and the rolling berms.
 4 **CHAIRMAN MARTIN:** Mr. Whitney.
 5 **COMMISSIONER WHITNEY:** I thought he also
 6 agreed to the changing of the processing area.
 7 **CHAIRMAN MARTIN:** No, that was in a -- an
 8 exception, and staff recommended against -- to deny.
 9 **COMMISSIONER WHITNEY:** To not approve it,
 10 and then I thought he agreed that he would go --
 11 **CHAIRMAN MARTIN:** He said, yeah, don't --
 12 he said he doesn't have a problem with that denial.
 13 **UNIDENTIFIED SPEAKER:** Did anybody make a
 14 motion on postponing?
 15 **COMMISSIONER BOKENKO-CARLUCCIO:**
 16 (Indiscernible) I will.
 17 **CHAIRMAN MARTIN:** Please.
 18 **COMMISSIONER BOKENKO-CARLUCCIO:** I move
 19 that we postpone deliberation and final vote on KPB
 20 Planning Commission Resolution 2018-23.
 21 **COMMISSIONER ABRAHAMSON-BENTZ:** Second.
 22 **CHAIRMAN MARTIN:** And to the next
 23 meeting?
 24 **COMMISSIONER BOKENKO-CARLUCCIO:** Sorry,
 25 to the next meeting.

1 **CHAIRMAN MARTIN:** Mr. Whitney.
 2 **COMMISSIONER WHITNEY:** Can we make sure
 3 that's the number 1 thing on the agenda, so if people
 4 do come to be here for that decision, that they won't
 5 have to wait around all night?
 6 **CHAIRMAN MARTIN:** Do we have to make a
 7 motion to force to you do that, Julie? Thank you.
 8 Okay, is there any discussion on the
 9 motion to postpone? Any objection? It's unanimous
 10 that we'll see you -- we'll see each other here next
 11 time.
 12 (11:39:00)
 13 (End of requested portion)
 14 (11:40:13)
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1 **CERTIFICATE**
 2 **I, LEONARD J. DiPAOLO, Registered Professional**
 3 **Reporter, Certified Realtime Reporter, Certified CART**
 4 **Provider, and Notary Public in and for the State of**
 5 **Alaska, do hereby certify:**
 6 **That the tape recording, CD 6/10/19 was transcribed**
 7 **under my direction by computer transcription; that the**
 8 **foregoing is a true record of the testimony and**
 9 **proceedings taken at that time to the best of my**
 10 **ability; and that I am not a party to nor have I any**
 11 **interest in the outcome of the action herein contained.**
 12 **IN WITNESS WHEREOF, I have hereunto set my**
 13 **hand and affixed my seal this 26th day**
 14 **of August, 2019.**
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LEONARD J. DiPAOLO, RPR, CRR, CCP
 Notary Public for Alaska
 My Commission Expires: 2-3-2020

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JUNE 24, 2019

KENAI PENINSULA BOROUGH PLANNING COMMISSION

LOCATION

Betty J. Glick Assembly Chambers
George A. Navarre Administration Building
144 North Binkley Street
Soldotna, Alaska 99669

Monday, June 24, 2019
7:36 p.m.

TRANSCRIPT OF PROCEEDINGS - EXCERPT
Pages 1 - 48, inclusive

Commissioners Present:

Paulette Bokenko-Carluccio, City of Seldovia
Syverine Abrahamson-Bentz, Anchor Point/Ninilchik
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Dr. Rick Foster, Southwest Borough
Blair Martin, Kalifornsky Beach
Diane Fikes, City of Kenai
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer
Paul Whitney, City of Soldotna

Staff Present:

Max Best, Planning Director
Charlie Pierce, Kenai Peninsula Borough Mayor
Julie Hindman, Administrative Assistant
Holly Montague, Deputy borough Attorney
Bruce Wall, Planner
Scott Huff, Planning Manager

Others Present:

Eric Neely
Pete Arno
Pete Kinneen
Teresa Jacobson Gregory
Mary Trimble
Hans Bilben
Richard Carlton
James Hall
Jamie Ross
Richard Koskovich
Peter Zuyus
Blaine Gilman
Buzz Kyllonen

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1 Others Present, Continued:
 2 Wayne Ogle
 3 Transcribed by: Leonard J. DiPaolo, RPR, CRR, CCP
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1 location, and the adjacent property is a prior existing
 2 use material site on the opposite side of Danver Road.
 3 And so the recommendation would be, if
 4 you choose to make that change, would be the fifth
 5 bullet point on condition No. 2 to change it to read:
 6 A 50-foot vegetated buffer adjacent to the eastern most
 7 parcel boundary and a 12-foot high berm placed near the
 8 active excavation area, except along the northern 200
 9 feet of the proposed excavation.
 10 The applicant has also volunteered this
 11 additional condition. The permittee shall not operate
 12 the material site or haul material from the site on
 13 Memorial Day weekend, Saturday through Monday; Labor
 14 Day weekend, Saturday through Monday; and the 4th of
 15 July holiday, to include Saturday and Sunday if July
 16 4th is on a Saturday, Sunday, Monday, or Friday;
 17 Saturday, Sunday and Monday if the July 4th is on a
 18 Tuesday; Saturday, Sunday, and Friday if July 4th is on
 19 a Thursday.
 20 If the Planning Commission accepts this
 21 condition, staff recommends adding the following
 22 findings to finding No. 29, and that would be E, F, and
 23 G as follows.
 24 E, the applicant has volunteered a
 25 condition that prohibits material site operation on

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1 PROCEEDINGS
 2 7:34:42 p.m.
 3 (This portion not requested)
 4 7:37:50 p.m.
 5 **CHAIRMAN MARTIN:** Hearing and seeing no
 6 requests, I'll close public comment and bring it back
 7 to staff for a report on Item E-1.
 8 **MR. WALL:** Thank you, Mr. Chairman.
 9 This is an application for a conditional
 10 land use permit for a material site in the Anchor Point
 11 area. It is located at 74185 Anchor Point Road, Parcel
 12 No. is 169-010-67. The applicant is Beachcomber, LLC.
 13 At the June 10th meeting, the Planning
 14 Commission asked staff to work with the applicant on
 15 additional volunteered conditions. The applicant also
 16 wanted a clarification to the buffer along the eastern
 17 boundary.
 18 Along the northern 200 feet of the buffer
 19 along Danver Road he's requesting a 50-foot vegetated
 20 buffer without the 12-foot high berm. This was
 21 discussed at previous meetings, but not in detail, and
 22 it was not incorporated into the conditions.
 23 Staff is in support of this because there
 24 is significant vegetation in this area. Danver Road is
 25 at a lower elevation than the material site at this

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1 holiday weekends during the summer months; F, the
 2 volunteered condition to not operate on holidays is
 3 consistent with the standard to reduce noise
 4 disturbance to adjacent properties; and G, the
 5 volunteered condition to not operate on holidays is in
 6 the best interest of the borough and the surrounding
 7 property owners because the Anchor River State
 8 Recreational Area has a significantly greater number of
 9 visitors on holidays, and several of the neighbors and
 10 Alaska State Parks has expressed concerns about noise
 11 impacts to the recreational area.
 12 The public hearing for this item was
 13 closed at your last meeting. Your packet contains the
 14 resolution that has been updated to reflect the
 15 volunteered conditions that were accepted at the last
 16 meeting. The packet also includes on page 30 a letter
 17 dated May 1st from Alaska State Parks.
 18 At the last meeting it was mentioned by a
 19 testifier that State Parks had submitted a letter. I
 20 informed the Planning Commission that we had not
 21 received the letter. Since then I have spoken to State
 22 Parks and they provided me with a copy of the letter.
 23 It evidently was lost in the mail.
 24 On page 32 through 61 are materials that
 25 were passed out at the last meeting. In your desk

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1 packet are two letters from Shirley Gruber that were
 2 mailed directly to Ms. Carluccio and Mr. Whitney after
 3 the hearing was closed.
 4 The applicant has not had an opportunity
 5 to rebut the comments mailed directly to the commission
 6 members or the letter from State Parks.
 7 The applicant may not have received all
 8 of the printed materials that were provided at the last
 9 meeting.
 10 Prior to continuing deliberation on this
 11 matter, the applicant should be given an opportunity to
 12 rebut this additional information. The applicant
 13 should also be instructed to limit his rebuttal to only
 14 those additional comments that I have mentioned.
 15 With the chair's permission I would like
 16 to address a couple of commission members to get some
 17 items clarified in the record.
 18 Mr. Ruffner, there is an article
 19 published on June 4th by KBBi that quotes you as
 20 saying, concerning material sites, "The Planning
 21 Commission doesn't have the authority to say no."
 22 Can you state for the record the context
 23 of that statement?
 24 **COMMISSIONER RUFFNER:** Sure. Through the
 25 chair. Yeah, I don't know that I can recall verbatim

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1 what the comments were or the context, but in general I
 2 would say that a number of times when material sites
 3 have come before this body, since I've been on the
 4 commission, it's been pretty clear to me that our job
 5 as commissioners is to interpret what the code is that
 6 has been laid forward from the assembly.
 7 And with respect to a denial, if a permit
 8 application comes in and it's complete and it meets the
 9 conditions that have been set forth in 21.29, then
 10 those -- and again, I'll just repeat, if those
 11 conditions are met, then we don't have the ability to
 12 deny the permit.
 13 So that's my understanding of how that
 14 is, because those elements that address the conditions
 15 are pretty specific in 21.29.050 I believe. That would
 16 be my address back to staff and to the public for
 17 clarification on those comments.
 18 **MR. WALL:** So it's my understanding that
 19 was in the context of your role as the chair of the
 20 material site work group?
 21 **COMMISSIONER RUFFNER:** Yeah. I mean, I
 22 know they called me and asked about -- KBBi that is
 23 called and asked to do an interview on that. And it
 24 wasn't specific to any one gravel pit, it was the
 25 entire suite of code that we address right now.

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1 So again, I've made very similar comments
 2 on the record for a whole host of these material sites
 3 that have come before us over the last five, six, seven
 4 years.
 5 **MR. WALL:** All right, thanks. Mr.
 6 Chairman, if I could ask Dr. Foster a question as well.
 7 At the April 22nd meeting, the applicant
 8 stated, and I'm reading from the minutes of the meeting
 9 that I recognize isn't verbatim, but it says that he
 10 met prior to the meeting with planning staff Mr. Best
 11 and Mr. Wall, and the acting chairman Dr. Foster. They
 12 made some changes to procedures and they wanted to make
 13 him aware of the changes.
 14 He listened and came away from the
 15 meeting knowing how the things would go regarding
 16 scheduling. All of the testimony would be allowed, and
 17 at the end of the public testimony they would ask for a
 18 continuance and that would be the end of the public
 19 testimony.
 20 Starting on April 22nd, the date
 21 presented by staff and Dr. Foster, that it would begin
 22 with his rebuttal, and it sounded fine, so they agreed.
 23 So I guess what I'm wondering is, as I'm
 24 reading that, Mr. Trimble's account of the
 25 conversation, it sounds like the conversation was

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1 limited to how the meeting was going to proceed. And
 2 I'm wondering if you could provide any additional
 3 clarification concerning that conversation.
 4 **COMMISSIONER FOSTER:** Thank you. Through
 5 the chair. When I arrived I had a short meeting with
 6 Mr. Best and Mr. Wall in regards to tidying up our
 7 hearing procedure. That we would begin with the chair
 8 introducing the agenda items; the staff presenting a
 9 report and staff recommendation; the No. 3, the
 10 presentation by the applicant and their
 11 representatives -- in the past we have started that way
 12 but haven't read this out as this is going to be the
 13 process -- and then 4, testimony by members of the
 14 public; 5, response by staff to any testimony that was
 15 given and an opportunity for the commission to ask
 16 questions of the staff; and then No. 6, the rebuttal by
 17 the applicant.
 18 That's something that we hadn't done
 19 regularly. And so by making this hearing procedure,
 20 setting it in stone, that then No. 7, the chairperson
 21 closes the hearing and then entertains a motion.
 22 So I read this over, I agreed to it as
 23 the acting chair. And then Mr. Trimble, I shared it
 24 with Mr. Trimble and showed him the seven steps and
 25 said, "This is where we're going to ask you to

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1 present." And that's the limit of my conversation with
2 him.

3 **MR. WALL:** Thanks. And Mr. Chairman,
4 if -- one more thing. Just for the record, we know
5 that Mr. Whitney and Ms. Carluccio has received ex
6 parte communication after the hearing was closed, and
7 it would probably be a good idea to ask the rest of the
8 commission members if there has been any additional ex
9 parte communication.

10 **CHAIRMAN MARTIN:** Ms. Carluccio.
11 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes. I
12 just want to state for the record that when I received
13 that letter, I didn't know what it was when I opened
14 it. And when I opened it and read the first line and
15 saw that it was in -- pertaining -- it was pertaining
16 to this issue, I did not read the rest of the letter,
17 but I scanned it and sent it to Julie, our secretary.

18 And the first time I got to read the
19 letter was tonight when I saw it in the desk packet.

20 **CHAIRMAN MARTIN:** Mr. Foster.
21 **COMMISSIONER FOSTER:** I received --
22 through the chair. I received that same letter and
23 brought it in and turned it in.

24 **CHAIRMAN MARTIN:** Mr. Whitney.
25 **COMMISSIONER WHITNEY:** Yeah, I received

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1 it and e-mailed it to Julie the next day, I believe it
2 was.

3 **CHAIRMAN MARTIN:** Ms. Fikes.
4 **COMMISSIONER FIKES:** I received the same
5 letter, and I turned it over to Julie. I also received
6 a phone call message for contact and I did not respond.

7 **CHAIRMAN MARTIN:** Yes, Ms. Bentz.
8 **COMMISSIONER BENTZ:** I must not check my
9 mail very often because I did not receive a letter.

10 But I did receive calls from neighbors, but just
11 related to the material site code ordinance. And I
12 reminded them that I wouldn't be able to speak to any
13 specific permits. So we just discussed the ordinance,
14 not the application of the day.

15 **CHAIRMAN MARTIN:** Mr. Ruffner.
16 **COMMISSIONER RUFFNER:** Thank you, Mr.
17 Chair. Well, if I got a letter, I didn't read it or
18 see it. So I'm trying to catch up. So maybe not
19 specifically on ex parte communication, because I don't
20 believe I've had any ex parte communication with people
21 since the hearing happened.

22 But I would say that I wasn't here for
23 the last meeting, so I did go back and listen to the
24 audio portion of the record. I listened to almost all
25 of that, most of it, and read through the minutes

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1 pretty carefully. So I'm up to speed on what happened
2 last time.

3 **CHAIRMAN MARTIN:** Thank you. Ms. Morgan.
4 **COMMISSIONER MORGAN:** I was not here the
5 last meeting, but I did listen to the audio and I read
6 the minutes, and I read the packets.

7 **CHAIRMAN MARTIN:** Thank you. Staff.
8 **MR. WALL:** Thank you, Mr. Chairman. I
9 might add that both Mr. Ruffner and Ms. Morgan did view
10 the video presentation that was done by the applicant
11 at the last meeting.

12 And in conclusion, staff recommends that
13 the Planning Commission review the application, site
14 plan, staff report, and comments received and determine
15 if the mandatory conditions contained in KPB 21.29.050
16 will be met.

17 The planning department recommends that
18 the Planning Commission amend the resolution as
19 discussed in tonight's staff report, deny the
20 processing distance waiver request, approve the
21 conditional land use permit with listed conditions, and
22 adopt the findings of fact subject to the requirements
23 contained in the full staff report. And that's the end
24 of my report.

25 **CHAIRMAN MARTIN:** Thank you. So there is

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1 a motion on the floor. Mr. Whitney.
2 **COMMISSIONER WHITNEY:** I just have a
3 procedural question. If we pull up this new resolution
4 with these changes made, is that going to open up for
5 testimony about those changes?

6 **CHAIRMAN MARTIN:** I'm not at liberty to
7 answer that. Staff?
8 **MR. WALL:** The resolution that's included
9 in your staff report are basically what you had
10 approved at the last meeting, I just put it in writing.

11 What's contained in the staff report
12 today is the applicant's response to the public
13 testimony that's been heard. So you're certainly free
14 to act on that without taking additional public
15 comments. The public has already commented and the
16 applicant has responded with an additional volunteered
17 condition.

18 And the other item concerning the buffer,
19 that's certainly within your purview to change the
20 requested buffers. That does not require additional
21 public comment.

22 **CHAIRMAN MARTIN:** Thank you. Ms.
23 Ecklund.
24 **COMMISSIONER ECKLUND:** Through the chair
25 to staff. Is discussion then allowed, or any

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1 additional amendments allowed besides the one that are
 2 new and presented tonight and the changes we made at
 3 the last meeting?
 4 **MR. WALL:** As I recall, the way that you
 5 ended the last meeting was you left it open to bring
 6 the applicant up to ask him for additional volunteered
 7 conditions as well. But you also asked me to work with
 8 the applicant in the meantime so that wouldn't all have
 9 to be hashed out here.
 10 **COMMISSIONER ECKLUND:** In the time from
 11 the last meeting it's come to my attention that there
 12 is really, like, three times of the year that the beach
 13 is inundated with people, there is three openings, and
 14 it's mentioned in the letter that you said is new for
 15 us tonight, the one on page 30.
 16 It's mentioned in there by the parks
 17 department that the saltwater and the fresh fishery
 18 opens increase traffic. So I'm just wondering, are
 19 those the same periods of time that the applicant has
 20 made amendments and agreed to? They sound like
 21 holidays, but these fishery openings, is it possible
 22 to -- I know they change every year, but there are
 23 three fisheries openings in that area and would
 24 increase public traffic.
 25 **MR. WALL:** That is certainly something

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1 that you can bring up with the applicant.
 2 **COMMISSIONER ECKLUND:** Thank you.
 3 **CHAIRMAN MARTIN:** Yes.
 4 **COMMISSIONER ECKLUND:** Is this now the
 5 time that we can talk to staff and deliberate some
 6 more?
 7 **CHAIRMAN MARTIN:** Yeah, we are in
 8 discussion.
 9 **COMMISSIONER ECKLUND:** Through the chair,
 10 back to staff --
 11 **MR. WALL:** Mr. Chairman, if I could.
 12 Again, my recommendation is to allow the applicant to
 13 rebut the additional comment -- the additional comments
 14 he had not seen at the last meeting if he wishes to do
 15 so.
 16 **CHAIRMAN MARTIN:** I think that would be a
 17 good sequence of events if Ms. Ecklund agrees.
 18 **COMMISSIONER ECKLUND:** The comments
 19 regarding the fisheries?
 20 **CHAIRMAN MARTIN:** We're going to bring
 21 the applicant up so we can -- for housekeeping get the
 22 beginning -- get us caught up in time.
 23 **COMMISSIONER ECKLUND:** Okay, yeah.
 24 **CHAIRMAN MARTIN:** Would the applicant
 25 please come to the podium. State your name and address

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1 and turn the microphone on.
 2 **EMMITT TRIMBLE:** Emmitt Trimble, Box 193,
 3 Anchor Point.
 4 My understanding regarding any rebuttal
 5 would be it would specifically deal with those -- the
 6 letter that was received, and I had some rebuttal
 7 regarding the presentation that was drawn out over a
 8 two-hour period with the -- one of the opponents
 9 sitting over here with the computer. I felt that that
 10 was something that should not have happened. We've
 11 previously rebutted those drawings and those assertions
 12 with the letter from a licensed land surveyor.
 13 Regarding the letter that came in late, I
 14 have no problem with anything there, and I'm available
 15 for any questions.
 16 **CHAIRMAN MARTIN:** Ms. Ecklund.
 17 **COMMISSIONER ECKLUND:** Through the chair.
 18 Thank you, Mr. Trimble.
 19 The letter from the Alaska Division of
 20 Parks and Outdoor Recreation, Jack Blackwell, mentions
 21 the increase of traffic during the freshwater and
 22 saltwater fisheries, and I believe those are just a few
 23 days, but three different times. Are you familiar with
 24 those fishery openings?
 25 **EMMITT TRIMBLE:** Very familiar. I've

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1 been there in that river bottom since 1975.
 2 **COMMISSIONER ECKLUND:** Okay. And --
 3 sorry, go ahead.
 4 **EMMITT TRIMBLE:** And they aren't the
 5 same. The freshwater openings vary every year. It
 6 opens around Memorial Day, sometimes it's the weekend
 7 before, sometimes weekend after. But nevertheless, on
 8 Memorial Day and on the holidays, that's when the most
 9 people are there. Right now there is -- last Saturday
 10 there was 14 people out of 186 sites.
 11 So we chose to respond to the state's
 12 concerns. And, you know, the noise is coming both ways
 13 then. But it's not in our best interest to be trying
 14 to operate in the middle of all of that.
 15 Regarding the freshwater openings -- and
 16 so the saltwater is continuous every day, but mostly
 17 it's on the weekends. So I'm open to suggestions about
 18 that, but the summertime is what we have --
 19 **COMMISSIONER ECKLUND:** Correct.
 20 **EMMITT TRIMBLE:** -- we can't not operate.
 21 But I thought it was reasonable Labor Day, Memorial
 22 Day, and the 4th of July. Particularly we have a
 23 parade down there on the 4th of July and big barbecues,
 24 and so those were the big events.
 25 **COMMISSIONER ECKLUND:** Okay. I did go

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1 down there two Saturdays ago and drove the road and saw
 2 the recreational sites, and it was a pretty quiet
 3 Saturday. I don't think there was a freshwater opening
 4 that Saturday.
 5 **EMMITT TRIMBLE:** Yes, that was when there
 6 were 14 out of 186 was --
 7 **COMMISSIONER ECKLUND:** Not just three
 8 days ago, but two weeks ago.
 9 **EMMITT TRIMBLE:** Yes, I understand. And
 10 that was on a Saturday. There were 35 last Saturday.
 11 **COMMISSIONER ECKLUND:** Okay. So on your
 12 suggested additional conditions that you would agree
 13 to, you say if the 4th is on a Thursday you would be
 14 closed Saturday, Sunday, and Friday. Is your parade on
 15 the 4th or is your parade on Friday. Because you're
 16 going to be open on the day of the parade if the 4th is
 17 Thursday.
 18 **EMMITT TRIMBLE:** I didn't discuss those
 19 clarifications of when it fell. I'm open to anything
 20 there. Certainly I don't want to be anyone trying to
 21 operate while the parade is going on. We wouldn't do
 22 that anyway. So I think that was a clarification from
 23 staff that, you know, the dates change. So we needed
 24 to address that in the staff report.
 25 **COMMISSIONER ECKLUND:** Okay. Yeah,

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1 because they are skipping the 4th on all three of those
 2 dates. So we might need to just --
 3 **UNIDENTIFIED SPEAKER:** (Indiscernible).
 4 **COMMISSIONER ECKLUND:** -- to include the
 5 4th?
 6 **MR. WALL:** Mr. Chairman, that was the
 7 intent, to include the 4th. And so if it can be
 8 construed a different way, then feel free to reword
 9 that, I think.
 10 **COMMISSIONER ECKLUND:** Okay. So it's
 11 going to include the 4th plus these three additional
 12 days around these holidays?
 13 **EMMITT TRIMBLE:** Sometimes there is a
 14 four-day weekend I guess is what he was getting to. So
 15 we would include all of that.
 16 **COMMISSIONER ECKLUND:** And I didn't ask
 17 you to make it a condition, but you seem to be
 18 agreeable or probably practical not to operate on those
 19 freshwater openings when it's crowded, or would you --
 20 **EMMITT TRIMBLE:** I would rather keep it
 21 to the holidays because there is too much uncertainty
 22 about those openings. Frankly, usually the first
 23 weekend there is hardly anyone there anyway. So I
 24 would rather keep it to the holidays.
 25 **COMMISSIONER ECKLUND:** Thank you.

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1 **EMMITT TRIMBLE:** Because we know that
 2 people will be there then regardless of the fish.
 3 **COMMISSIONER ECKLUND:** Thank you.
 4 **CHAIRMAN MARTIN:** Further discussion on
 5 the voluntary conditions? Make sure we get those all
 6 nailed down.
 7 **EMMITT TRIMBLE:** And the -- to clarify,
 8 Mr. Wall had a question regarding the back-up beepers,
 9 and he was clarifying with me that I said I was in
 10 agreement with that on my equipment. I can't govern
 11 what happens with a truck that's maybe one time going
 12 to come in there, but I would certainly try to
 13 accomplish that.
 14 It's not a big deal to deactivate the
 15 beeper without putting the other white noise machine
 16 on. So I would do everything I could to keep that down
 17 on other people's equipment.
 18 **CHAIRMAN MARTIN:** Yes.
 19 **COMMISSIONER ECKLUND:** Just another
 20 question regarding the weight. Do you know what the
 21 weight limit is on the bridge? And I know you can't
 22 use it, but what is the weight limit on the bridge?
 23 **EMMITT TRIMBLE:** I think it's 11 tons. I
 24 followed a dump truck across it with 12 yards of dirt
 25 in it the other day heading up Danver, so...

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1 **COMMISSIONER ECKLUND:** I had one follow
 2 me across the bridge last Saturday.
 3 **EMMITT TRIMBLE:** So it's not being
 4 monitored. But to answer your question, I think it's
 5 11 tons.
 6 **COMMISSIONER ECKLUND:** And a gravel truck
 7 full is more than that?
 8 **EMMITT TRIMBLE:** As far as I know it's
 9 more than that. And we, for our part, would not be
 10 going across that bridge until it's repaired.
 11 **COMMISSIONER ECKLUND:** But you are
 12 probably going to have other contractors working with
 13 you in the pit?
 14 **EMMITT TRIMBLE:** And we would require of
 15 them, that if they are going to buy gravel from us,
 16 they cannot go across the bridge until it's repaired.
 17 **COMMISSIONER ECKLUND:** Is there a
 18 timeline for those repairs, do you know?
 19 **EMMITT TRIMBLE:** I'm hoping for next
 20 summer. I'm not optimistic. I mean, you've got to
 21 build a separate bridge to tear that one down, you
 22 know, to --
 23 **COMMISSIONER ECKLUND:** Yeah. Thank you.
 24 **CHAIRMAN MARTIN:** Ms. Fikes.
 25 **COMMISSIONER FIKES:** Through the chair.

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1 Is there an area of the residential zone there or
 2 housing area that would be affected by any of the Jake
 3 brake use at all?
 4 **EMMITT TRIMBLE:** The only place someone
 5 might use a Jake brake would be on the other side of
 6 the river coming down the hill towards the bridge.
 7 You know, I'm down there all the time, my
 8 daughter lives there. I don't know that I've heard
 9 Jake brakes there. I have heard them from out on the
 10 Sterling, Old Sterling highway. And also I'd just
 11 clarify it's not a residential zone. There are
 12 residential properties there, but there is no zone.
 13 **COMMISSIONER FIKES:** Yes, I apologize,
 14 you are correct. Thank you.
 15 **CHAIRMAN MARTIN:** Any other questions for
 16 the applicant? None at this time.
 17 **EMMITT TRIMBLE:** Thank you.
 18 **UNIDENTIFIED SPEAKER:** Mr. Chairman --
 19 **CHAIRMAN MARTIN:** I don't -- this isn't
 20 part -- this isn't part of the plan.
 21 **UNIDENTIFIED SPEAKER:** I realize it isn't
 22 (indiscernible).
 23 **CHAIRMAN MARTIN:** And if -- you're not
 24 even -- this is not part of the procedure, sir. We
 25 have -- we're in discussion at this point and we

Page 23

1 brought up some information by request.
 2 **UNIDENTIFIED SPEAKER:** (Indiscernible).
 3 **CHAIRMAN MARTIN:** No, by -- these people
 4 requested.
 5 **UNIDENTIFIED SPEAKER:** They did
 6 (indiscernible).
 7 **CHAIRMAN MARTIN:** What say you, Ms.
 8 Ecklund?
 9 **COMMISSIONER ECKLUND:** I have a question
 10 for staff through the chair.
 11 On page 124 of our packet No. 2, which
 12 has 600-some pages, is the letter we received, not
 13 quite -- there is so many packets on my iPad right now
 14 I'm not sure which one. But it's the one from the
 15 Alaska Department of Transportation & Public Facilities
 16 that is, like, giving us direction, giving the borough
 17 direction.
 18 And I will say the pictures that were
 19 presented to us at the last meeting in public testimony
 20 showed the road, they were black and white.
 21 But I drove that road, as I said, two
 22 Saturdays ago, and I can't imagine what that road is
 23 going to turn into with a large amount of heavy trucks
 24 going over it. It's very narrow, it is cracked all
 25 over, especially along the edges and tried to be

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1 patched like their edges are already falling off the
 2 sides of the road.
 3 So I spoke to Planning Director Best and
 4 asked if there had been any followup, because at the
 5 meeting, Mr. Wall, you stated that the borough would
 6 not be doing any repairs as the Department of
 7 Transportation and Public Facilities requested.
 8 Is there anyplace in the borough code
 9 that talks about what happens to a state maintained
 10 road when we approve something to happen on it that
 11 then makes it a bad shape, in bad repair? Who is
 12 responsible to repair that?
 13 **MR. BEST:** Thank you, through the chair,
 14 Ms. Ecklund. There is nothing in borough code that
 15 would require an applicant or somebody utilizing the
 16 road to repair it, a state road especially. The code
 17 talks about borough roads and any borough ownership of
 18 those roads.
 19 The -- that responsibility lies with the
 20 state. If they want to impose weight restrictions,
 21 axle load limits on a road in disrepair, they certainly
 22 have that ability, like they do in the spring, signage.
 23 Like I said, load limits and those kind of things, they
 24 have the tools to do that if they felt that was
 25 necessary on that road.

Page 25

1 **COMMISSIONER ECKLUND:** Thank you.
 2 **CHAIRMAN MARTIN:** Mr. Bentz.
 3 **COMMISSIONER BENTZ:** Followup question
 4 for staff regarding roads.
 5 We did receive testimony that, "Wouldn't
 6 it have to be approved by the state DNR through the
 7 State Parks since that road was originally granted as
 8 easement through the State Parks for DOT as well?"
 9 I just remember there being some
 10 combination of State Parks/DOT relationship with that
 11 road building.
 12 **MR. WALL:** It is complicated. I did look
 13 into that a little bit today. I believe that DOT does
 14 have an easement for that to do all the work they need.
 15 From my previous conversations with DOT,
 16 the major limiting factor was the adjacent wetlands and
 17 encroaching upon, like, the adjacent private property.
 18 There just isn't much room to work in there. So it was
 19 more of a physical restraint rather than the legal
 20 restraint.
 21 **CHAIRMAN MARTIN:** Mr. Whitney.
 22 **COMMISSIONER WHITNEY:** A followup on that
 23 earlier question on weight limits.
 24 Who would trigger that with DOT? Would
 25 it be a complaint from the borough? Would it be a

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1 complaint from property owners in the area or people
 2 using the road or even parks department?
 3 **MR. BEST:** Through the chair, Mr.
 4 Whitney. I believe it could be anybody that could make
 5 the complaint. But it would be up to DOT to do an
 6 analysis of it to decide if there should be some sort
 7 of load limit on there.
 8 **COMMISSIONER WHITNEY:** Thank you.
 9 **CHAIRMAN MARTIN:** Mr. Ruffner.
 10 **COMMISSIONER RUFFNER:** Thank you, Mr.
 11 Chair. So I think to get us on to the crux of what
 12 we're working on here, I would move to amend our motion
 13 by substitution. And the substitution would include
 14 the resolution that is in our electronic packet
 15 starting on page 22 of 173 and continuing through 29 of
 16 173.
 17 **COMMISSIONER BENTZ:** Second.
 18 **COMMISSIONER RUFFNER:** And then I can
 19 speak a little bit just to the substitution.
 20 So this substitution amendment renumbers
 21 a number of sections to have it make sense. There are
 22 a couple of substantial -- or maybe not substantial
 23 changes, but the additions are in red that included the
 24 voluntary conditions that were worked on and agreed
 25 upon by the applicant and staff.

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1 And also makes some changes and clarifies
 2 the permit conditions themselves with respect to a
 3 change in the height of the berm specifically along one
 4 of the streets. So that's -- and this was all covered
 5 by the staff in their staff report. So that's what
 6 this amendment accomplishes.
 7 **CHAIRMAN MARTIN:** Mr. Wall.
 8 **MR. WALL:** Just for clarification. The
 9 resolution on the page numbers that Mr. Ruffner just
 10 referred to does not include the conditions that has
 11 been volunteered since the last meeting. And the
 12 clarification on the buffer along Danver Road as
 13 contained in today's staff report, that would need to
 14 be --
 15 **CHAIRMAN MARTIN:** A separate motion?
 16 **MR. WALL:** -- an additional motion to
 17 amend that.
 18 **CHAIRMAN MARTIN:** So we can deliberate
 19 and vote on the motion now and then add to that, it
 20 would be simpler. Further discussion on the motion?
 21 Ms. Bentz.
 22 **COMMISSIONER BENTZ:** Question for staff
 23 through the chair.
 24 On page 27 of our packet, the permit
 25 conditions, there is language change on condition No. 2

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1 about buffers. And the language that was replaced was
 2 "between the vegetated buffer" and replaced with
 3 "placed near the active extraction area." Can you
 4 explain that language change for three bullet points in
 5 condition 2?
 6 **MR. WALL:** Yes, and that was me trying to
 7 get it into words what the applicant was volunteering
 8 concerning the rolling berm or the moving berm.
 9 The way that it was previously written,
 10 he could put that berm anywhere between the property
 11 boundary and the excavation. This limits him to
 12 placing the berm near the active excavation area.
 13 So as the -- as he progresses with the
 14 active excavation area, he would need to move the berm.
 15 So it would be moving or rolling, as he's referred to
 16 it.
 17 **CHAIRMAN MARTIN:** Further discussion? Is
 18 there any opposition to the motion? Hearing and seeing
 19 none, the motion passes, the amendment passes.
 20 I'll entertain a motion on the other
 21 amendment Mr. Wall discussed.
 22 (Whispered discussion-indiscernible).
 23 **COMMISSIONER RUFFNER:** I think there is a
 24 little discussion, I want to be careful about that. So
 25 the only discussion that's happening up here is that we

Page 29

1 just need a little clarification, Mr. Wall, on the --
 2 where we can find -- is it -- I think there are two --
 3 are there two additional changes or just one additional
 4 change that was not in the substitute language?
 5 **MR. WALL:** Yes, and I apologize. And
 6 some of that I did kind of a blue line/red line thing,
 7 and the other part I didn't. So let me clarify that.
 8 On condition 2, I'm proposing that the
 9 fifth bullet point be changed to a 50-foot vegetated
 10 buffer adjacent to the eastern most parcel boundary and
 11 a 12-foot high berm placed near the active extraction
 12 area except along the northern 200 feet of the proposed
 13 excavation. So that takes care of the first issue
 14 concerning the buffer along Danver.
 15 The --
 16 **COMMISSIONER BOKENKO-CARLUCCIO:** I'm
 17 sorry, I'm sorry, Mr. Chairman, I'm a little lost. I
 18 don't know -- he said Item 2, and now I don't know
 19 where he is.
 20 **MR. WALL:** Okay, and I'm referring to
 21 today's staff report, the two-page staff report,
 22 condition No. 2.
 23 **COMMISSIONER BOKENKO-CARLUCCIO:** On
 24 page -- on what page?
 25 **COMMISSIONER ECKLUND:** 27 of 173.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{15.1?}

2 **COMMISSIONER ECKLUND:** This is 15.1. But

3 on the packet it gives permit conditions.

4 **COMMISSIONER BOKENKO-CARLUCCIO:** And

5 that's on page 27?

6 **COMMISSIONER ECKLUND:** Where the change

7 is.

8 **COMMISSIONER BOKENKO-CARLUCCIO:** So,

9 okay, permit conditions on page 27 of 173 and 15.1 of

10 173?

11 **MR. WALL:** Yeah. So on the resolution

12 that's contained in your staff report -- I mean, in the

13 packet, you're changing the fifth bullet point -- I'm

14 proposing changing the fifth bullet point on condition

15 2 on page 27.

16 **COMMISSIONER RUFFNER:** Through the chair.

17 Is that the only additional change?

18 **MR. WALL:** Mr. Chairman, Mr. Ruffner, the

19 second change is in the staff report on that page 15.1.

20 And it would be all of the text under 22, and 29 E, F,

21 and G contained in the staff report. The 29 E, F, and

22 G would be the findings to support the additional

23 condition No. 22.

24 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Do you}

25 think you can --

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1 **CHAIRMAN MARTIN:** Mr. Ruffner.

2 **COMMISSIONER RUFFNER:** Thank you, Mr.

3 Chair. Just -- I know that we're all trying, trying to

4 follow along here. But I think I've got it, so I'll

5 try this and staff can correct me if it's not the right

6 intent.

7 But I think there are three more changes

8 that we might consider, and I think taking them one at

9 a time probably makes the most sense. So I'll put the

10 first one out there for discussion.

11 So in the fifth bullet point are the

12 resolution that we now have in front of us.

13 On condition No. 2, we would be

14 changing that bullet point to read, "A 50-foot

15 vegetated buffer adjacent to the eastern most parcel

16 boundary and a 12-foot high berm placed near the active

17 extraction area, except along the northern 200 feet of

18 the proposed excavation, period."

19 So that is a motion to amend our

20 resolution, to include that condition, permit

21 condition.

22 **COMMISSIONER BENTZ:** Second.

23 **CHAIRMAN MARTIN:** Discussion. Ms.

24 Carluccio.

25 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Why are}

Page 32

1 we excluding the 200 feet to the north?

2 **MR. WALL:** Mr. Chairman, Ms. Carluccio.

3 That is an area that has some significant vegetation.

4 The applicant felt like a 12-foot berm would be

5 redundant, particularly since the property sits at a

6 higher elevation than the adjacent road. The adjacent

7 road is quite a bit lower right there.

8 And the adjacent property across the

9 street on Danver is a prior existing use material site.

10 Generally the commission doesn't require a buffer

11 between material sites.

12 But then also the idea behind that, I

13 think what the applicant was getting at with that is

14 that that gives him additional gravel to extract in

15 that area that's more hidden from the neighbors. And

16 so if he can extract more gravel from that area that's

17 hidden from the neighbors, that would mean less gravel

18 that he would have to extract elsewhere potentially.

19 **CHAIRMAN MARTIN:** Ms. Ecklund.

20 **COMMISSIONER ECKLUND:** I'm not -- through

21 the chair to staff, and I'm not sure that you have this

22 dimension.

23 But when I drove down Danver, the first

24 200 feet is -- their access road is within there, and

25 you can see into the upper level as you said, an upper

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1 level area of gravel.

2 And at some point along Danver is a big

3 high berm, the downed trees and the stuff that was just

4 pushed off so that they could get to the gravel.

5 Do you know, is that berm within that 200

6 feet? It seemed rather close to the Anchor Point Road

7 up Danver.

8 **MR. WALL:** That berm would not be within

9 the 200 feet. The 200 feet would end where the denser

10 vegetation ends.

11 **COMMISSIONER ECKLUND:** Okay. There is a

12 berm somewhere along there, and you're right, it could

13 be more than 200 feet, and then there is an area where

14 there is no vegetation along Danver Road where you

15 could see out to the fenced horse area. Is that area 2

16 or area 3 that I saw?

17 I'm just trying to find out where the

18 buffer is along there. I know that's not what we're

19 talking about right now, but I just -- the berm is

20 passed the 200 feet, and then the area where you can

21 see the horse pasture is past the 200 feet?

22 **MR. WALL:** That's correct.

23 **CHAIRMAN MARTIN:** Ms. Carluccio.

24 **COMMISSIONER BOKENKO-CARLUCCIO:** ^{Yes.}

25 With all these pages, can you direct us to a page that

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1 we could visually see what you're talking about?
 2 **MR. WALL:** Give me a minute.
 3 **COMMISSIONER BENTZ:** Mr. Chair, I would
 4 suggest looking at page 190 of Volume 2, or --
 5 **MR. WALL:** And I apologize, my numbering
 6 is different than what you have, so give me a minute to
 7 catch up with you.
 8 **CHAIRMAN MARTIN:** Mrs. Carluccio, did you
 9 find the page that Ms. Bentz is suggesting?
 10 **COMMISSIONER BOKENKO-CARLUCCIO:**
 11 Actually, Ms. Ecklund did, and that's not really what I
 12 had in mind. I was thinking about a --
 13 **CHAIRMAN MARTIN:** Photograph.
 14 **COMMISSIONER BOKENKO-CARLUCCIO:** --
 15 actual photograph, an aerial view.
 16 **MR. WALL:** Yeah, I have in front of me
 17 the picture that you're looking for. I just need to
 18 find it, what the page number is in your packet. I'm
 19 being told that it's page 420.
 20 **COMMISSIONER BOKENKO-CARLUCCIO:** Of
 21 Volume 2? It can't be, I only have --
 22 **MR. WALL:** Okay, so there is the prior
 23 existing use material site is the pond on the opposite
 24 side of Danver. And immediately west of that pond is
 25 the vegetation that I'm talking about that's fairly

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1 dense in there. And that's the portion that he is
 2 proposing to eliminate the 12-foot high berm.
 3 Then on a couple of pages after that is
 4 some contour lines that might help visualize that as
 5 well. That would be page -- is there a number there?
 6 **UNIDENTIFIED SPEAKER:** 423.
 7 **CHAIRMAN MARTIN:** Yeah, 423.
 8 **MR. WALL:** And so there are some contour
 9 lines there that shows that the road is at a lower
 10 elevation there. You can see that the adjacent
 11 property is at about a 24-foot elevation, and where
 12 those trees are it's about a 44-foot elevation.
 13 **CHAIRMAN MARTIN:** Ms. Ecklund.
 14 **COMMISSIONER ECKLUND:** If you're looking
 15 at that page, the area I was talking about where there
 16 is no vegetated buffer is along Danver Road to the
 17 south where you don't see any trees.
 18 How do you get a vegetated -- 50-foot
 19 vegetated buffer? Are we talking grass land?
 20 **MR. WALL:** Yes, there are some trees in
 21 that area. They are pretty sparse. So yes, it does
 22 not provide a lot of screening. So yeah, most of that
 23 is going to be grass.
 24 **COMMISSIONER ECKLUND:** And that's --
 25 **MR. WALL:** So that's why a 12-foot berm

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1 is being recommended there in addition to that 50-foot
 2 vegetation.
 3 **COMMISSIONER ECKLUND:** Thank you.
 4 **CHAIRMAN MARTIN:** Further discussion on
 5 the amendment? Ms. Carluccio, you have your
 6 microphone.
 7 **COMMISSIONER BOKENKO-CARLUCCIO:** Sorry.
 8 **CHAIRMAN MARTIN:** Is there any opposition
 9 to the motion for amendment? Hearing and seeing none,
 10 the motion passes unanimously. Further discussion on
 11 the main motion? Mr. Ruffner.
 12 **COMMISSIONER RUFFNER:** Thank you, Mr.
 13 Chair. So we'll take the second proposed volunteered
 14 condition. So this would be No. 22.
 15 Permittee shall not operate the material
 16 site or haul material from the site on Memorial Day
 17 weekend, Labor Day weekend, and the 4th of July
 18 holiday. And the specifics of how those fall with
 19 respect to the Tuesday through Thursday is spelled out
 20 in three bullet points on page 151 of -- or 15.1 of
 21 173. So I'd make that amendment.
 22 **COMMISSIONER FOSTER:** Second.
 23 **CHAIRMAN MARTIN:** It's been moved and
 24 seconded. Discussion?
 25 **COMMISSIONER ECKLUND:** Add findings?

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1 **COMMISSIONER BENTZ:** Do we need to attach
 2 the findings?
 3 **COMMISSIONER RUFFNER:** Yes, and I'll add
 4 to my amendment then, too. Attach the following
 5 findings, 29 E, the applicant has volunteered the
 6 condition, a condition that prohibits material site
 7 operations on holiday weekends during the summer
 8 months; and F, a volunteered condition to not operate
 9 on holidays as consistent with the standard to reduce
 10 noise disturbance to adjacent properties; and G, the
 11 volunteered condition to not operate on holidays in the
 12 best interest of the borough and the surrounding
 13 property owners because of the state recreational area
 14 has a significant greater number of visitors on those
 15 holidays, and several of the neighbors and Alaska State
 16 Parks has expressed concerns about noise impacts to the
 17 recreational area.
 18 **CHAIRMAN MARTIN:** Does the maker of the
 19 second concur?
 20 **COMMISSIONER FOSTER:** Yes.
 21 **CHAIRMAN MARTIN:** Now we can discuss. Is
 22 there any opposition to the motion? Hearing and seeing
 23 none, that motion passes.
 24 Yeah, we're discussing the main motion as
 25 amended. Ms. Ecklund.

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1 **COMMISSIONER ECKLUND:** Through the chair
2 to staff. This is the main motion on approving this
3 material site permit.
4 Staff, is the area around this gravel
5 pit, would it have been sufficient area for a local
6 option zoning had they done that prior to this permit?
7 **MR. WALL:** Yes. All that's required for
8 a local option zone is 12 contiguous lots.
9 **COMMISSIONER ECKLUND:** Okay. Thank you
10 followup, sorry.
11 **CHAIRMAN MARTIN:** Yes.
12 **COMMISSIONER ECKLUND:** Would the
13 recreational, the state recreational -- no, I'm getting
14 a head shake from Mr. Best. So it would be 12
15 privately owned lots?
16 **MR. WALL:** Yeah, the code deals with
17 similarly sized lots. And so I would believe that
18 would exclude the state recreational areas, because
19 they would need to be similarly sized lots and similar
20 uses.
21 **COMMISSIONER ECKLUND:** And then they
22 could have -- I know it's after the fact, but yeah,
23 just wanted to know if it was even a possibility ever
24 in their life.
25 **CHAIRMAN MARTIN:** Ms. Carluccio.

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1 **COMMISSIONER BOKENKO-CARLUCCIO:** I was
2 going to say actually I don't think so, because even if
3 they did an LOR, it wouldn't necessarily include Mr.
4 Trimble's property. And so the LOR wouldn't have
5 affected this anyway, would it?
6 **MR. WALL:** That is correct. Under the
7 current ordinance, the -- because, again, the parcel
8 sizes need to be similarly sized, they could not
9 include Mr. Trimble's property within that local option
10 zone. It would be limited to 12 contiguous similarly
11 used lots, residential lots.
12 **CHAIRMAN MARTIN:** Ms. Carluccio.
13 **COMMISSIONER BOKENKO-CARLUCCIO:** Yes, one
14 other question. And once again, I'm not sure where it
15 was, but did Mr. Trimble at some point indicate what --
16 how much gravel he was planning to move on a yearly
17 basis, or how much he was planning to excavate?
18 **MR. WALL:** Mr. Chairman, Ms. Carluccio.
19 The application states up to 50,000 cubic yards. In
20 previous hearings he indicated that he really has no
21 intentions of going that high. It would probably be
22 much smaller. That is just the number that he used,
23 because anything beyond that requires bonding with the
24 state.
25 **COMMISSIONER BOKENKO-CARLUCCIO:** But in

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1 effect, he could excavate that much, move that much
2 gravel in a year.
3 And I guess through the chair, another
4 question I have is if he, in fact, sold this property,
5 would the conditional use go with the property?
6 **MR. WALL:** Yeah, the first question is
7 yes. He certainly could excavate the 50,000 cubic
8 yards, if this permit is approved, per year.
9 And yes, the permit does carry with the
10 land. It doesn't -- it's not tied to the owner, it's
11 tied to the land.
12 **COMMISSIONER BOKENKO-CARLUCCIO:** So just
13 one final followup. Even if he says that he doesn't
14 intend to move 50,000 in a year, but he, in fact, sold
15 the property, then it still would be open for up to
16 50,000?
17 **MR. WALL:** That's correct.
18 **COMMISSIONER BOKENKO-CARLUCCIO:** But --
19 through the chair. But all of these other conditions
20 that we've put on it today would remain in effect?
21 **MR. WALL:** That is correct.
22 **COMMISSIONER BOKENKO-CARLUCCIO:** Thank
23 you.
24 **CHAIRMAN MARTIN:** Are you ready to vote?
25 Ms. Bentz?

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1 **COMMISSIONER BENTZ:** Thanks, through the
2 chair. I guess in deliberations, I just remind all the
3 commissioners, if there is any other conditions or
4 modification to the conditions that we have laid before
5 us that would facilitate a reduction in negative
6 secondary impacts of this material site going in, we
7 did briefly talk about the rolling berm and how it
8 would be more or less effective based on the approach
9 to extraction, whether it was going from east to west
10 towards neighboring residences or from north to south,
11 and just trying to think about the practicality of that
12 rolling berm and having it march ahead of any
13 excavation so that it was reducing that sight angle or
14 reducing that potential dust or noise barrier as it
15 went.
16 So I think that's just a concept that I
17 haven't seen a lot before in other material sites, and
18 just curious if other commissioners have any opinions
19 about that, or the practicality of that?
20 **CHAIRMAN MARTIN:** Mr. Ruffner.
21 **COMMISSIONER RUFFNER:** Well, I'll just
22 kind of redirect to staff. I think that, you know,
23 that we did include that in that first amendment by
24 substitution, that the applicant had volunteered to
25 utilize that technique.

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1 And so it seems to make sense, you know,
2 in this case, and because of the sight angles that you
3 mentioned, but in other cases, than just the
4 practicality of being able to extract material if
5 you're removing the stuff you don't want, which is on
6 top, and just kind of keep stacking it and moving it as
7 you go, that keeps the greatest distance of a buffer
8 between you rather than, you know, push it all out at
9 the beginning, build your berm way out at the end and
10 work to supply the material.
11 And particularly in large sites it seems
12 like it would make a lot of sense to apply that in the
13 future as well. I think that's what you were asking.
14 **CHAIRMAN MARTIN:** Mr. Foster.
15 **COMMISSIONER FOSTER:** I have a question
16 for staff. With these berms, do they ever put in
17 alder, just so the alder will take off on these earthen
18 berms, or they just generally cut down a bunch of trees
19 and drag them over and make it kind of biomass and
20 dirt? How -- what do we consist of an earthen berm and
21 what can we put on as additional conditions on that?
22 **MR. WALL:** I don't think the code really
23 allows any additional conditions on that. It's assumed
24 that it's going to be an earthen berm. Typically
25 that's what I see with material sites, is an earthen

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1 berm with perhaps some woody debris in there from the
2 clearing, but usually that stuff just gets in the way.
3 So there is usually not a lot of woody debris in there.
4 And then if that berm stays in place for
5 quite some time, then vegetation will naturally start
6 growing on it, such as alders. But that would not seem
7 practical in this case where they are going to be
8 moving the berm periodically.
9 **CHAIRMAN MARTIN:** Further discussion?
10 Ms. Carluccio.
11 **COMMISSIONER BOKENKO-CARLUCCIO:** And as
12 far as this goes, that we do have a reclamation plan in
13 place? Or is it just up to Mr. Trimble?
14 **MR. WALL:** There is a reclamation plan
15 included with the application that meets the code
16 requirements, yes.
17 **COMMISSIONER BOKENKO-CARLUCCIO:** And the
18 code requirements are?
19 **MR. WALL:** The exhausted areas exceeding
20 five acres in size needs to be reclaimed with four feet
21 of soil and revegetated -- four inches of soil and
22 revegetated. And the slopes need to be 2-to-1 slope so
23 there aren't any steep slopes.
24 **CHAIRMAN MARTIN:** Please.
25 **COMMISSIONER BOKENKO-CARLUCCIO:** And what

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1 is the borough's history on following up on
2 reclamations of other sites?
3 **MR. WALL:** Each year I do go and do an
4 inspection of each of the permitted material sites and
5 take note of what areas are in need of reclamation, and
6 if they haven't been keeping up, I do follow up with
7 them.
8 The current language of the code is a
9 little bit problematic with that because it talks about
10 exhausted areas, and so that's a little bit subjective.
11 But if an area is obviously exhausted, then I do follow
12 up and require the reclamation take place.
13 **COMMISSIONER BOKENKO-CARLUCCIO:** And is
14 there something in the code or some way to follow up
15 if, in fact, they don't reclaim?
16 **MR. WALL:** Yes, there are provisions in
17 the code for enforcement of the ordinance, particularly
18 concerning reclamation. That would involve sending out
19 an enforcement notice, scheduling a hearing with a
20 hearing officer. And the fines are typically \$300 a
21 day, plus the hearing officer can take additional
22 action concerning -- requiring the reclamation and
23 revoking the permit.
24 **COMMISSIONER BOKENKO-CARLUCCIO:** So, in
25 effect, you actually can revoke a permit if they don't

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1 follow the guidelines?
2 **MR. WALL:** Yes, absolutely.
3 **COMMISSIONER BOKENKO-CARLUCCIO:** And
4 through the chair -- you're very lenient, thank you.
5 **CHAIRMAN MARTIN:** It's your meeting.
6 **COMMISSIONER BOKENKO-CARLUCCIO:** And how
7 much time do they have? I mean, when you send out a
8 letter and a notice, are we talking weeks, months,
9 years?
10 **MR. WALL:** I'm probably a little too
11 generous in working with some of these people, giving
12 them more time than I should. The idea is to get
13 compliance with it, get them to be in compliance and
14 help them determine the time frame that works with
15 them. But no, we're not talking about years, we're
16 talking about months.
17 **COMMISSIONER BOKENKO-CARLUCCIO:** Okay,
18 thank you.
19 **CHAIRMAN MARTIN:** Mr. Venuti.
20 **COMMISSIONER VENUTI:** Question for staff
21 through the chair. Mr. Wall, would reclamation require
22 bonding?
23 **MR. WALL:** The way that the code is
24 currently written is if a material site in the borough
25 is exempt from the state bonding requirements, we also

1 exempt it from our bonding requirements. Anything that
2 is excavating -- that has a total disturbed area of
3 less than five acres is exempt from the state bonding
4 requirement.

5 So if they start reclaiming land after
6 they have disturbed five acres, then no, we would never
7 require bonding under the current code.

8 **COMMISSIONER VENUTI:** Can we make bonding
9 a condition?

10 **MR. WALL:** The ordinance specifically
11 exempts it if they were exempt from the state bonding
12 requirements.

13 **COMMISSIONER VENUTI:** Thank you.

14 **CHAIRMAN MARTIN:** Anyone else? Roll
15 call, please.

16 **THE CLERK:** This is to approve a
17 conditional land use permit application for
18 Beachcomber, LLC, Resolution 2018-23 that's been
19 amended.

20 Venuti?

21 **COMMISSIONER VENUTI:** Yes.

22 **THE CLERK:** Morgan.

23 **COMMISSIONER MORGAN:** Yes.

24 **THE CLERK:** Foster?

25 **COMMISSIONER FOSTER:** Yes.

1 **THE CLERK:** Carluccio?

2 **COMMISSIONER BOKENKO-CARLUCCIO:** No.

3 **THE CLERK:** Bentz?

4 **COMMISSIONER BENTZ:** Yes.

5 **THE CLERK:** Whitney?

6 **COMMISSIONER WHITNEY:** No.

7 **THE CLERK:** Ruffner?

8 **COMMISSIONER RUFFNER:** Yes.

9 **THE CLERK:** Fikes?

10 **COMMISSIONER FIKES:** Yes.

11 **THE CLERK:** Ecklund?

12 **COMMISSIONER ECKLUND:** Yes.

13 **THE CLERK:** Martin?

14 **CHAIRMAN MARTIN:** Yes.

15 **THE CLERK:** 8 to 2.

16 **CHAIRMAN MARTIN:** The motion carries.

17 And I would like to thank you every member of the
18 public who came and did their research and participated
19 in the process. It's not a pretty one, but it's the --
20 it's better than a lot of the alternatives. So I just
21 want to express my thanks for you participating in this
22 way.

23 8:40:03.

24 (End of requested portion)

25 11:10:33

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CERTIFICATE

I, LEONARD J. DiPAOLO, Registered Professional
Reporter, Certified Realtime Reporter, Certified CART
Provider, and Notary Public in and for the State of
Alaska, do hereby certify:

That the tape recording, CD 6/24/19 was transcribed
under my direction by computer transcription; that the
foregoing is a true record of the testimony and
proceedings taken at that time to the best of my
ability; and that I am not a party to nor have I any
interest in the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal this 26th day
of August, 2019.

LEONARD J. DiPAOLO, RPR, CRR, CCP
Notary Public for Alaska
My Commission Expires: 2-3-2020

#3319

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CERTIFICATE OF SERVICE

I, John Blankenahip, Clerk of the Kenai Peninsula Borough, do hereby certify that, I served the foregoing notice and copies of Hearing Officers Decision on Motion for Reconsideration.

X 
Signature

Dated this 12th day of December, 2019.

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TRANSMITTAL OF AGENCY RECORD

TO: Superior Court Clerk
Third Judicial District at Kenai
125 Trading Bay Road
Kenai, Alaska 99611

Date: February 21, 2020

FROM: Kenai Peninsula Borough
Johni Blankenship, Borough Clerk
144 N. Binkley Street
Soldotna, Alaska 99669

RE: Case Name: Hans Bilben, Appellant vs. Kenai Peninsula Borough Planning
Commission, Appellee
Appeal Case Number: 3KN-20-00034 CI
Agency Case Number: Appeal of PC Decision Case No. 2019-01-PCA

Pagination of the agency file has been completed. In accordance with Appellate Rule 604(b)(1)(B)(ii) and (iii), the following items are being forwarded to you:

1 - Volume 1 of agency file (a copy) The file is numbered from page R1 to R246 and T1 to T49.	5 - Other: 1 - Hearing Officer's Decision (a copy) The file is numbered from page 1 to 12 (dated November 15, 2019)
1 - Volume 2 of agency file (a copy) The file is number from page R247 to R783 and T1 to -T209	1 - Hearing Agenda (a copy) The file is numbered from page 1 to 2 (dated October 30, 2019)
1 - Volume Hearing Packet (a copy) This file is numbered from page 784 to 987	1 - Hearing Summary (a copy) The file is numbered from page 1 to 3
1 - Volume of Transcript of October 30, 2019 Hearing (original)	1 - Appellant's Motion for Reconsideration (a copy) The file is numbered page 1 to 6 1 - Hearing Officer's Decision on Motion for Reconsideration (a copy) The file is number page 1 to 5 and certificate of service.

If the court needs any of the exhibits being retained by the agency, the court must contact the following person:

Name: Johni Blankenship
Title: Borough Clerk
Phone No. 907-714-2160

February 21, 2020


Agency Representative

Location: Kenai Peninsula Borough, Soldotna, Alaska

AP-312 (3/01)(cs)
TRANSMITTAL OF AGENCY RECORD

KENAI PENINSULA BOROUGH

In the matter of the Kenai Peninsula)
Borough Planning Commission’s)
decision to approve a conditional land)
use permit for a material site that was)
requested for KPB Parcel 169-010-67;)
Trace B, McGee Tracts – Deed or)
Record Boundary Survey (Plat 80-104) –)
Deed Recorded in Book 4, Page 116,)
Homer Recording District)
Hans Bilben)
Appellant)
Emmitt and Mary Trimble)
Beachcomber LLC,)
Applicant.)

CASE NO. 2019-01-PCA

MOTION FOR RECONSIDERATION

Hans Bilben, by and through counsel, hereby moves for reconsideration of the Hearing Officer Decision and Order, distributed November 15, 2019 pursuant to KPB Code 21.25.350 because the Hearing Officer, in reaching its decision, overlooked, misapplied and failed to consider a code provision that was directly controlling and the Hearing Officer overlooked or misconceived a material question in the case.

A hearing was held on this administrative appeal on October 30, 2019. The central questions posed on appeal were whether the Code interpretation imposed on the Planning Commission was correct and whether there was substantial evidence presented to justify the findings that were made. In resolving both questions presented in favor of the Applicant, the Hearing Officer determined that “the Commission acted within the scope of its authority in approving the Application. Due consideration must be given to the Commission’s expertise and experience in interpreting KPB titles 20 and 21, and the additional facts presented at the

Commission's 2019 public meetings on the Application provide the evidence to support the Commission's findings of fact."¹

1. In Reaching its Decision, the Hearing Officer Overlooked, Misapplied or Failed to Consider KPB Code Chapter 21.20.320(1).

In detailing the scope of appellate review, the KPB Code provides that "The hearing officer may exercise independent judgment on matters that relate to the interpretation of ordinances of other provisions of law; however, due consideration shall be given to the expertise and experience of the planning commission in its interpretations of KPB titles 20 and 21." In determining that the Commission's interpretation of the interplay between 21.29.040 and 21.29.050 is "reasonable," the Hearing Officer deferred to the Planning Commission's 2019 interpretation of those provisions. However, the record evidence in this case indicates that, in the Commission's experience and expertise, it does not interpret the Code to read that "[c]ompliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040."

The Commission first heard this application in 2018. At the conclusion of that hearing, the Commission determined that the application *did not meet* the standards articulated in 21.29.040 – a determination that did not turn on the application's compliance with the conditions set forth in 21.29.050. Six of the Planning Commissioners determined to disapprove this material site permit. Importantly, the entire panel of the nine Commissioners present at that July 16, 2018 meeting adopted a resolution that referred only to the standards contained in 21.29.040(A)(4) and (A)(5) as the unanimous basis to support the disapproval of the permit application. That is, in 2018 the Commission unanimously interpreted the Code to allow for disapproval of a permit

¹ November 15, 2019 Hearing Officer Decision and Order at 4.

application where it did not meet the standards set forth in 21.29.040 without consideration of whether the application complied with the 21.29.050 conditions.

Accordingly, this is not a situation where the Commission has routinely interpreted these particular code provisions in this particular manner. *National Bank of Alaska v. State, Dept. of Revenue*, 642 P.2d 811, 815 (Alaska 1982) (noting that where the agency interpretation being reviewed is neither longstanding nor consistent, it cannot play a strong role in reviewing the issue of statutory construction). Indeed, no evidence in the record was presented or supported any similar instance where the Commission previously interpreted the Code to require approval of an application because it contained 21.29.050 conditions even though it could not otherwise meet the standards in 21.29.040. To the contrary, the history of Commission experience and expertise in interpreting the Code in this record indicates that, before 2019, the Commission did not require 21.29.050 compliance to necessarily mean that the standards contained in 21.29.040 had been met.

The Hearing Officer misconceived the experience and expertise of the Planning Commission in interpreting the interplay between 21.29.040 and 21.29.050 and should have exercised its own independent judgment in construing and interpreting the Code – which expressly mandates that the Commission disapprove permit applications that do not meet the standards set out in the Code. This is especially true where, as here, the issue presented is one of pure statutory construction. *Id.*

2. In Reaching its Decision, the Hearing Officer Overlooked, Misapplied or Failed to Consider KPB Code Chapter 21.29.050(A)(2)(c) and Overlooked a Material Question of the Case.

Although the Appellant maintains that the Commission has the authority to deny a permit that does not meet the 21.29.040 standards, even under the interpretation adopted between 2018

and 2019 that compliance with 21.29.050 necessarily means compliance with 21.29.040, it is clear that the permit must comply with the mandatory conditions set forth in 21.29.050.

21.29.050(A)(2)(c) requires a determination that the “vegetation and fencing [contained in the buffer zone] *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.” Notably absent from the findings of fact adopted by the Commission was a finding of fact that the Commission determined that 21.29.050(A)(2)(c) had been met. In reaching its decision that the findings of fact were sufficient and that they were supported by substantial evidence in the record, the Hearing Officer overlooked this Code provision and mandatory condition and, therefore, overlooked a material question in the case.

The language in 21.29.050(A)(2)(c) is mandatory. The 21.29.050 conditions regulating counter permits and CLUPs are “mandatory.” The Hearing Officer states that “Appellant does not call out any specific finding of fact that is allegedly unsupported by substantial evidence in the record.”² However, Appellant’s position was both that this finding of fact was required as a mandatory permit condition and that there was no substantial evidence in the record to support this finding.

When the 2018 Hearing Officer remanded the original decision back to the Planning Commission, it was with the instruction that it refer to *specific* substantial evidence in the record to support its findings. While the 2019 Hearing Officer notes that there was additional public comment presented in the 2019 hearings, neither the Planning Commission nor the Hearing Officer delineates what *specific evidence* supports a finding that there was sufficient noise and

² Decision at 9.

visual screening presented by the buffer zone proposed by the application that was not presented and did not exist when the same application was heard and addressed in 2018.

Instead, Lynn Whitmore, a surveyor and engineer with over 40 years' experience, developed substantial evidence using the Borough's own GIS technology to demonstrate the *ineffectiveness* of the proposed buffer zone at providing *sufficient* visual and noise screening.³ The GIS mappings of various adjacent and surrounding properties demonstrated that these properties would receive little to no screening from the uses proposed by the application: excavation, processing and transportation.

The Planning Commission was never asked to determine, as it must, whether or not there was substantial evidence to support the finding that the buffer zone presented sufficient visual and noise screening. The Planning Commission was not presented with substantial evidence to support this finding it did not make. In failing to address the omission of the mandatory condition contained in 21.29.050(A)(2)(c), the Hearing Officer overlooked or misconceived this question in the case.

3. Where there are a Lack of Findings, KPB Code 21.20.330 Mandates Remand.

Under 21.20.330(B): "Appeals from planning commission decisions which lack findings of fact and conclusions by the planning commission or contain findings of fact and conclusions which are not supported by substantial evidence *shall be remanded* to the planning commission with an order to make adequate findings of fact and conclusions."

As previously discussed, 21.29.050(A)(2)(c) contains mandatory language and is included as a mandatory condition which must be met before an application can be approved by the Commission. Because 21.29.050(A)(2)(c) was not imposed as a permit condition and because

³ R 599-602 and R 663-664.

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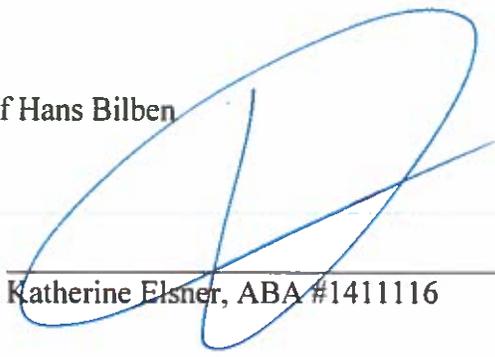
the Commission made no findings of fact as to how it reached the conclusion that the proposed buffer zone provides sufficient visual and noise screening of the proposed use, this appeal must be remanded to the Commission. On remand, the Hearing Officer should instruct the Commission to make specific findings of fact detailing the specific evidence that allows it to reach the conclusion that the buffer zone sufficiently screens the proposed uses from nearby property owners.

4. Conclusion.

Reconsideration is appropriate where, as here, the Decision overlooks a directly controlling provision of law and overlooks a material question in the case. The Hearing Officer should not defer to a Commission interpretation that was adopted within the past year and which is directly opposed to the interpretation employed in 2018. The Commission is not allowed to approve an application that does not meet the mandatory conditions set forth in 21.29.050 and may not approve an application without detailing findings of fact and permit conditions demonstrating that all 21.29.050 mandatory conditions have been met. The Hearing Officer should reconsider the due consideration given to the Commission’s interpretation of the interplay between 21.29.040 and 21.29.050 and should remand the appeal to the Planning Commission for further findings and conclusions relating to mandatory condition 21.29.050(A)(2)(c).

DATED December 2, 2019.

Respectfully submitted and filed on behalf of Hans Bilben



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1/13/22

Kenai Peninsula Borough Planning Commission
c/o Kenai Peninsula Borough Planning Department
144 N. Binkley Street
Soldotna AK 99669
planning@kpb.us
ashirnberg@kpb.us
skelley@kpb.us

Sent via Email

RE: Conditional Land Use Permit Application
Applicant: Beachcomber, LLC
Parcel ID # 169-010-67
Anchor Point Area

OBJECTION TO DELIBERATION IN ADJUDICATIVE SESSION

Planning Commission Members,

On behalf of Hans Bilben, Jeanne Bilben, Lynn Whitmore, Rick Carlton, Marie Carlton, Linda Patrick, Mike Patrick, Gary Sheridan, Eileen Sheridan, Ann Cline, Richard Cline, Phil Brna, Todd Bareman, Xochitl Lopez-Ayala, Gary Cullip, Jay Sparkman, Rick Oliver, Vickey Hodnick, George Krier, Don Horton and Laurie Horton, please take notice of this objection to the Planning Commission Hearing Agenda for the Planning Commission Hearing scheduled for January 25, 2022 at 7:30 p.m. which indicates that “It is also possible that the Commission will elect to deliberate these matters in an adjudicative session.”

KPB Code 21.25.050 clearly requires that when Conditional Land Use Permits applications are being considered, public hearing is “*required.*” Indeed, such requirement is imposed in the very title of 21.25.050. Nowhere within 21.25.050 is private deliberation authorized or indeed contemplated, and such private deliberation would run contrary to the mandate and intent that all CLUP applications be subject to a public process. *See, e.g., Brookwood Area Homeowners Ass’n, Inc. v. Municipality of Anchorage*, 702 P.2d 1317, 1322 (Alaska 1985) (“Modern public meetings statutes reject the argument that only the moment of ultimate decision must be subject to public scrutiny, and require that preliminary deliberations be open as well....’ ‘deliberation connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision....’ ‘An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. *There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors.*”

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Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices.”) (internal citations omitted) (emphasis in original).

While the Alaska Open Meetings Act may serve to exempt these types of adjudicatory sessions, the Kenai Peninsula Borough can, and has, adopted more stringent requirements relative to the public nature of these types of decisional meetings. While public comment has not been reopened in this matter, it remains an item of significant public concern. Regardless of the outcome, the public would still benefit from knowing not just the ultimate decision, but the thoughts and comments made by the Commissioners to understand how the decision is made. Not only will this understanding aid all sides in this particular instance, but it will also inform all participants in future hearings as to what the Commissioners find persuasive and meaningful as it relates to CLUP applications. This could reduce both the length of public comment as well as the number of future challenges. Accordingly, please be advised of this objection to any private deliberative discussions being conducted in adjudicatory session as it relates to the reconsideration of this CLUP application.

/s/ Katie Elsner
Katie A. Elsner, Esq.

MEMORANDUM

TO: Blair Martin, Chair
Member, Kenai Peninsula Planning Commission

FROM: Sean Kelley, Borough Attorney

DATE: December 30, 2021

RE: Setting the Remand Hearing Date ITMO: Beachcomber, LLC

The purpose of this scheduling discussion is for the Planning Commission to set a date to consider this matter consistent with the Superior Court's decision. The Commission should not discuss the merits during the scheduling discussion.

On September 2, 2021, Kenai Superior Court Judge Jason M. Gist issued a *Memorandum Decision and Order* in the matter of *Hans Bilben, et al. v. Kenai Peninsula Borough, Planning Commission, and Beachcomber LLC, et al.*, Appeal Case No. 3KN-20-00034CI (the "decision"). The Court's decision is attached. Two excerpts from the remand decision, at page 15 of 17 and page 17 of 17, are provided to highlight the direction and guidance from the Court:

"Having reviewed the record in this case, this court agrees that the findings of fact in Resolution 2018-23 are supported by substantial evidence. However, the court finds that the findings of fact related to the Buffer Zone in Section 17 of the Resolution are legally insufficient under KPB 21.29.050(A)(2). Under that Code section, "[t]he 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 ... " The findings of fact in Section 17 of the Resolution detail what conditions are imposed on the CLUP, and those findings repeatedly indicate that some of the proposed conditions will "increase visual and noise screening." (See, decision at page 15.)

....

"The Commission did not specifically find whether the conditions imposed on the CLUP were *deemed appropriate* to satisfy the standards set forth in KPB 21.29.040. By all accounts from the record, it appears that the Commission operated under the incorrect assumption that KPB 21.29.040 was "necessarily satisfied" so long as the CLUP contained conditions in KPB 21.29.050. It is unclear from the record whether the Commission

deemed the conditions appropriate to satisfy those standards. For these reasons, the case is REMANDED back to the Commission for further review and/or clarification. If the Commission does in fact deem the conditions set forth in Resolution 2018-23 appropriate to satisfy the standards set forth in KPB 21.29.040, then it shall grant the CLUP. If, however, the Commission finds that no conditions in KPB 21.29.050 could adequately minimize visual and noise impacts to the standards set forth in KPB 21.29.040, then it may deny the CLUP.” (Emphasis original). (See, decision at page 17.)

It is recommended that as part of this scheduling discussion the Planning Commission consider scheduling a special meeting for the sole purpose of deciding two adjudicatory proceedings on remand, to wit: (1) the *Bilben v. Beachcomber LLC* remand hearing; and (2) the *Rosenberg v. Cook Inlet Region, Inc.* remand hearing. A special meeting for this purpose can be arranged for the week of January 17th or the week of January 24th.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

HANS BILBEN, et al.,)
)
 Appellants,)
)
 v.)
)
 KENAI PENINSULA BOROUGH,)
 PLANNING COMMISSION, and)
 BEACHCOMBER LLC, et al.)
)
 Appellees.)

Appeal Case No. 3KN-20-00034CI

AGENCY CASE NO. 2019-01-PCA

MEMORANDUM DECISION AND ORDER

On January 10, 2020, Appellants, Hans Bilben et al.¹ (herein referred to solely as “Bilben”), filed a *Notice of Appeal* of a Hearing Officer Decision and Order in Kenai Peninsula Borough Planning Commission (“Commission”) Case 2019-01-PCA, which ultimately granted a conditional land use permit (“CLUP”) in favor of Beachcomber, LLC, for materials extraction on certain Beachcomber property.

I. BACKGROUND

On June 4, 2018, Beachcomber applied for a CLUP under Kenai Peninsula Borough Code (“KPB”) 21.29.30 to excavate and process materials on 27.7 acres of its 41.72-acre property in Anchor Point.² The proposed development would occur in phases over a 15-year period, two to five acres at a time. The proposed material site is surrounded by residential and recreational properties. The site is also topographically depressed, meaning that the surrounding properties look down over any activities occurring at the proposed gravel mine.

¹ The Appellants in this case consist of 29 owners of real properties that adjoin or surround the proposed 27.7-acre gravel pit situated in an area presently used for residential and recreational purposes.

² Excerpt of Record (“Exc.”), pp.1-21.

Beachcomber's CLUP application contained information required by the KPB Code, including a reclamation plan and proposed buffers to minimize impact on the surrounding community.³

Notice of the CLUP was posted and public comment was invited at a meeting set for July 16, 2018. Prior to the meeting, the Commission received nearly 200 documents for consideration. At the meeting, the Commission heard hours of public testimony from over 30 people affected by the CLUP. Due to the volume of testimony, the meeting continued beyond the Commission's ordinary adjournment time. Following the meeting, the Commission deliberated on the proposed gravel mine and voted to disapprove the application by a vote of 6-3.⁴ The Commission identified two primary reasons under KPB Code 21.29.040 for disapproving the CLUP application: (1) the noise disturbance will not be sufficiently reduced with any buffer or berm that could be added, and (2) the visual impact to the neighboring properties will not be sufficiently reduced.⁵

On August 2, 2018, Beachcomber appealed the Commission's denial of the CLUP. In advance of the appeal proceeding, the Planning Director submitted a brief in which he described the Commission's decision to deny the CLUP as "hasty and reactionary [...] made to accommodate the fears and concerns of the crowd."⁶ The Planning Director requested that the Hearing Officer either approve the CLUP or remand the decision back to the Commission for further analysis.⁷

On December 6, 2018, Hearing Officer Holly Wells was assigned to preside over the administrative appeal. In her decision, Officer Wells discussed KPB Code 21.29.050, and held that the Commission exceeded the scope of its authority in denying the CLUP application.⁸ Officer Wells found that:

³ Exc. 1-4.

⁴ Exc. 36.

⁵ Exc. 36.

⁶ Exc. 227.

⁷ The Planning Director stated that the Commission did not make sufficient findings to support its denial. Specifically, "[p]ursuant to KPB 21.29.050(A)(2) the planning commission determines the appropriate height and density of the buffers for a material site within the confines of the code section. However, no exploration or effort was made to determine whether the buffers proposed by staff, or different or additional buffers, could be fashioned to screen the material site. If the planning commission believed that buffers were not feasible it should have made findings to support that position and then waived the buffers under KPB 21.29.050(e). Further, the decision lacked any reference as to whether the other 14 conditions set forth in KPB 21.29.050 were also useless to afford any protection to the surrounding property owners." See Exc. 224.

⁸ Exc. 60.

“the Code does not provide the Commission discretion to deny such a permit when the application has been properly submitted [...] The Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code [...] the [Kenai Peninsula Borough] Assembly, in adopting the Code, only granted the Commission authority to impose these conditions and ensure that any application complied with these application requirements [...] the Commission may only apply the conditions under KPB 21.29.050 when issuing a material site conditional use permit.”⁹

Officer Wells remanded the CLUP application back to the Commission for further findings. In ruling on a *Motion for Reconsideration* by Bilben, Hearing Officer Wells reiterated that “the Commission’s findings were not sufficient to determine whether the denial was properly within the Commission’s authority.”¹⁰ Bilben did not appeal Officer Wells’ decision. On remand, the Planning Department issued a staff report and provided background information to the Commission with excerpts from the hearing with Officer Wells.¹¹

Beginning in March, 2019, the Commission again considered Beachcomber’s CLUP application at a series of hearings and deliberations held over five days.¹² Commissioners expressed ongoing concerns about the CLUP application, including that Beachcomber’s proposed buffer would not adequately reduce the noise disturbance and visual impact on the surrounding properties.¹³

Beachcomber voluntarily added conditions to mitigate the visual and noise impacts, including (1) using roaming (rather than stationary) berms to be moved as the extraction area expanded, (2) operating onsite equipment with multi-frequency (white noise) back-up alarms instead of traditional (beep-beep) back-up alarms, and (3) restricting operating hours for rock crushing on holiday weekends during the summer.¹⁴ Following deliberations, the Commission voted to approve the application by a vote of 8-2.¹⁵ The Commission adopted Resolution 2018-23, which included 30 findings of fact and outlined 22 permit conditions.¹⁶ The

⁹ *Id.*

¹⁰ Exc. 56.

¹¹ *Id.*

¹² March 25, April 8, April 22, June 10, June 24, 2019, with public comments heard only on June 10, 2019.

¹³ Exc. 94-96.

¹⁴ Exc. 115, 117-119.

¹⁵ Exc. 113.

¹⁶ Exc. 114-119.

Resolution adhered to the instructions provided on remand that “[c]ompliance with the mandatory conditions in KPB [Code] 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.”¹⁷

Bilben appealed the Commission’s approval of the CLUP. On October 30, 2019, Hearing Officer Goldsmith presided over the appeal. Officer Goldsmith gave deference to the Commission’s interpretation of the Code, and found that the “Commission’s interpretation that these two provisions must be read together, and that compliance with KPB 21.29.050 necessarily means compliance with KPB 21.29.040, is reasonable.”¹⁸ Hearing Officer Goldsmith upheld the Commission’s decision, finding that the “Commission acted within the scope of its authority in approving the Application, and finding that “the additional facts presented at the Commission’s 2019 public meetings on this Application provide the evidence to support the Commission’s findings of fact.”¹⁹

II. PARTIES’ ARGUMENTS

a. Standard of Review

The parties agree on which standards of review are appropriate for administrative decisions, but disagree as to which should be applied in this case. Bilben argues that the court should apply the independent judgment standard, arguing that deference to agency decisions are not warranted where the matter is one of purely statutory interpretation for which no agency expertise or questions of fundamental policy are involved.²⁰ Bilben argues that the question of whether the Commission has authority to disapprove a completed permit application is one of purely statutory interpretation. Bilben notes that courts have accorded deliberative weight to “what the agency has done, especially where the agency interpretation is longstanding.”²¹ However, Bilben asserts that the Commission’s final interpretation of the Code in this case (that compliance with KPB Code 21.29.050 necessarily means compliance with KPB Code

¹⁷ Exc. 115.

¹⁸ Exc. 182.

¹⁹ Exc. 177.

²⁰ *Balough v. Fairbanks North Star Borough*, 995 P.2d 245 (Alaska 2000).

²¹ *State, Dep’t of Health and Human Services, Div. of Public Assistance v. Gross*, 347 P.3d 116 (Alaska 2015).

21.29.040) is due little deference based on longevity because (1) the final interpretation of the Code did not originate from the agency, but rather from Hearing Officer Wells, and (2) the Commission has not previously been required to approve a CLUP application in a residential area with overlooking surrounding properties where the standards in KPB Code 21.29.040 could not feasibly be met.

Bilben argues that if the court applies deference to agency interpretation, it should defer to the Commission's 2018 interpretation rather than the 2019 interpretation. Bilben argues that when the Commission voted to disapprove the CLUP application in 2018, the majority of the Commission understood that the Commission was authorized to determine whether the standards in KPB Code 21.29.040 had been met prior to approving the permit.

Conversely, Appellees argue that the court should apply the reasonable basis standard of review because (1) the Commission has expertise in approving or denying CLUPs pursuant to the KPB Code and should be afforded deference; (2) one of the Commission's core statutory functions is to consider and approve properly-submitted CLUPs; (3) the Commission has maintained a longstanding and continuous policy of approving CLUPs that comply with KPB Code; and (4) the Alaska Supreme Court has specifically directed courts to be deferential when considering a zoning board's determination.²²

b. Discretion of the Planning Commission

Bilben argues that the instruction provided to the Commission on remand – that it lacked the discretion to judge whether the CLUP application met the KPB Code 21.29.040 standards and that it lacked the authority to disapprove a completed permit application – was incorrect. Bilben argues that KPB Code 21.25.050(b) explicitly provides the Commission with discretion to “either approve, modify, or disapprove the permit application.”²³ Bilben asserts that the purpose of Chapter 21.25 is to “require advance notice, to provide an opportunity for public

²² *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 173 n.12 (“When a planning agency does, in fact, provide its interpretation of an ordinance within its area of expertise, we will give that interpretation considerable deference.”); See also, *Griswold v. Homer Advisory Planning Commission et al.*, No. S-17669, Op. No. 7515 (Alaska Apr. 9, 2021).

²³ KPB Code 21.25.050(b).

comment, and *impose minimum standards*” for certain land uses, including CLUPs.²⁴ Bilben further asserts that “before granting the permit, the Commission must find *at a minimum* that the proposed activity complies with the requirements” of Chapter 21.25.²⁵ Therefore, Bilben argues that the standards outlined in the Code represent the floor of the Commission’s discretionary authority, not the ceiling.

Bilben contends that statutory construction indicates that the Commission does indeed have authority to disapprove a CLUP application that does not meet the KPB 21.29.040 standards. Bilben asserts that if the Commission were prohibited from denying a completed application, various portions of the Code would be rendered obsolete, including (1) the responsibility of the Planning Director to assess the completeness of an application provided in KPB 21.25.050(A); (2) the Commission’s authority to “either approve, modify or disapprove the permit application” provided in KPB 21.25.050(B); and (3) the utility and meaning of the standards in KPB 21.25.050(B),²⁶ 21.25.020,²⁷ and 21.29.040.²⁸

A more straightforward interpretation, Bilben argues, is that the Legislature imposed minimum standards that must be met prior to granting permission to engage in activities on a parcel of land. To that end, Bilben asserts that the Legislature divided responsibility between the Planning Director, who is responsible for assessing completeness of an application, and the Commission, which is responsible for assessing whether the standards have been met.

Moreover, Bilben asserts that the Code’s stated purpose is to “provide advance public notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights.”²⁹ As such, Bilben argues that it would be unreasonable to adopt an interpretation of the Code that prohibits the Commission from

²⁴ KPB Code 21.25.020 (emphasis added).

²⁵ KPB 21.25.050(B) (emphasis added).

²⁶ KPB Code 21.25.050(B) (“Before granting the permit, the commission must find at a minimum that the proposed activity complies with the requirements of this chapter.”).

²⁷ KPB Code 21.25.020 (“It is the purpose of this chapter... to impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare...”).

²⁸ Setting forth the list of six standards applicable to Material Site Permits.

²⁹ KPB 21.25.020.

disallowing a CLUP, regardless of the outcome of public comment, public health, safety and welfare, or whether or not the application satisfies standards imposed by KPB 21.29.040.

Bilben concedes that the Commission's authority to impose standards on material site permits is limited by KPB Code 21.29. Specifically, KPB Code 21.29.050 provides sixteen permit conditions which the Commission may impose to meet the six specific standards outlined in KPB 21.29.040. However, Bilben argues that while KPB Code 21.29.040 states that "[o]nly the conditions set forth in KPB 21.29.050 may be imposed to meet the standards," it does not otherwise restrict or define the Commission's authority to deny an application in the event that the standards are, nevertheless, not met by the applicant. Bilben argues that the word "only" in KPB Code 21.29.040 serves to limit the universe of allowable conditions that the Commission could impose on a gravel mine operator, not eviscerate the Commission's discretion to deny an application altogether.³⁰ Therefore, Bilben argues that the Commission was not in error when it disapproved the CLUP in 2018 for failure to sufficiently reduce noise or visual impacts.

In opposition, Appellees argue that the word "only" in KPB Code 21.29.040 limits the Commission's discretion to deny a completed CLUP application. Namely, that the Commission may *only* impose conditions listed in KPB Code 21.29.050 to meet the standards outlined in KPB Code 21.29.040. Appellees note that KPB Code 21.29.040 provides a list of six goals, including minimizing noise disturbances and visual impacts. However, Appellees argue that KPB Code 21.29.040 illustrates the Legislative Assembly's aspirational intent; it does not seek to eliminate *all* noise disturbances or visual impacts - instead it only aspires to *minimize* them. Appellees argue that KPB 21.29.050(A)(2)(e) explicitly gives the Commission the ability to "waive buffer requirements" entirely "where the topography of the property [...] makes screening not feasible or necessary." Appellees contend that the Commission must view a CLUP application through the lens of KPB 21.29.050 while keeping the six aspirational goals of KPB 21.29.040 in mind. Appellees argue that because the six standards of KPB 21.29.040 are aspirational, it would be improper for the Commission to deny a CLUP based only on those standards if the applicant otherwise meets the sixteen mandatory conditions outlined in KPB 21.29.050.

³⁰ KPB 21.29.040 ("Only the conditions set forth in KPB 21.29.050 may be imposed to meet these [six] standards").

Appellees argue that the Assembly crafted legislation that favors minimal restrictions on landowners to use and control their land. In support, they assert that in 1999 the Assembly removed a Code provision that required the Commission to deny a permit application if it was either detrimental to the public welfare or injurious to other property in the area.³¹ Instead, the Assembly adopted Code provisions that limit the Commission's discretion to deny a CLUP solely to situations in which the application fails to meet the mandatory conditions of KPB Code 21.29.050.

Both parties agree that when various Code chapters conflict, the more specific chapter controls. Appellees argue that KPB 21.29, which outlines mandatory permit conditions, is more specific than the provisions in KPB 21.25. Therefore, Appellees argue, the discretion afforded to the Commission in chapter 21.25 to "either approve, modify or disapprove" a permit application gives way to the limited discretion provided to the Commission in KPB 21.29 to deny a permit application if and only if it fails to meet the mandatory conditions of KPB 21.29.050. Appellees assert that the Commission does not have authority to impose additional conditions or requirements beyond those listed in KPB 21.29.050.³² Appellees argue that in 2019, the Commission found that Beachcomber's application met all of the mandatory conditions and that approval of the CLUP was, therefore, proper.

In reply, Bilben asserts that he is not seeking to impose *additional* conditions to the CLUP, but rather only aim to apply the standards already listed in the Code.³³ Bilben asserts that mapped depictions of the proposed CLUP area that were created using the Borough's mapping technology demonstrates that the visual and noise impacts will not be minimized.³⁴ He further insists that conditions listed in the CLUP may be ineffective at minimizing the visual and aural impact. For example, he argues, a condition that requires a screen or buffer to be placed near the material excavation site would do nothing to minimize the impacts for the transportation routes or processing sites. For those reasons, he argues that the Commission had authority to deny the CLUP.

³¹ See former KPB Code 21.13.

³² See Warrington, Memorandum Decision and Order, 3KN-05-00206CI, at 8.

³³ *Id.* Bilben argues that Warrington is distinguishable because in that case the agency found that the proposed gravel mining pit would not affect the neighboring water sources.

³⁴ Exc. 12-13.

c. Substantial Evidence

Bilben argues that substantial evidence does not support the Commission's findings in Resolution 2018-23 and that Hearing Officer Goldsmith's decision upholding the Resolution must be reversed. Bilben asserts that Officer Goldsmith reasoned that substantial evidence existed for the Resolution approving the CLUP because "due consideration must be given to the Commission's interpretation of the Code."³⁵ However, Bilben asserts that it cannot be discerned whether the Commission determined that the standards had been met in 2019 because the only finding relating to standards states that the standards in KPB 21.29.040 are "necessarily met" when the mandatory conditions in KPB 21.29.050 are imposed.³⁶ Bilben contends that the evidence presented in 2019 was not sufficiently different from the evidence presented in 2018 when the Commission denied the CLUP due to visual and noise impacts.

In opposition, Appellees argue that the Commission made factual findings concerning the topography of the properties, as well as the ability of buffers to minimize noise and visual impacts. Specifically, the Commission discussed how Beachcomber's CLUP could "mar the view," and recognized that the "material site cannot be conditioned so that all adjacent parcels are equally screened by the buffers."³⁷ Appellees argue that after reviewing the evidence and detailing the findings, the Commission "deemed appropriate" the conditions imposed on Beachcomber's CLUP application.³⁸

III. DISCUSSION

A. Standard of Review

When the superior court sits as a court of appeal from an administrative decision, there are four principle standards of review. The court applies the "substantial evidence test to

³⁵ Appellant's Brief at p.35-36; Exc. 184-85.

³⁶ Exc. 115.

³⁷ Exc. 116.

³⁸ Appellee's Brief at p.24.

questions of fact,”³⁹ the “reasonable basis test to questions of law involving agency expertise,”⁴⁰ the “substitution of judgment test” for questions of law that do not involve agency expertise, and the “reasonable and not arbitrary standard applies to review of administrative regulations.”⁴¹ The Alaska Supreme Court has recognized that planning commissions “receive deference equal to that accorded to an administrative agency,” and that “their interpretations of zoning ordinances should be given great weight and...accepted whenever there is a reasonable basis for the meaning given by the board.”⁴²

B. Authority of the Planning Commission to Deny a CLUP

A significant dispute between the parties concerns the scope of the Commission’s authority in reviewing a CLUP application. Appellants argue that the Commission initially interpreted the Borough Code to allow them to deny an application that did not sufficiently satisfy the requirements of KPB 21.29.040 even after imposing conditions contained in KPB 21.29.050. As such, Appellants urge this court to defer to the Commission’s interpretation of the Borough Code at that time. Appellee’s urge the court to adopt the Commission’s interpretation of the Borough Code as it was during the 2019 hearings. Appellant’s respond that the Commission did not interpret the Borough Code in 2019, but rather, adopted the required interpretation as ordered by Hearing Officer Wells.

At the July 16, 2018, hearing before the Commission, the commissioners discussed whether they had the authority to deny the CLUP. Commissioner Ecklund believed that the Commission had “sufficient findings to deny this permit based on...the borough code as it is written now.”⁴³ Commissioner Ruffner felt otherwise, stating that “as commissioners, our hands are tied.”⁴⁴ Commissioner Carluccio questioned whether the intent of the law was to

³⁹ *Frank Griswold v. Homer Advisory Planning Comm’n, et al.*, 484 P.3d 120, 127 (Alaska 2021) (internal citations and quotations omitted).

⁴⁰ *Id.*

⁴¹ *State, Dep’t of Nat. Res. V. Alaska Crude Corp.*, 441 P.3d 3939, 398 (Alaska 2018).

⁴² *Griswold*, 484 P.3d at 127 (citing *Griswold v. City of Homer*, 55 P.3d 64, 67-68 (Alaska 2002) (quoting *S. Anchorage Concerned Coal, Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993))).

⁴³ Exc. 34.

⁴⁴ *Id.* at 35.

protect surrounding landowners, giving the Commission authority to deny the CLUP.⁴⁵ As evidence by the vote of 6-3 to deny the CLUP, Other Commissioners also interpreted the Borough Code in such a way that gave the Commission the authority to deny the CLUP due to their findings that any conditions imposed would fail to sufficiently minimize noise or visual impacts.⁴⁶

On appeal, Hearing Officer Wells found that the Commission exceeded the scope of its authority in denying the permit based upon its determination that the conditions would not afford adequate protection from noise and visual blight.⁴⁷ She further held that “the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code.”⁴⁸ On remand at the June 10, 2019, hearing, some commissioners continued to recognize that they did not believe the conditions in KPB 21.29.050 would sufficiently minimize the noise and visual impacts of the material site.⁴⁹ At the July 24, 2019, hearing, Commissioner Ruffner, however, expressed his long-held belief that “if a permit application comes in and it’s complete and it meets the conditions that have been set forth in 21.29, then those....if those conditions are met, then we don’t have the ability to deny the permit.”⁵⁰

As noted above, this court is to apply its own independent judgment to questions of law that do not involve agency expertise, but is to give deference to planning commissions in interpreting their zoning ordinances involving agency expertise “whenever there is a reasonable basis for the meaning given by the board.”⁵¹ Appellants argue that this court should apply its

⁴⁵ *Id.* Commissioner Carluccio eventually voted to deny the CLUP. *Id.* at 36.

⁴⁶ *Id.* at 36 (Commissioner Bentz noting that “I don’t think these conditions will minimize noise disturbance...and the conditions won’t minimize visual impacts either; Commissioner Morgan stated that she did not “see how the 50-foot buffer or berms are going to minimize visual impact or sound impact because of the unique topography.”; Exc. 96 (Commissioner Whitney expressed concern that “I just don’t think the berms that proposed and anything that’s going on here is adequate to control the visual impact...”)).

⁴⁷ Exc. 46.

⁴⁸ Exc. 50.

⁴⁹ Exc. 90 (Commissioner Ernst expressed concern that “in this unique situation...[i]s there any possible buffer that could be reasonably used to protect the, you know, the noise levels and visual impact of this pit...?; Exc. 95, Commissioner Ecklund worried that while KPB 21.29.050(14) required consideration of the “best interest of the borough and the surrounding property owners,” the limit of the Commission’s authority gave them “no meat to help [surrounding property owners] in this ordinance.”)

⁵⁰ Exc. 103.

⁵¹ *Griswold*, 484 P.3d at 127 (citing *Griswold v. City of Homer*, 55 P.3d 64, 67-68 (Alaska 2002) (quoting *S. Anchorage Concerned Coal, Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993))).

independent judgment in interpreting the Borough Code in this instance, as the scope of the Commission's authority does not involve agency expertise. Appellees argue that the Commission's interpretation of the Borough Code is entitled to deference, as it does in fact involve agency expertise.

While both arguments have merit, this court finds that under either standard of review, the Commission has authority to deny a CLUP if it determines that the requirements of KPB 21.29.040 cannot be met. It is clear that the Commission interpreted the Borough Code in 2018 in such a way that provided it with the authority to deny the CLUP, as it voted 6-3 to deny the CLUP. While the Commission voted 8-2 in favor of the CLUP in June 2019, the record is not entirely clear as to whether this decision hinged on the commissioners' belief that they were obliged to do so per Hearing Officer Wells' decision, or whether they actually found that the visual impacts and noise levels were sufficiently minimized. Thus, if this court were to apply a deferential standard of review, it would defer to the agency's interpretation as it was in June 2018.

Applying the independent judgment standard, the court finds that the Commission had the authority to deny the CLUP if the standards in KPB 21.29.040 cannot not be satisfied. KPB 21.25 details the procedure for obtaining a CLUP. KPB 21.25.040 requires a permit for "material site pursuant to KPB 21.29."⁵² Under KPB 21.25.050, there must be a public hearing where those wishing to contest the permit can be heard. Following the hearing, the Commission "*shall either* approve, modify, or disapprove the permit application."⁵³ KPB 21.25 contains general provisions, while KPB 21.29 are more specific provisions. While this court recognizes that "where the provisions of [KPB 21.25] and a CLUP chapter regulating a specific use conflict, the more specific chapter shall control,"⁵⁴ the court does not find a conflict between KPB 21.25.050's requirement that the Commission "approve, modify, or disapprove" and any provision in KPB 21.29. Simply put, there is no specific provision in KPB 21.29 that precludes

⁵² The parties agree that the proposed gravel pit in this case falls within the definition of a "material site," and that it is of sufficient magnitude to require a CLUP rather than a "Counter Permit" under 21.29.020.

⁵³ KPB 21.25.050(B).

⁵⁴ KPB 21.25.010.

the Commission from denying a CLUP when it finds that the conditions in KPB 21.29.050 will not satisfy the standards in KPB 21.29.040.

KPB 21.29.040 states that the material site regulations are “intended to protect against...noise and visual impacts,” listing six standards that include “minimiz[ing] noise disturbances to other properties,” and “minimiz[ing] visual impacts.” That section also states that “*Only* the conditions set forth in KPB 21.29.050 may be imposed to meet these standards.”⁵⁵ Appellees assert that this language requires the Commission to grant a CLUP application so long as the conditions in KPB 21.29.050 are met. This argument is supported by Hearing Officer Wells’ finding that “the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code.”⁵⁶

The language in KPB 21.29.040(A) that “*Only* the conditions set forth in KPB 21.29.050 may be imposed to meet these standards” undoubtedly limits the Commission’s authority. If the Commission believes that certain steps must be taken to meet the standards set forth in KPB 21.29.040, the only tools at its disposal to meet such standards are those conditions listed in KPB 21.29.050. Planning authorities are “bound by the terms and standards of the applicable zoning ordinance, and are not at liberty to either grant or deny [permits] in derogation of legislative standards.”⁵⁷ CLUP applicants may voluntarily agree to additional types of conditions that are not contained in KPB 21.29.050, but the authority of the Commission to impose such conditions is legislatively restricted.⁵⁸ Indeed, Appellees agreed to a number of voluntary conditions in this case.⁵⁹

While KPB 21.29.040 limits the types of conditions the Commission can impose, KPB 21.29.050 provides the Commission with some latitude as to those specific conditions. For example, material sites must maintain a “buffer zone” of at least “50 feet of undisturbed natural vegetation, *or* ... a minimum six-foot earthen berm, *or*... a minimum six-foot fence.”⁶⁰

⁵⁵ KPB 21.29.040(A) (emphasis added).

⁵⁶ Exc. 50.

⁵⁷ *So. Anch. Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 174-75 (Alaska 1993).

⁵⁸ KPB 21.29.050(A)(14).

⁵⁹ Exc. 117-18.

⁶⁰ KPB 21.29.050(A)(2)(i)-(iii) (emphasis added).

However, while only one type of these conditions is required, the Commission has the authority to designate “a combination of the above *as it deems appropriate*.”⁶¹ While Hearing Officer Wells found that “the Code does not afford the Commission discretion to judge the effectiveness of the conditions identified in the Code,”⁶² this finding appears to be in direct conflict with KPB 21.29.050’s requirement that “[t]he 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*.”⁶³ In other words, the Commission is specifically tasked with determining the effectiveness of the conditions that are to be imposed and whether they will meet the standards set forth in KPB 21.29.040. If after judging the effectiveness of the potential conditions in its toolbox under KPB 21.29.050(A)(2) the Commission finds that no combination of buffers could be “deem[ed] appropriate” to satisfy the standards set forth in KPB 21.29.040, the Commission is not required to approve the CLUP nonetheless. Nothing in KPB 21.29 suggests otherwise, nor do any of KPB 21.29’s provision conflict with KPB 21.25.050(B) grant of authority to “approve, modify, or deny” a CLUP.⁶⁴

Appellees argue that the conclusion that the Commission is required to approve the CLUP is “consistent with the unzoned rural area at issue in this appeal, along with the general approval-oriented framework adopted by the Assembly.”⁶⁵ Appellees cite to *Warrington v. Kenai Peninsular Borough Board of Adjustments, Cecil Jones and In Jones*, where Judge Huguelet found that “[t]he Assembly has specifically adopted ordinances that are protective of material site operators,” and “could have chose a policy that favors residential property owners, but instead it chose to adopt a policy that favors material site operators.”⁶⁶

⁶¹ KPB 21.29.050(A)(2)(c).

⁶² Exc. 50.

⁶³ *Id.* (emphasis added).

⁶⁴ The court is not persuaded by Appellee’s argument that an “application cannot be denied based on inadequate buffers, when under KPB Code either enhancing the buffers or waiving the buffers are the authorized resolution to a situation where buffers are not feasible.” See Appellee Brief, p.10, n.18. KPB 21.29.050(e) states that “*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.” Waiving the buffer requirements are clearly within the discretion of the Commission. Moreover, it seems to this court that the Commission would be derelict in its duties to waive the requirements in this instance given that under that Code section, “[b]uffer requirements *shall* be made in consideration of and in accordance with existing uses of adjacent property at the time of the approval of the permit.”

⁶⁵ Appellee’s Brief, p.18.

⁶⁶ Memorandum Decision and Order, 3KN-05-00206CI, at 9-10 (May 31, 2006) (Appendix A to Appellee’s Brief).

Indeed, the Borough Code significantly favors material site operators. The Commission recognized as much in its June 10, 2019, hearing.⁶⁷ That favoritism is not unlimited, however. Nothing in the Borough Code requires the Commission to approve a CLUP even where it finds that the conditions imposed cannot possibly minimize the visual and noise impacts to surrounding neighbors. In fact, Judge Huguelet even recognized the interplay between KPB 21.25.050's grant of authority to "approve, modify, or disapprove" permit applications where certain conditions cannot be sufficiently satisfied.⁶⁸

For these reasons, the court finds that the Commission does have the authority under KPB 21.25.050(B) to deny a CLUP if it finds that the standards set forth in KPB 21.29.040 cannot be sufficiently satisfied, even after implementing the tools at its disposal listed in KPB 21.29.050.

C. Why Remand to the Planning Commission is Necessary

As noted above, this court finds that the Commission does have the authority under KPB 21.25.050(B) to deny a CLUP if it finds that the standards set forth in KPB 21.29.040 cannot be sufficiently satisfied by conditions in KPB 21.29.050. Under KPB 21.25.050(B)-(C), the Commission must detail their findings in writing by way of a resolution, which they did in this case in Resolution 2018-23. The court will uphold the Commission's factual findings if they are supported by substantial evidence.⁶⁹

Having reviewed the record in this case, this court agrees that the findings of fact in Resolution 2018-23 are supported by substantial evidence. However, the court finds that the findings of fact related to the Buffer Zone in Section 17 of the Resolution are legally insufficient under KPB 21.29.050(A)(2). Under that Code section, "[t]he vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed use as

⁶⁷ Exc. 095 (Commissioner Ecklund noted that the Planning Commission had only denied two gravel pits in the ten years he had been on the commission, noting that both of those denials had been overturned).

⁶⁸ *Warrington* Memorandum Decision and Order, 3KN-05-00206C1, at 6, 8 (recognizing the authority of the Planning Commission to deny a permit under KPB 21.25.050, and recognizing the authority of the Planning Commission to "consider the evidence, as they did in the case at hand, to determine whether gravel mining will negatively impact the quality and quantity of water" in a nearby aquifer.).

⁶⁹ *State, Dep't of Nat. Res. V. Alaska Crude Corp.*, 441 P.3d at 398.

deemed appropriate by the planning commission...” The findings of fact in Section 17 of the Resolution detail what conditions are imposed on the CLUP, and those findings repeatedly indicate that some of the proposed conditions will “increase visual and noise screening.”⁷⁰

However, the findings in Section 17 do not detail whether the Commission found those conditions to in fact be *deemed appropriate* or sufficient to satisfy the standards set forth in KPB 21.29.040. Rather, the Resolution concedes that “Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.”⁷¹ This concession is well-founded only if the Commission did in fact deem the buffer zone appropriate and sufficient to satisfy the standards set forth in KPB 21.29.040.

Throughout the hearings in both 2018 and 2019, multiple commissioners questioned whether any buffers could adequately provide visual and noise screening of the material site. In 2018, a majority of the commissioners found that the neighboring properties could not be adequately screened, with similar conditions imposed. Commissioners Bentz, Morgan and Carluccio were adamant that they did not believe the buffer or berms would minimize the noise and sound impacts because of the “unique topography.”⁷² As a result, the Commission denied the CLUP.

In 2019, commissioners again questioned whether buffers could adequately satisfy the noise and visual standards set forth in KPB 21.29.040. Commissioner Ecklund expressed great concern that the conditions imposed would not minimize the visual and noise impacts. While he recognized that the Commission would never ask an applicant “to put a 53 [foot] high earthen berm” into place (calling the proposal “ridiculous”), he also asked whether it was in their authority to do so if necessary, to which the Borough Planner replied “Yes, and staff did...propose a 12-foot berm in most locations.”⁷³ Despite these expressed concerns,

⁷⁰ Resolution 2018-21, Sec 17, ¶¶H, I, J, M, N.

⁷¹ *Id.*, ¶15.

⁷² Exc. 35-36.

⁷³ Exc. 95.

Commissioner Ecklund voted to grant the CLUP. Commissioner Carluccio questioned “but is a 12-foot berm enough to minimize visual and noise impacts?”⁷⁴

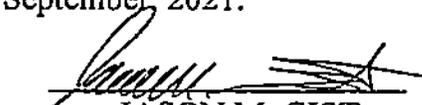
The Commission did not specifically find whether the conditions imposed on the CLUP were *deemed appropriate* to satisfy the standards set forth in KPB 21.29.040. By all accounts from the record, it appears that the Commission operated under the incorrect assumption that KPB 21.29.040 was “necessarily satisfied” so long as the CLUP contained conditions in KPB 21.29.050. It is unclear from the record whether the Commission deemed the conditions appropriate to satisfy those standards. For these reasons, the case is REMANDED back to the Commission for further review and/or clarification. If the Commission does in fact deem the conditions set forth in Resolution 2018-23 appropriate to satisfy the standards set forth in KPB 21.29.040, then it shall grant the CLUP. If, however, the Commission finds that no conditions in KPB 21.29.050 could adequately minimize visual and noise impacts to the standards set forth in KPB 21.29.040, then it may deny the CLUP.

IV. CONCLUSION

For the reasons stated herein, this case is REMANDED back to the Commission for further consideration consistent with this *Order*.

Dated at Kenai, Alaska, this 2nd day of September, 2021.

I certify that a copy of the foregoing was
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AK _____
Clerk _____
Date 9-3-21


JASON M. GIST
SUPERIOR COURT JUDGE

⁷⁴ *Id.*

In the Supreme Court of the State of Alaska

Beachcomber, LLC,
Petitioner,

v.

Hans Bilben, Philip Brna, George Krier, Lawrence ‘Rick’ Oliver, Shirley Gruber, Todd Bareman, Xochill Lopez-Ayala, Richard Carlton, Marie Carlton, Mike Patrick, Linda Patrick, Joseph Sparkman, Vickey Hodnik, Gary Cutlip, John Girton, Linda Bruce, Steve Thompson, Lynn Whitmore, Donald Horton, Lori Horton, James Gorman, Linda Stevens, Gary Sheridan, Eileen Sheridan, Thomas Brook, Joshua Elmaleh, Christine Elmaleh, Angela Roland, Michael Brantley, Teresa Jacobson, David Gregory, Pete Kinneen, Lauren Isenhour, Allison Paparoa, Danica High, Gina Debardelaben, and Kenai Peninsula Borough Planning Commission,

Respondents.

Supreme Court No. **S-18187**

Order

Petition for Review

Date of Order: **12/29/2021**

Trial Court Case No. **3KN-20-00034CI**

Before: Winfree, Chief Justice, Maassen, Carney, Borghesan, and Henderson, Justices

On consideration of the Petition for Review filed on **11/16/2021**, and the Response filed on **11/29/2021**,

IT IS ORDERED:

The Petition for Review is **DENIED**.

Entered at the direction of the court.

Beachcomber, LLC v. Bilben, et al.
Supreme Court No. S-18187
Order of 12/29/2021
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Clerk of the Appellate Courts


Meredith Montgomery

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