



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Agenda Assembly

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

Tuesday, August 9, 2022

6:00 PM

Betty J. Glick Assembly Chambers

Meeting ID: 884 7373 9641 Passcode: 671108

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

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

[Clerk's Note: The invocation will be offered by Robert Whitney.]

ROLL CALL

COMMITTEE REPORTS

APPROVAL OF AGENDA AND CONSENT AGENDA

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

ACTION ITEMS CURRENTLY ON CONSENT AGENDA:

KPB-4449 July 5, 2022 Regular Assembly Meeting Minutes
Resolution 2022-045 Solid Waste CAT® Equipment
Resolution 2022-047 Stream Gages and Gaging Stations
Resolution 2022-046 Supporting the AKLNG Project
Ordinance 2021-19-59 To Record Expenditures on Behalf of PERS
Ordinance 2021-19-60 SPH's Air Conditioning Scope Expansion
Ordinance 2022-19-07 Transfer of Land Sale Revenues
Ordinance 2022-33 Late filed Exemptions
Ordinance 2022-34 Late Filed Community Purpose Exemption
Ordinance 2022-19-08 Acquisition of Property for WESA
Ordinance 2022-36 Amending KPB 21.25 and KPB 21.29
Ordinance 2022-31 Release of a Commercial Deed Restriction
Ordinance 2022-32 Delinquent Sales Tax Lists
Ordinance 2022-35 Adjusting Deadlines for RIAD Applications
KPB-4404 Proposition No. 1 Reapportionment of Districts
KPB-4405 Proposition No. 2 Educational Capital Improvement Bonds
KPB-4431 Proposition No. 3 Approval of Proposition Summary to be included in Voter Pamphlet
KPB-4435 Petition to Vacate Portions of Seismograph Trail
KPB-4432 Approving Amendment to 2022 Assembly Meeting Schedule
KPB-4436 Confirming Appointments to Emergency Services Advisory Board
KPB-4437 Confirming an Appointment to the Funny River APC
KPB-4438 Confirming an Appointment to the Road Service Area Board

ACTION ITEMS ELIGIBLE TO BE ADDED TO THE CONSENT AGENDA:

Ordinance 2021-19-50 Opioid Settlement Funds
Ordinance 2022-19-05 Appropriating Funds for Unexpected Election Expenses
Ordinance 2022-19-06 Changing the Print Shop Position to a Full Time Position
Ordinance 2022-29 Senior Citizen/Disabled Veteran Late Filed Exemptions

APPROVAL OF MINUTES

- *1. [KPB-4449](#) 070522 Regular Assembly Meeting Minutes

Attachments: [070522 DRAFT Regular Assembly Meeting Minutes](#)

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

(20 minutes total)

1. [KPB-4466](#) Central Peninsula Hospital Quarterly Report

2. [KPB-4467](#) South Peninsula Hospital Quarterly Report

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

(3 minutes per speaker; 20 minutes aggregate)

ITEMS NOT COMPLETED FROM PRIOR AGENDA

PUBLIC HEARINGS ON ORDINANCES

(Testimony limited to 3 minutes per speaker)

Ordinances referred to Finance Committee

1. [2021-19-50](#) An Ordinance Accepting and Appropriating the Opioid Settlement Funds and Establishing the Opioid Settlement Fund Grant Program (Mayor) (Hearing on 08/09/22)

Attachments: [Ordinance 2021-19-50](#)
[Memo](#)
[Exhibit E and G \(excerpt\) to Settlement Agreement_Opioid Approp. backup](#)

2. [2022-19-05](#) An Ordinance Appropriating \$20,000 from the General Fund to Cover Unexpected Election Expenses (Johnson) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-19-05](#)
[Memo](#)

3. [2022-19-06](#) An Ordinance Changing the Print Shop Administrative Assistant/Multidisciplinary Position from a Part-Time Position to a Full-Time Position and Appropriating Necessary Funds for the Position (Mayor) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-19-06](#)
[Memo](#)

4. [2022-29](#) An Ordinance Authorizing the Assessor to Accept One Late-Filed Senior Citizen Exemption Application Filed After March 31 and Two Late-Filed Disabled Veteran Applications and Providing an Exception to KPB 5.12.040(B) (Mayor, Tupper) (Hearing on 08/09/22)

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

Ordinances referred to Lands Committee

5. [2022-25](#) An Ordinance Amending KPB Chapter 21.50 Relating to Stop-Work Orders and Fine Amounts in Stipulated Agreements (Mayor) (Hearing on 08/09/22)

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

6. [2022-26](#) An Ordinance Amending KPB Chapters 7.20, 7.30 and 21.44 Relating to Marijuana Establishments and Processing Applications for Marijuana Establishments (Mayor) (Hearing on 08/09/22)

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

7. [2022-27](#) An Ordinance Amending KPB 21.25 to Add Definition of “Aggrieved Party” and Amending KPB 21.29 to Remove the Term “Impartial”, to Clarify the Well-Monitoring Timeline, to Define “Quarterly”, and to Add a “Definitions” Section (Mayor) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-27](#)
[Memo](#)
[Advisory Board Recommendations](#)

8. [2022-30](#) An Ordinance Approving Stephenie Alaska Sub Block 8 Residential Waterfront (R-W) Local Option Zoning District and Amending KPB 21.46.110 (Mayor) (Hearing on 08/09/22)

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

Ordinances referred to Policies and Procedures Committee

9. [2022-28](#) An Ordinance Providing for Necessary Code Updates Relating to Declaration of Disaster Emergency and the Administration of the Borough’s Emergency Powers and Duties (Mayor) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-28](#)
[Memo](#)
[KPB Code Revision Report](#)

UNFINISHED BUSINESS

NEW BUSINESS

1. Resolutions

Resolutions referred to Finance Committee

- *a. [2022-045](#) A Resolution Authorizing a Standardization Policy with NC Machinery for Solid Waste Cat® Equipment (Mayor)

Attachments: [Resolution 2022-045](#)
 [Memo](#)

- *b. [2022-047](#) A Resolution Authorizing the Mayor to Execute a Joint Funding Agreement with the U.S. Department of the Interior, U.S. Geological Survey to Cooperatively Maintain the Stream River Gages and Gaging Stations (Mayor)

Attachments: [Resolution 2022-047](#)
 [Memo](#)
 [USGS Joint Funding Agreement Letter](#)
 [USGS Joint Funding Agreement](#)

Resolutions referred to Policies and Procedures Committee

- *c. [2022-048](#) A Resolution Authorizing One Full-Time Business Solutions Development Manager Administrative Service Position (Mayor)

Attachments: [Resolution 2022-048](#)
 [Memo](#)

Resolutions referred to Legislative Committee

- *d. [2022-046](#) A Resolution Supporting the Alaska LNG Project, Requesting Timely Completion of Federal Review and Permitting Processes, including a Department of Energy Export License, as Being in the Best Interests of Local, State, and Federal Energy Security and Resiliency (Mayor)

Attachments: [Resolution 2022-046](#)
 [Memo](#)

2. Ordinances for Introduction

Ordinances for Introduction and referred to the Finance Committee

- *a. [2021-19-59](#) An Ordinance Recording FY2022 Expenditures Paid by the State of Alaska Department of Administration, Division of Retirement & Benefits on Behalf of the Kenai Peninsula Borough Toward the Borough's Unfunded PERS Liability (Mayor) (Hearing on 08/23/22)

Attachments: [Ordinance 2021-19-59](#)
[Memo](#)
[State of Alaska Letter](#)

- *b. [2021-19-60](#) An Ordinance Expanding the Scope of Work for the South Peninsula Hospital's Air Conditioning for Long-Term Care and Rehab Project (Mayor) (Hearing on 08/23/22)

Attachments: [Ordinance 2021-19-60](#)
[Memo](#)

- *c. [2022-19-07](#) An Ordinance Appropriating up to \$4,565,000 from the Land Trust Fund, Fund Balance to be Transferred to the Land Trust Investment Fund Representing the Fiscal Year 2022 Transfer of Land Sales Revenue to the Land Trust Investment Fund per KPB 5.20.080(B) (Mayor) (Hearing on 08/23/22)

Attachments: [Ordinance 2022-19-07](#)
[Memo](#)

- *d. [2022-33](#) An Ordinance Authorizing the Assessor to Accept One Late-Filed Disabled Veteran Exemption and Four Late-Filed Senior Citizen Exemption Applications Filed After March 31 and Providing an Exception to KPB 5.12.040(B) (Mayor) (Hearing on 08/23/22)

Attachments: [Ordinance 2022-33](#)
[Memo](#)

- *e. [2022-34](#) An Ordinance Authorizing the Assessor to Accept One Late-Filed Community Purpose Exemption Application Filed After March 31 and Providing an Exception to KPB 5.12.040(B) (Mayor) (Hearing on 08/23/22)

Attachments: [Ordinance 2022-34](#)
[Memo](#)

Ordinances for Introduction and referred to the Lands Committee

- *f. [2022-19-08](#) An Ordinance Authorizing the Acquisition of Real Property Located in Anchor Point, Alaska on Behalf of Western Emergency Services through an Interfund Loan from the Land Trust Investment Fund, Appropriating Loan Proceeds for the Property Acquisition, and Appropriating Western Emergency Service Area Operating Funds for the Annual Loan Payment to the Land Trust Investment Fund (Mayor) (Hearing on 08/23/22)

Attachments:

[Ordinance 2022-19-08](#)

[Memo](#)

[Reference Ordinance 2018-29](#)

[Map](#)

[Western Emergency Service Area Board Minutes 07-13-2022](#)

- *g. [2022-36](#) An Ordinance Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley) (Hearings on 09/06/22 & 09/20/22)

Attachments:

[Ordinance 2022-36](#)

[Memo](#)

- *h. [2022-31](#) An Ordinance Authorizing the Release of a Commercial Deed Restriction on a Parcel of Land Located in Cooper Landing Originally Conveyed by the Kenai Peninsula Borough (Mayor) (Hearing on 08/23/22)

Attachments:

[Ordinance 2022-31](#)

[Memo](#)

[Map](#)

[Release of Deed Restriction Instrument](#)

[Half Mile Notification](#)

[Kuznicki Petition](#)

[Wilkes Petition](#)

Ordinances for Introduction and referred to the Policies and Procedures Committee

- *i. [2022-32](#) An Ordinance Amending Borough Code to Remove Requirements for Newspaper Publication of Delinquent Sales Tax Lists and Public Posting of Certificates of Registration Lists and Providing Instead for Publication of Such Information on the Borough Website (Mayor) (Hearing on 09/06/22)

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

- *j. [2022-35](#) An Ordinance Amending KPB 14.31, Special Assessments – Road Improvements, to Adjust Applicable Deadlines Regarding Application and Review of a Road Improvement Assessment District (Mayor) (Hearing on 09/06/22)

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

3. Other

Other items referred to Policies and Procedures Committee

- *a. [KPB-4404](#) Approval of Proposition Summary to be Included in the Voter Pamphlet for Proposition No. 1: Reapportionment of Assembly and Board of Education Districts (Borough Clerk)

Attachments: [Proposition No. 1 - Reapportionment](#)

- *b. [KPB-4405](#) Approval of Proposition Summary to be included in the Voter Pamphlet for Proposition No. 2: Educational Capital Improvement General Obligation Bonds (Borough Clerk)

Attachments: [Proposition No. 2 - School Rehabilitation Bonds](#)

- *c. [KPB-4431](#) Approving the Proposition Summary to be included in the Voter Pamphlet for Proposition No. 3: Central Emergency Service Area Station Bonds and Approval of Project (Borough Clerk)

Attachments: [Proposition No. 3 - CES Station 1 Bonds](#)

Other items referred to Lands Committee

- *d. [KPB-4435](#) Petition to Vacate Portions of Seismograph Trail and Associated Utility Easements within Lot 110 of Plat 84-115 (Mayor)

[Clerk's Note: At its regularly scheduled meeting of July 18, 2022 the Kenai Peninsula Borough Planning Commission approved the proposed vacation by unanimous consent.]

Attachments: [Seismograph Trail Petition to Vacate](#)

Other items referred to Policies and Procedures Committee

- *e. [KPB-4432](#) Approving an Amendment to the 2022 Assembly Meeting Schedule (Johnson)

Attachments: [2022 Meeting Schedule Johnson Amendment](#)

- *f. [KPB-4436](#) Confirming Appointments to the Emergency Services Communications Center Advisory Board (Mayor)

9-1-1 Dispatch Center - Tammy Goggia-Cockrell
Central Emergency Service Area - Chief Roy Browning, Deputy Chief Dan Grimes, Alternate
Nikiski Fire Service Area - Vlad Glushkov

Attachments: [Mayor's Appointment Memo to Assembly](#)

- *g. [KPB-4437](#) Confirming an Appointment to the Funny River Advisory Planning Commission (Mayor)

Glenda Radvansky, Seat F, Term Expires 9/30-2022

Attachments: [Funny River APC Appointment](#)

- *h. [KPB-4438](#) Confirming an Appointment to the Road Service Area Board (Mayor)

M. Kathryn Thomas, West Region, Seat Term Expires 9/30/2023

Attachments: [Road Service Area Appointment](#)

MAYOR'S REPORT

Mayor's Report Cover Memo

[KPB-4454](#) Mayor's Report Cover Memo

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

1. Assembly Requests/Responses

2. Agreements and Contracts

- a. [KPB-4455](#) Authorization to Award a Contract for ITB22-055 Homer High School Roof Phase 2 Partial Roof Replacement
Attachments: [Auth to Award ITB22-055](#)
- b. [KPB-4456](#) Authorization to Award a Contract for ITB22-053 CPL Leachate Infrastructure Improvements Phase 1
Attachments: [Auth to Award ITB22-053](#)
- c. [KPB-4457](#) Authorization to Award a Contract for ITB22-046 Summer & Winter Road Maintenance - North Region Unit 1
Attachments: [Auth to Award ITB22-046](#)
- d. [KPB-4458](#) Authorization to Award a Contract for ITB22-056 Summer and Winter Road Maintenance - Central Region Unit 5
Attachments: [Auth to Award ITB22-056](#)

3. Other

- a. [KPB-4459](#) Transfer Remaining Road Funds to Current Projects
Attachments: [Transfer Remaining Road Funds](#)
- b. [KPB-4460](#) Tax Adjustment Request Approval
Attachments: [Tax Adjustment Request Approval](#)
- c. [KPB-4461](#) Investment Report Quarter Ended 06/30/22
Attachments: [Investment Report](#)
- d. [KPB-4462](#) Litigation Status Report - Quarter Ended 06/30/22
Attachments: [Litigation Status Report](#)
- e. [KPB-4463](#) Revenue-Expenditure Report - June 2022
Attachments: [Revenue-Expenditure Report](#)
- f. [KPB-4464](#) Budget Revisions - June 2022
Attachments: [Budget Revisions](#)

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

ASSEMBLY COMMENTS**PENDING LEGISLATION**

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

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

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

Attachments:

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

INFORMATIONAL MATERIALS AND REPORTS**ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS**

August 23, 2022 Assembly Material Site Subcommittee Meeting

Time TBD Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

August 23, 2022 Regular Assembly Meeting

6:00 PM Betty J. Glick Assembly Chambers

Borough Administration Building

Remote participation available through Zoom

Meeting ID: 884 7373 9641 Passcode: 671108

ADJOURNMENT

The next meeting of the Kenai Peninsula Borough Assembly will be held on August 23, 2022 at 6:00 P.M. in the Borough Assembly Chambers, Soldotna, Alaska.

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

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

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



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Minutes - Draft

Assembly

Brent Johnson, President

Brent Hibbert, Vice President

Jesse Bjorkman

Lane Chesley

Tyson Cox

Richard Derkevorkian

Cindy Ecklund

Bill Elam

Mike Tupper

Tuesday, July 5, 2022

6:00 PM

Betty J. Glick Assembly Chambers

Meeting ID: 884 7373 9641 Passcode: 671108

CALL TO ORDER

A Regular Meeting of the Kenai Peninsula Borough Assembly was held on July 5, 2022, in the Borough Assembly Chambers, Soldotna, Alaska. President Johnson called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

INVOCATION

[Clerk's Note: The invocation was given by David Carey.]

ROLL CALL

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

Excused: 1 - Richard Derkevorkian

Also present were:

Charlie Pierce, Borough Mayor

Aaron Rhoades, Chief of Staff

Sean Kelley, Borough Attorney

Brandi Harbaugh, Finance Director

Johni Blankenship, Borough Clerk

Michele Turner, Deputy Borough Clerk

COMMITTEE REPORTS

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

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

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

APPROVAL OF AGENDA AND CONSENT AGENDA

Hibbert moved to approve the agenda and consent agenda.

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

[KPB-4401](#) June 21, 2022 Regular Assembly Meeting Minutes

Attachments: [062122 Regular Assembly Meeting Minutes](#)

approved.

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

[2022-19-01](#) An Ordinance Appropriating \$300,000 from the General Fund to Establish Temporary Firewise Slash Disposal Sites (Mayor) (Hearing on 07/05/22)

Attachments: [Ordinance 2022-19-01](#)

[Memo](#)

[Slash Site Locations Email](#)

This Budget Ordinance was enacted.

[2022-19-03](#) An Ordinance Appropriating Road Service Area Capital Project Funds from Previously-Appropriated Projects to the FY2021 Borough Road Improvement Project to Fund the Mansfield Avenue, Ferrin Road and Old Exit Glacier, Fish Passage Projects (Mayor) (Hearing on 07/05/22)

Attachments: [Ordinance 2022-19-03](#)

[Memo](#)

[Advisory Board Recommendations](#)

This Budget Ordinance was enacted.

[2022-19-04](#) An Ordinance Approving the Purchase of the Surgery Center of Kenai and Appropriating \$9,770,000 from the Central Peninsula Hospital

Plant Replacement and Expansion Fund to Support the Purchase
(Mayor) (Hearing on 07/05/22)

Attachments: [Ordinance 2022-19-04](#)

[Amendment Memo](#)

[Memo](#)

[CPH Resolution](#)

[Public Comment](#)

*[Clerk's Note: The title in Ordinance 2022-19-04 was amended to read, "APPROVING THE PURCHASE OF THE SURGERY CENTER OF KENAI AND APPROPRIATING [\$9,120,000] **\$9,770,000** FROM THE CENTRAL PENINSULA HOSPITAL PLANT REPLACEMENT AND EXPANSION FUND TO SUPPORT THE PURCHASE"; and the eighth Whereas clause was amended to read, "CPH has been presented the opportunity to purchase the Surgery Center of Kenai which will provide the hospital with two additional outpatient operating rooms for the purchase price of [\$9,120,000] **\$9,770,000**; and"; and the tenth Whereas clause was amended to read, 'CPGH Inc. administration has negotiated an agreement with the Surgery Center of Kenai to purchase one-hundred (100) percent of the shares, **while retiring all associated debt**, at a **total price of \$9,770,000** [\$9,120,000, ALONG WITH THE ASSUMPTION OF APPROXIMATELY \$650,000 OF DEBT], all of which falls within the Fair Market Value ranges calculated by Health Care Appraisers, Inc.; and"; and the eleventh Whereas clause was amended to read, "CPH Administration has determined that there are sufficient funds available in the Central Peninsula Hospital Plant Replacement and Expansion Fund (PREF) to fund the [\$9,120,000] **\$9,770,000** purchase of the surgery center and would like to utilize PREF funds for the purchase; and"; and the thirteenth Whereas clause was amended to read, "the CPGH, Inc. board, at its May 26, 2022, meeting requested approval from the Borough Assembly to approve the purchase of the Kenai Surgery Center utilizing [\$9,120,000 IN] PREF Funds; [AND]"; and Section 2 was amended to read, "The purchase price not to exceed [\$9,120,000 **WITH] \$9,770,000, which includes paying off [THE ASSUMPTION OF]** approximately \$650,000 in debt, is hereby approved."; and Section 5 was amended to read, "Funds in the amount up to [\$9,120,000] **\$9,770,000** are appropriated from the Central Peninsula Hospital Unobligated portion of the Plant Replacement and Expansion Fund account number 490.20602 to account 490.81110.22SUR.49999 for the Kenai Surgery Center Acquisition Project."; and Section 7 was amended to read, "Upon closing on the property described in Section 1, the mayor is authorized to execute an amendment to the Central Peninsula Hospital Operating Agreement with **CPGH**, Inc., amending Exhibit A to include the Surgery Center of Kenai on the list of Medical Facilities covered under the Operating Agreement. The understanding is that this is a business and asset-only purchase, which includes operation of the facility, and that the*

*Borough will not own the real property [WHICH IS CURRENTLY OWNED BY THE CITY OF KENAI]. **The building and real property are owned by Schilling Rentals, an Alaska partnership.***

This Budget Ordinance was enacted as amended.

[2022-24](#)

An Ordinance Providing for the Submission to the Qualified Voters of the Central Emergency Service Area in the Kenai Peninsula Borough at the Regular Election on October 4, 2022, the Question of the Issuance of Not-To-Exceed Sixteen Million Five Hundred Thousand Dollars (\$16,500,000) of General Obligation Bonds of the Central Emergency Service Area to Pay the Cost of Replacing Central Emergency Services Fire Station #1 in and for the Service Area (Mayor) (Hearing on 07/05/22)

Attachments: [Ordinance 2022-24](#)

[Memo](#)

This Ordinance was enacted.

[2022-19-02](#)

An Ordinance Appropriating Funds for the Costs of Distributing Information about the Ballot Proposition Seeking Voter Approval for the Issuance of Bonds to Pay for the Central Emergency Service Area Fire Station #1 Project to Ensure Compliance with Legal Restrictions on the Use of Borough Funds and Assets Related to Ballot Propositions (Mayor) (Hearing on 07/05/22)

Attachments: [Ordinance 2022-19-02](#)

[Amendment Memo](#)

[Memo](#)

[Clerk's Note: The final Whereas clause in Ordinance 2022-19-02 was deleted, [AT ITS MEETING HELD ON _____, 2022, THE CENTRAL EMERGENCY SERVICE AREA BOARD RECOMMENDED _____ OF THIS ORDINANCE;]

This Budget Ordinance was enacted as amended.

[2022-042](#)

A Resolution Approving a Modification to the Spending Plan for the Remaining Balance of \$100,000 from the State of Alaska for the Healthy and Equitable Communities Program, a Federal Pass-thru Award Under the Centers for Disease Control and Prevention (Mayor)

Attachments: [Resolution 2022-042](#)

[Memo](#)

This Resolution was adopted.

[2022-043](#) A Resolution Approving an Increase to the Limitation on the Total Cumulative Annual Cost of Real Property Leases in Which CPGH, Inc. is the Sole Lessee (Mayor)

Attachments: [Resolution 2022-043](#)

[Memo](#)

This Resolution was adopted.

[2022-044](#) A Resolution Authorizing the Mayor to Execute an Agreement with the City of Soldotna for Services Provided by the Borough through the Soldotna Public Safety Communications Center (Mayor)

Attachments: [Resolution 2022-044](#)

[Memo](#)

[City of Soldotna Final Agreement](#)

This Resolution was adopted.

[2022-19-05](#) An Ordinance Appropriating \$20,000 from the General Fund to Cover Unexpected Election Expenses (Johnson) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-19-05](#)

[Memo](#)

[Clerk's Note: Assembly Member Elam disclosed he served as an election official and abstained from discussion and vote.]

Ordinance 2022-19-05 was introduced and set for public hearing.

Yes: 7 - Bjorkman, Cox, Hibbert, Johnson, Chesley, Ecklund, and Tupper

Excused: 1 - Derkevorkian

Abstain: 1 - Elam

[2022-19-06](#) An Ordinance Changing the Print Shop Administrative Assistant/Multidisciplinary Position from a Part-Time Position to a Full-Time Position and Appropriating Necessary Funds for the Position (Mayor) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-19-06](#)

[Memo](#)

This Budget Ordinance was introduced and set for public hearing.

[2022-29](#) An Ordinance Authorizing the Assessor to Accept One Late-Filed Senior Citizen Exemption Application Filed After March 31 and Two Late-Filed Disabled Veteran Applications and Providing an Exception to

KPB 5.12.040(B) (Mayor, Tupper) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-29](#)

[Memo](#)

This Ordinance was introduced and set for public hearing.

[2022-25](#) An Ordinance Amending KPB Chapter 21.50 Relating to Stop-Work Orders and Fine Amounts in Stipulated Agreements (Mayor) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-25](#)

[Memo](#)

This Ordinance was introduced and set for public hearing.

[2022-26](#) An Ordinance Amending KPB Chapters 7.20, 7.30 and 21.44 Relating to Marijuana Establishments and Processing Applications for Marijuana Establishments (Mayor) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-26](#)

[Memo](#)

This Ordinance was introduced and set for public hearing.

[2022-27](#) An Ordinance Amending KPB 21.25 to Add Definition of “Aggrieved Party” and Amending KPB 21.29 to Remove the Term “Impartial”, to Clarify the Well-Monitoring Timeline, to Define “Quarterly”, and to Add a “Definitions” Section (Mayor) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-27](#)

[Memo](#)

[Advisory Board Recommendations](#)

This Ordinance was introduced and set for public hearing.

[2022-30](#) An Ordinance Approving Stephenkie Alaska Sub Block 8 Residential Waterfront (R-W) Local Option Zoning District and Amending KPB 21.46.110 (Mayor) (Hearing on 08/09/22)

Attachments: [Ordinance 2022-30](#)

[Memo](#)

This Ordinance was introduced and set for public hearing.

[2022-28](#) An Ordinance Providing for Necessary Code Updates Relating to Declaration of Disaster Emergency and the Administration of the Borough’s Emergency Powers and Duties (Mayor) (Hearing on

08/09/22)

Attachments: [Ordinance 2022-28](#)
[Memo](#)
[KPB Code Revision Report](#)

This Ordinance was introduced and set for public hearing.

[KPB-4362](#) Approving the Issuance of a Letter of Non-Objection for the transfer of ownership and location of a Liquor License no. 976 filed by Three Bears Alaska DBA Bears Den Liquor

Attachments: [Recommendation Memo to Assembly](#)
[Transfer Ownership and Location Application 976](#)
[Map Layout3](#)
[Map Layout2](#)
[Map Layout](#)

Approved.

[KPB-4383](#) Petition to Vacate Section Line Easements Associated with Tracts A, B, & C of Quartz Creek Subdivision Plat No. SW 94-11; KPB File 2022-060V (Mayor)

[Clerk's Note: At its regularly scheduled meeting of June 13, 2022 the Kenai Peninsula Borough Planning Commission approved the proposed vacation by unanimous vote.]

Attachments: [Petition to Vacate Section Line Easements, Quartz Creek Sub](#)

Approved

[KPB-4399](#) Petition to Vacate a Portion of Hanks Mill Road (formerly Old Sterling Highway), Happy Valley KPB 2022-077V (Mayor) (Referred to Lands Committee)

[Clerk's Note: At its regularly scheduled meeting of June 27, 2022 the Kenai Peninsula Borough Planning Commission approved the proposed vacation by unanimous vote.]

Attachments: [Hank's Mill Right of Way Vacation Packet](#)
[Planning Commission Memo](#)
[Planning Commission Minutes 06/27/22](#)
[Public Comment](#)

Approved

[KPB-4384](#) Confirming Appointments to the KPB Planning Commission:

Diane Fikes, City of Kenai Seat, Term Expires July 31, 2025

Franco Venuti, City of Homer Seat, Term Expires July 31, 2025

Attachments: [Planning Commission Appointments](#)

Approved.

[KPB-4385](#) Confirming an Appointment to the Nikiski Senior Service Board:

Hala Allam, Board Seat D, Term Expires October 2023

Attachments: [Nikiski Senior Service Area Board Appointment](#)

Approved.

[2022-23](#) An Ordinance Amending KPB 5.18.200 and KPB 5.18.430 Relating to Borough Sales Tax to Provide an Exemption for Residential Rentals in Excess of 30 Consecutive Days to Increase the Maximum Amount of a Sale Subject to Borough Sales Tax to \$1,000, Subject to Voter Approval (Johnson, Hibbert, Chesley) (Hearing on 07/05/22)

Attachments: [Ordinance 2022-23](#)

[Memo](#)

[Fiscal Note](#)

This ordinance was withdrawn by the sponsor.

Approval of the Agenda and Consent Agenda

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

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

Excused: 1 - Derkevorkian

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

President Johnson called for public comment with none being offered.

MAYOR'S REPORT

1. Assembly Requests/Responses

2. Agreements and Contracts

a. [KPB-4394](#) Authorization to Award a Contract for FRP22-017 South Bend RIAD

Engineering Design to McLane Consulting, Inc., Soldotna, AK

Attachments: [Auth to Award a Contract for RFP22-017 South Bend RIAD Engineering Design](#)

- b. [KPB-4395](#) Authorization to Award a Contract for RFP22-022 Ready, Set, Go! Preparedness Campaign to FEA (Facility Engineering Associates, PC) Lakewood, Colorado

Attachments: [Auth to Award a Contract for RFP22-022 Ready, Set, Go! Preparedness Campaign](#)

- c. [KPB-4396](#) Authorization to Award a Contract for RFP22-024 Hazardous Waste Collection Program to US Ecology Alaska, LLC, Kenai, AK

Attachments: [Auth to Award a Contract for RFP22-024 Hazardous Waste Collection Program](#)

- d. [KPB-4397](#) Authorization to Award a Contract for RFP22-023 Volunteer Firefighter Campaign to Agnew::Beck Consulting, Anchorage, AK

Attachments: [Auth to Award a Contract for RFP22-023 Volunteer Firefighter Campaign](#)

3. Other

- a. [KPB-4398](#) Tax Adjustment Request Approval

Attachments: [Tax Adjustment Request Approval](#)

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

President Johnson called for public comment with none being offered.

ASSEMBLY COMMENTS

Vice President Hibbert stated we had a great local hospital and spoke in support of Ordinance 2022-19-04. He wished everyone a good night.

Assembly Member Ecklund stated the assembly was moving in the right direction. She spoke in support of all of the local hospitals. She reminded everyone of the fire dangers on the peninsula.

Assembly Member Chesley reminded everyone to pray for the salmon harvesters safe travels and good harvests.

Assembly Member Bjorkman thanked the first responders from Central Emergency Services for attending the meeting and supporting Ordinance 2022-24. He stated it was important to talk about the infrastructure in our communities. Mr. Bjorkman echoed Ms. Ecklund's comments and reminded everyone of the fire dangers on the

peninsula. He reminded everyone of boater's safety and ATV riders to wear helmets. Mr. Bjorkman extended his condolences to the family of the young girl in Ninilchik who lost her life in an ATV accident. He wished everyone a good evening.

Assembly Member Tupper congratulated the City of Seldovia on their 60-years as a first class city. He echoed everyone's previous statements regarding the Central Emergency Services bond package. Mr. Tupper also spoke in support of the Nikiski Fire Department's efforts regarding Resolution 2022-042.

Assembly Member Cox hoped everyone had a great fourth of July holiday weekend. He shared that he attended several local events. He encouraged everyone to celebrate their independence everyday and not just on Independence Day. Mr. Cox reminded everyone of the Wednesday market and music in the park at Soldotna City Park.

Assembly Member Elam thanked Ms. Ecklund for chairing the Lands Committee. He thanked everyone for attending the meeting. Mr. Elam spoke in support of Ordinance 2022-24.

President Johnson provided a brief history of the hospitals on the peninsula. Mr. Johnson stated Ordinance 2022-23 was withdrawn from the agenda and voiced his concerns regarding upcoming funding issues for schools. He also stated his concerns regarding teachers. Mr. Johnson stated his support of the bond measure for repairing school and borough buildings.

INFORMATIONAL MATERIALS AND REPORTS

None.

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

August 9, 2022 Regular Assembly Meeting
6:00 PM Betty J. Glick Assembly Chambers
Borough Administration Building
Remote participation available through Zoom
Meeting ID: 884 7373 9641 Passcode: 671108

ADJOURNMENT

With no further business to come before the assembly, President Johnson adjourned the meeting at 6:53 p.m.

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

Johni Blankenship, MMC, Borough Clerk

Approved by the Assembly: _____

Introduced by:	Mayor
Date:	05/03/22
Hearing:	05/17/22
Action:	Introduced and Set for Public Hearing on 08/09/22
Vote:	9 Yes, 0 No, 0 Absent
Date:	08/09/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-19-50**

**AN ORDINANCE ACCEPTING AND APPROPRIATING THE OPIOID SETTLEMENT
FUNDS AND ESTABLISHING THE OPIOID SETTLEMENT FUND GRANT
PROGRAM**

- WHEREAS,** the State of Alaska (the “state”) has agreed to a settlement agreement with three major distributors (Cardinal, McKesson and AmerisourceBergen) and one marketer and manufacturer (Johnson & Johnson) of opioids as part of a national settlement agreement; and
- WHEREAS,** Resolution 2021-074 authorized the Kenai Peninsula Borough (Borough) to join the settlement as one of the nine political subdivisions of the state; and
- WHEREAS,** approximately \$58 million in settlement funds will be distributed to the State of Alaska; and
- WHEREAS,** the payments will be distributed annually over the next 18 years; and
- WHEREAS,** under the default terms of the national settlement agreements, 15% of the settlement funds, or approximately \$8.7 million, will be distributed over 18 years to the nine political subdivisions that signed-on to the agreement, this fund is referred to as the “Subdivision Fund”; and
- WHEREAS,** per the settlement, the allocation of the Subdivision Fund distributions will be based on population with the Borough set to receive 9.4922% of the ~\$8.7 million over 18 years (the distribution based on population is as follows: Anchorage will receive 47.6578%, Mat-Su Borough - 15.4726%, Fairbanks North Star Borough – 10.9627%, Juneau – 5.2324%, Fairbanks 5.1226%, Ketchikan – 2.2406%, Kodiak – 2.1839%, Wasilla – 1.6351%); and
- WHEREAS,** based on currently available information it is anticipated that the Borough will receive, at a minimum, approximately \$45,916 a year annually for the next 18 years; and

WHEREAS, in addition, 15% of the settlement funds will go directly to the state (“State Fund”) and 70% of the settlement funds will be distributed to the Abatement Accounts Fund, which will be under the control and direction of the state; and

WHEREAS, Borough staff initiated meetings with various community stakeholders to see public input in order to create a plan to distribute the funds; and

WHEREAS, the Borough has an existing internal process for managing and distributing grant funds and the funds can be distributed throughout the Kenai Peninsula Borough; and

WHEREAS, this ordinance appropriates the settlement funds distributed by the state to the Borough for opioid remediation purposes as defined, outlined, and allowed pursuant to the Final Distributor Settlement Agreement; and

WHEREAS, the Assembly finds that it is in the best interests of the Kenai Peninsula Borough to start an Opioid Settlement Fund Grant Program to distribute the funds in the manner below:

1. Given the limited number of funds, the total number of annual grants issued under this grants program will be limited to five grants.
2. All opioid settlement funds will be distributed through this program.
3. The grant program will be managed and directed by the Community and Fiscal Projects Manager.
4. Eligible Entities:
 - a. Nonprofit Entities.
 - b. Medical providers and mental health providers with active licenses to practice under their respective Alaskan Boards with no actions against their licenses in the prior three years, and who are not in arrears in any amounts owed to the Kenai Peninsula Borough.
 - c. Businesses who employ medical providers or mental health providers with active licenses to practice under their respective Alaskan Boards with no actions against their licenses in the prior three years, and who are not in arrears in any amounts owed to the Kenai Peninsula Borough.
 - d. Native Tribes and Corporations that have not received opioid settlement funds previously, and have by resolution waived immunity from suit for claims arising out of activities of the council related to the grant

- e. For any entity to be considered eligible under this category all entities must be current on all legal filings at the Federal, State, and Local levels and may not be in arrears in any balances due to the Kenai Peninsula Borough.
- 5. Services by the entities must be provided to the Kenai Peninsula Borough residents.
- 6. Additional funds received mid-year can be applied to existing grantees as appropriated by the Assembly, and as allowed under the applicable settlement agreement.
 - a. The Assembly may elect to hold mid-year receipts until a subsequent year for increased grant distributions, should funding restrictions permit.
- 7. Notification of Grants will be placed on the Grants webpage, under the Mayor's Office homepage, on the Kenai Peninsula Borough's website.

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

SECTION 1. That \$_____ in opioid settlement funds are accepted and appropriated to account 271.94910.OPD22.49999, for use for the Opioid Settlement Fund Grant Program.

SECTION 2. The Opioid Settlement Fund Grant Program is hereby established. The program will be managed by the Community and Fiscal Project Manager in a manner consistent with this ordinance.

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

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

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

05/03/22 vote on motion to introduce and set for public hearing on 08/09/22:

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

No: None

Absent: None

Yes:

No:

Absent:

Kenai Peninsula Borough

Community & Fiscal Projects

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *AR for CP*
Brandi Harbaugh, Finance Director *BA*

FROM: Rachel Chaffee, Community & Fiscal Projects Manager *RC*
Sean Kelley, Borough Attorney *SK*

DATE: April 21, 2022

RE: Ordinance 2021-19- 50: Accepting and Appropriating the
Opioid Settlement Funds and Establishing the Opioid Settlement
Fund Grant Program (Mayor)

The State of Alaska (the “state”) has agreed to a settlement agreement with three major distributors (Cardinal, McKesson and AmerisourceBergen) and one marketer and manufacturer (Johnson & Johnson) of opioids as part of a national settlement agreement. Resolution 2021-074 authorized the Kenai Peninsula Borough (Borough) to join the settlement as one of the nine political subdivisions of the state. Approximately \$58 million in settlement funds will be distributed to the State of Alaska with distributions occurring annually over the next 18 years.

Under the default terms of the national settlement agreements, 15% of the settlement funds, or approximately \$8.7 million, will be distributed over 18 years to the nine political subdivisions that signed-on to the agreement, this fund is referred to as the “Subdivision Fund”. Per the settlement, the allocation of the Subdivision Fund distributions will be based on population with the Borough set to receive 9.4922% of the ~\$8.7 million over 18 years (the remaining distribution based on population is as follows: Anchorage will receive 47.6578%, Mat-Su Borough - 15.4726%, Fairbanks North Star Borough – 10.9627%, Juneau – 5.2324%, Fairbanks 5.1226%, Ketchikan – 2.2406%, Kodiak – 2.1839%, Wasilla – 1.6351%).

Therefore, based on available information it is anticipated that the Borough will receive, at a minimum, approximately \$45,916 a year annually for the next 18 years

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Re: O2021-19- 50

In addition, 15% of the settlement funds will go directly to the state ("State Fund") and 70% of the settlement funds will be distributed to the Abatement Accounts Fund, which will be under the control and direction of the state.

This ordinance appropriates the settlement funds distributed by the state to the Borough pursuant to the terms of the applicable settlement agreements for opioid remediation purposes as defined, outlined, and allowed pursuant to the Final Distributor Settlement Agreement and establishes an Opioid Settlement Fund Grant Program to evaluate grant applications and distribute funds.¹

Allowed Uses

Pursuant to the Final Distributor Settlement Agreement dated March 25, 2022 (Agreement), use of fund is restricted to Opioid Remediation. The definition that the Agreement offers for Opioid Remediation is provided below and the non-exhaustive list of expenditures or uses known as Exhibit E to the Agreement is attached to this memo. Also included in the "Exhibit E and Exhibit G(excerpt) of Settlement Agreement" attachment is the allocation percentages for the "Qualified Subdivisions" within Alaska.

Opioid Remediation definition:

" SS. "Opioid Remediation." Care, treatment, and other programs and expenditures (including reimbursement for past such programs or expenditures¹ except where this Agreement restricts the use of funds solely to future Opioid Remediation) designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of, including on those injured as a result of, the opioid epidemic. Exhibit E provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation. Qualifying expenditures may include reasonable related administrative expenses." (See Page 6 of Final Distributor Settlement Agreement dated March 25, 2022).

Grant Program

After gathering information to determine community needs, a common theme that was heard was that there were gaps in federal and state funding and that

¹ The exact figure will be inserted once the first payment is received from the State of Alaska.

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this funding could be used to bridge gaps and assist in ways to support needs. The needs were of a wide variety ranging from support personnel to incentives to complete treatments.

These funds are for designated use and are limited. Allowing the funds to be utilized through a competitive grant process that issues grants to no more than 5 agencies will allow for use of funds to multiple agencies or providers throughout the Borough, and will also allow for a wide variety of ability to utilize the funds to meet a greater need.

The Kenai Peninsula Borough has existing procedures in place to manage and issue grants to agencies with these funds. This ordinance will establish the grant program under the following criteria:

1. The Borough's Opioid Settlement Fund Grant Program will be open to no more than 5 entities or providers given the limited funds that are expected to be received and based on information received from community stakeholders regarding the best use of the funds.
 - a. All opioid settlement funds are intended to be managed by and through this grant program.
 - b. Increased funds received through this program will increase the grant funding available and will therefore allow for greater ability to meet remediation and prevention needs.
2. This grant program will expire when the funding is no longer in place.
3. Funding is subject to annual appropriation by the Borough Assembly.
4. Funding is subject to the parameters and terms of the settlement agreement related to these funds. In addition, the grant funding will comply with applicable Borough code and controlling law.
5. Eligible entities are:
 - a. Nonprofit entities who are current on all legal filings with the State of Alaska, United States, and Kenai Peninsula Borough and who are not in arrears in any amounts owed to the Kenai Peninsula Borough
 - b. Medical providers and mental health providers with active licenses to practice under their respective Alaskan Boards with no actions against their licenses in the prior three years, and who are not in

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- arrears in any amounts owed to the Kenai Peninsula Borough.
- c. Businesses who employ medical providers or mental health providers with active licenses to practice under their respective Alaskan Boards with no actions against their licenses in the prior three years, and who are not in arrears in any amounts owed to the Kenai Peninsula Borough.
 - d. Native Tribes and Corporations that have not received opioid settlement funds previously, and have by resolution waived immunity from suit for claims arising out of activities of the council related to the grant.
6. Services by the entities must be provided to Kenai Peninsula Borough residents.
 7. Additional funds, or funds received mid-year can be applied to existing grantees as appropriated by the assembly, and as allowed under the applicable settlement agreement.
 - a. The Assembly may elect to hold mid-year receipts until a subsequent year for increased grant should funding restrictions permit.
 8. Notification of grants will be placed on the Grants webpage on the Kenai Peninsula Borough's Website, and initial notice will be emailed to known partners, providers and stakeholders managing the opioid crisis.

Your consideration of this ordinance is appreciated.


FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Account: <u>271.94910.OPD22.49999</u>	
Amount: \$ _____	
Comment: Contingent upon actual amount received and acceptance of funds by Assembly.	
By: 	Date: <u>4/20/2022</u>

EXHIBIT E**List of Opioid Remediation Uses****Schedule A
Core Strategies**

States and Qualifying Block Grantees shall choose from among the abatement strategies listed in Schedule B. However, priority shall be given to the following core abatement strategies (“*Core Strategies*”).¹⁴

A. NALOXONE OR OTHER FDA-APPROVED DRUG TO REVERSE OPIOID OVERDOSES

1. Expand training for first responders, schools, community support groups and families; and
2. Increase distribution to individuals who are uninsured or whose insurance does not cover the needed service.

B. MEDICATION-ASSISTED TREATMENT (“MAT”) DISTRIBUTION AND OTHER OPIOID-RELATED TREATMENT

1. Increase distribution of MAT to individuals who are uninsured or whose insurance does not cover the needed service;
2. Provide education to school-based and youth-focused programs that discourage or prevent misuse;
3. Provide MAT education and awareness training to healthcare providers, EMTs, law enforcement, and other first responders; and
4. Provide treatment and recovery support services such as residential and inpatient treatment, intensive outpatient treatment, outpatient therapy or counseling, and recovery housing that allow or integrate medication and with other support services.

¹⁴ As used in this Schedule A, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.

C. **PREGNANT & POSTPARTUM WOMEN**

1. Expand Screening, Brief Intervention, and Referral to Treatment (“*SBIRT*”) services to non-Medicaid eligible or uninsured pregnant women;
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for women with co-occurring Opioid Use Disorder (“*OUD*”) and other Substance Use Disorder (“*SUD*”) / Mental Health disorders for uninsured individuals for up to 12 months postpartum; and
3. Provide comprehensive wrap-around services to individuals with OUD, including housing, transportation, job placement/training, and childcare.

D. **EXPANDING TREATMENT FOR NEONATAL ABSTINENCE SYNDROME (“*NAS*”)**

1. Expand comprehensive evidence-based and recovery support for NAS babies;
2. Expand services for better continuum of care with infant-need dyad; and
3. Expand long-term treatment and services for medical monitoring of NAS babies and their families.

E. **EXPANSION OF WARM HAND-OFF PROGRAMS AND RECOVERY SERVICES**

1. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments;
2. Expand warm hand-off services to transition to recovery services;
3. Broaden scope of recovery services to include co-occurring SUD or mental health conditions;
4. Provide comprehensive wrap-around services to individuals in recovery, including housing, transportation, job placement/training, and childcare; and
5. Hire additional social workers or other behavioral health workers to facilitate expansions above.

F. **TREATMENT FOR INCARCERATED POPULATION**

1. Provide evidence-based treatment and recovery support, including MAT for persons with OUD and co-occurring SUD/MH disorders within and transitioning out of the criminal justice system; and
2. Increase funding for jails to provide treatment to inmates with OUD.

G. **PREVENTION PROGRAMS**

1. Funding for media campaigns to prevent opioid use (similar to the FDA's "Real Cost" campaign to prevent youth from misusing tobacco);
2. Funding for evidence-based prevention programs in schools;
3. Funding for medical provider education and outreach regarding best prescribing practices for opioids consistent with the 2016 CDC guidelines, including providers at hospitals (academic detailing);
4. Funding for community drug disposal programs; and
5. Funding and training for first responders to participate in pre-arrest diversion programs, post-overdose response teams, or similar strategies that connect at-risk individuals to behavioral health services and supports.

H. **EXPANDING SYRINGE SERVICE PROGRAMS**

1. Provide comprehensive syringe services programs with more wrap-around services, including linkage to OUD treatment, access to sterile syringes and linkage to care and treatment of infectious diseases.

I. **EVIDENCE-BASED DATA COLLECTION AND RESEARCH ANALYZING THE EFFECTIVENESS OF THE ABATEMENT STRATEGIES WITHIN THE STATE**

Schedule B Approved Uses

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

PART ONE: TREATMENT

A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder (“*OUD*”) and any co-occurring Substance Use Disorder or Mental Health (“*SUD/MH*”) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:¹⁵

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, including all forms of Medication-Assisted Treatment (“*MAT*”) approved by the U.S. Food and Drug Administration.
2. Support and reimburse evidence-based services that adhere to the American Society of Addiction Medicine (“*ASAM*”) continuum of care for OUD and any co-occurring SUD/MH conditions.
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, including *MAT*, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. Improve oversight of Opioid Treatment Programs (“*OTPs*”) to assure evidence-based or evidence-informed practices such as adequate methadone dosing and low threshold approaches to treatment.
5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions and for persons who have experienced an opioid overdose.
6. Provide treatment of trauma for individuals with OUD (*e.g.*, violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (*e.g.*, surviving family members after an overdose or overdose fatality), and training of health care personnel to identify and address such trauma.
7. Support evidence-based withdrawal management services for people with OUD and any co-occurring mental health conditions.

¹⁵ As used in this Schedule B, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.

8. Provide training on MAT for health care providers, first responders, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions.
10. Offer fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Offer scholarships and supports for behavioral health practitioners or workers involved in addressing OUD and any co-occurring SUD/MH or mental health conditions, including, but not limited to, training, scholarships, fellowships, loan repayment programs, or other incentives for providers to work in rural or underserved areas.
12. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (“*DATA 2000*”) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.
13. Disseminate of web-based training curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service–Opioids web-based training curriculum and motivational interviewing.
14. Develop and disseminate new curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service for Medication–Assisted Treatment.

B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY

Support people in recovery from OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the programs or strategies that:

1. Provide comprehensive wrap-around services to individuals with OUD and any co-occurring SUD/MH conditions, including housing, transportation, education, job placement, job training, or childcare.
2. Provide the full continuum of care of treatment and recovery services for OUD and any co-occurring SUD/MH conditions, including supportive housing, peer support services and counseling, community navigators, case management, and connections to community-based services.
3. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions.

4. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, including supportive housing, recovery housing, housing assistance programs, training for housing providers, or recovery housing programs that allow or integrate FDA-approved medication with other support services.
5. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions.
6. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions.
7. Provide or support transportation to treatment or recovery programs or services for persons with OUD and any co-occurring SUD/MH conditions.
8. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions.
9. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
10. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to support the person with OUD in the family.
11. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to individuals with or in recovery from OUD, including reducing stigma.
12. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.
13. Create or support culturally appropriate services and programs for persons with OUD and any co-occurring SUD/MH conditions, including new Americans.
14. Create and/or support recovery high schools.
15. Hire or train behavioral health workers to provide or expand any of the services or supports listed above.

C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED
(CONNECTIONS TO CARE)

Provide connections to care for people who have—or are at risk of developing—OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Fund SBIRT programs to reduce the transition from use to disorders, including SBIRT services to pregnant women who are uninsured or not eligible for Medicaid.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.
4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments.
6. Provide training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
7. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, or persons who have experienced an opioid overdose, into clinically appropriate follow-up care through a bridge clinic or similar approach.
8. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose.
9. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
10. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions or to persons who have experienced an opioid overdose.
11. Expand warm hand-off services to transition to recovery services.
12. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
13. Develop and support best practices on addressing OUD in the workplace.

14. Support assistance programs for health care providers with OUD.
15. Engage non-profits and the faith community as a system to support outreach for treatment.
16. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions.

D. ADDRESS THE NEEDS OF CRIMINAL JUSTICE-INVOLVED PERSONS

Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support pre-arrest or pre-arraignment diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, including established strategies such as:
 1. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (“*PAARP*”);
 2. Active outreach strategies such as the Drug Abuse Response Team (“*DART*”) model;
 3. “Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
 4. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (“*LEAD*”) model;
 5. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative; or
 6. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions to evidence-informed treatment, including MAT, and related services.
3. Support treatment and recovery courts that provide evidence-based options for persons with OUD and any co-occurring SUD/MH conditions.

4. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are incarcerated in jail or prison.
5. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are leaving jail or prison or have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
6. Support critical time interventions (“CTI”), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.
7. Provide training on best practices for addressing the needs of criminal justice-involved persons with OUD and any co-occurring SUD/MH conditions to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, harm reduction, case management, or other services offered in connection with any of the strategies described in this section.

E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, and the needs of their families, including babies with neonatal abstinence syndrome (“NAS”), through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support evidence-based or evidence-informed treatment, including MAT, recovery services and supports, and prevention services for pregnant women—or women who could become pregnant—who have OUD and any co-occurring SUD/MH conditions, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for uninsured women with OUD and any co-occurring SUD/MH conditions for up to 12 months postpartum.
3. Provide training for obstetricians or other healthcare personnel who work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions.
4. Expand comprehensive evidence-based treatment and recovery support for NAS babies; expand services for better continuum of care with infant-need dyad; and expand long-term treatment and services for medical monitoring of NAS babies and their families.

5. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with NAS get referred to appropriate services and receive a plan of safe care.
6. Provide child and family supports for parenting women with OUD and any co-occurring SUD/MH conditions.
7. Provide enhanced family support and child care services for parents with OUD and any co-occurring SUD/MH conditions.
8. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.
9. Offer home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, including, but not limited to, parent skills training.
10. Provide support for Children's Services—Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION

F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding medical provider education and outreach regarding best prescribing practices for opioids consistent with the Guidelines for Prescribing Opioids for Chronic Pain from the U.S. Centers for Disease Control and Prevention, including providers at hospitals (academic detailing).
2. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Providing Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Supporting enhancements or improvements to Prescription Drug Monitoring Programs ("PDMPs"), including, but not limited to, improvements that:

1. Increase the number of prescribers using PDMPs;
2. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs, by improving the interface that prescribers use to access PDMP data, or both; or
3. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD in a manner that complies with all relevant privacy and security laws and rules.
6. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database in a manner that complies with all relevant privacy and security laws and rules.
7. Increasing electronic prescribing to prevent diversion or forgery.
8. Educating dispensers on appropriate opioid dispensing.

G. PREVENT MISUSE OF OPIOIDS

Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding media campaigns to prevent opioid misuse.
2. Corrective advertising or affirmative public education campaigns based on evidence.
3. Public education relating to drug disposal.
4. Drug take-back disposal or destruction programs.
5. Funding community anti-drug coalitions that engage in drug prevention efforts.
6. Supporting community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction—including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (“SAMHSA”).
7. Engaging non-profits and faith-based communities as systems to support prevention.

8. Funding evidence-based prevention programs in schools or evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
9. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
10. Create or support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions.
11. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
12. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses, behavioral health workers or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or another drug misuse.

H. PREVENT OVERDOSE DEATHS AND OTHER HARMS (HARM REDUCTION)

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Increased availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, individuals with OUD and their friends and family members, schools, community navigators and outreach workers, persons being released from jail or prison, or other members of the general public.
2. Public health entities providing free naloxone to anyone in the community.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, community support groups, and other members of the general public.
4. Enabling school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expanding, improving, or developing data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.

7. Public education relating to immunity and Good Samaritan laws.
8. Educating first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Syringe service programs and other evidence-informed programs to reduce harms associated with intravenous drug use, including supplies, staffing, space, peer support services, referrals to treatment, fentanyl checking, connections to care, and the full range of harm reduction and treatment services provided by these programs.
10. Expanding access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
11. Supporting mobile units that offer or provide referrals to harm reduction services, treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions.
12. Providing training in harm reduction strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions.
13. Supporting screening for fentanyl in routine clinical toxicology testing.

PART THREE: OTHER STRATEGIES

I. FIRST RESPONDERS

In addition to items in section C, D and H relating to first responders, support the following:

1. Education of law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.
2. Provision of wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.

J. LEADERSHIP, PLANNING AND COORDINATION

Support efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Statewide, regional, local or community regional planning to identify root causes of addiction and overdose, goals for reducing harms related to the opioid epidemic, and areas and populations with the greatest needs for treatment

intervention services, and to support training and technical assistance and other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

2. A dashboard to (a) share reports, recommendations, or plans to spend opioid settlement funds; (b) to show how opioid settlement funds have been spent; (c) to report program or strategy outcomes; or (d) to track, share or visualize key opioid- or health-related indicators and supports as identified through collaborative statewide, regional, local or community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
4. Provide resources to staff government oversight and management of opioid abatement programs.

K. TRAINING

In addition to the training referred to throughout this document, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, those that:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Support infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy list (*e.g.*, health care, primary care, pharmacies, PDMPs, etc.).

L. RESEARCH

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, data collection and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.

4. Research on novel harm reduction and prevention efforts such as the provision of fentanyl test strips.
5. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
6. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (*e.g.*, Hawaii HOPE and Dakota 24/7).
7. Epidemiological surveillance of OUD-related behaviors in critical populations, including individuals entering the criminal justice system, including, but not limited to approaches modeled on the Arrestee Drug Abuse Monitoring (“ADAM”) system.
8. Qualitative and quantitative research regarding public health risks and harm reduction opportunities within illicit drug markets, including surveys of market participants who sell or distribute illicit opioids.
9. Geospatial analysis of access barriers to MAT and their association with treatment engagement and treatment outcomes.

Subdivisions with Consolidated Allocations - Qualified Subdivisions Only

State ID	Qualifying Subdivision	Consolidated State Allocation
AK1	Anchorage Municipality, Alaska	47.6578000000%
AK2	Fairbanks City, Alaska	5.1226000000%
AK3	Fairbanks North Star Borough, Alaska	10.9627000000%
AK4	Juneau City and Borough, Alaska	5.2324000000%
AK5	Kenai Peninsula Borough, Alaska	9.4922000000%
AK6	Ketchikan Gateway Borough, Alaska	2.2406000000%
AK7	Kodiak Island Borough, Alaska	2.1839000000%
AK8	Matanuska-Susitna Borough, Alaska	15.4726000000%
AK9	Wasilla City, Alaska	1.6351000000%

Introduced by: Johnson
Date: 07/05/22
Hearing: 08/09/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-05**

**AN ORDINANCE APPROPRIATING \$20,000 FROM THE GENERAL FUND TO
COVER UNEXPECTED ELECTION EXPENSES**

- WHEREAS,** KPB 4.10.130(B) states in part, “The election supervisor shall set the hourly compensation to be paid for time spent by election officials at a rate comparable to that paid by the state for state elections,” and
- WHEREAS,** effective July 1, 2022, the State of Alaska has increased wages for election officials from \$10.00 to \$20.50 for election board chairs, from \$9.50 to \$20.00 for election board judges and from \$12.00 to \$20.50 for absentee voting officials; and
- WHEREAS,** the FY23 budget was approved with election officials’ wages reflected at the lesser rate; and
- WHEREAS,** an additional \$16,000 is needed to cover the unexpected payroll expense; and
- WHEREAS,** the State of Alaska Division of Elections (DOE) will be conducting absentee voting at the Soldotna Prep building for all of 2022’s elections; and
- WHEREAS,** the DOE has designated Soldotna Prep as the day of election polling location for the Mackey Lake and Funny River No. 2 precincts; and
- WHEREAS,** in order to eliminate voter confusion, the Clerk’s Office has chosen to conduct absentee voting for the October 4, 2022 election at Soldotna Prep as well as day of election polling sites for Mackey Lake and Funny River No. 2 precincts; and
- WHEREAS,** due to the fact that the Soldotna Prep building has no full-time custodian, the DOE has contracted with a local provider for custodial services; and
- WHEREAS,** additional funds of approximately \$4,000 are required for the Clerk’s Office to contract with the same provider for custodial services from September 16th through October 5, 2022 during the Borough’s local election season; and
- WHEREAS,** this expense was not anticipated at the time the FY23 budget was approved;

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

SECTION 1. That the amount of \$14,000 is appropriated from the General Fund fund balance to the Assembly Election Administration budget account number 100.11130.40120, Temporary Wages.

SECTION 2. That the amount of \$2,000 is appropriated from the General Fund fund balance to the Assembly Election Administration budget account number 100.11130.40210, FICA.

SECTION 3. That the amount of \$4,000 is appropriated from the General Fund fund balance to the Assembly Election Administration budget account number 100.11130.43011, Contract Services for custodial services.

SECTION 4. This ordinance shall be effective immediately upon enactment.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Office of the Borough Clerk

MEMORANDUM

TO: Assembly Members

THRU: Brent Johnson, Assembly President *BJ*

FROM: Johni Blankenship, MMC, Borough Clerk *JB*
Brandi Harbaugh, Finance Director *BH*

DATE: July 5, 2022

RE: Ordinance 2022-19-05: An Ordinance Appropriating \$20,000 from the General Fund to Cover Unexpected Election Expenses

The State of Alaska Division of Elections (DOE) increased the wages for election officials effective July 1, 2022. KPB 4.10.130(B) requires that the borough compensate election officials at a rate comparable to that paid by the state for state elections. Additional funds are required to cover those expenses for the October 4, 2022 regular election, as they were not considering when preparing the FY23 budget.

In addition, in order to eliminate voter confusion, the Clerk's Office has chosen to conduct absentee voting for the October 4, 2022 regular election at the Soldotna Prep building as that is the location that the DOE will be conducting absentee voting. Due to the fact that the Soldotna Prep building has no full-time custodian, the DOE has contracted with a local provider for custodial services. Additional funds of approximately \$4,000 are required for the Clerk's Office to contract with the same provider for custodial services from September 16th through October 5, 2022 during the Borough's local election season.

Your consideration is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Account:	<u>100.27910</u>
Amount:	<u>\$20,000</u>
By: <i>CS</i>	Date: <u>6/17/2022</u>

Introduced by:	Mayor
Date:	07/05/22
Hearing:	08/09/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-06**

**AN ORDINANCE CHANGING THE PRINT SHOP ADMINISTRATIVE ASSISTANT
POSITION FROM A PART-TIME POSITION TO A FULL-TIME POSITION AND
APPROPRIATING NECESSARY FUNDS FOR THE POSITION**

WHEREAS, Ordinance 2019-19-16 approved the original half-time administrative assistant position to provide administrative functions for the print shop and cross department coverage; and

WHEREAS, in the Kenai Peninsula Borough (Borough) Fiscal Year 2023 (FY2023) budget, there is a half-time Administrative Assistant/Multidisciplinary position in the Human Resources – Print Shop; and

WHEREAS, this ordinance increases the half-time position to a full-time position and appropriates \$69,000 to support the change in staffing; and

WHEREAS, many Borough departments and the Mayor’s Office are regularly in need of an Administrative Assistant to fill in for absences, vacation coverage, high volume work periods and periodic projects that are above and beyond current staffing level; and

WHEREAS, this position worked 2074 hours from January 1, 2021 to May 20, 2022; and

WHEREAS, it is anticipated that based on historical and anticipated need, the position will be charged out to other department budgets about 67% of the time, creating an estimated net impact of \$22,700 to the General Fund;

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

SECTION 1. That the Print Shop Administrative Assistant is changed from a part-time to a full-time position and funds in the amount of \$69,000 are appropriated from the General Fund balance to accounts:

100.11233.00000.40110	Regular Wages	\$ 26,051
100.11233.00000.40210	FICA	2,288
100.11233.00000.40221	PERS	5,960
100.11233.00000.40321	Health Insurance	31,800
100.11233.00000.40322	Life Insurance	85
100.11233.00000.40410	Leave	2,816
100.11233.00000.60000	Interdepartmental Charges	(46,230)
		<hr/>
		\$ 22,700

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

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Mayor's Office

MEMORANDUM

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

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

FROM: Aaron Rhoades, Chief of Staff *CP&AR*

DATE: June 23, 2022

RE: Ordinance 2022-19-06 Changing the Print Shop Administrative Assistant Position from a Part-Time Position to a Full-Time Position and Appropriating Necessary Funds for the Position (Mayor)

This ordinance appropriates funds to support changing the half-time Print Shop Administrative Assistant/Multidisciplinary position to a full-time position. The Administration is requesting that the position be reclassified from a half-time position to the full-time position to support borough-wide need for temporary administrative support. In November 2019, Ordinance 2019-19-16 approved the original half-time administrative assistant position to provide administrative functions for the Print Shop and cross department coverage. Many Borough Departments and the Mayor's Office are regularly in need of an Administrative Assistant/Multidisciplinary position to fill in for absences, vacation coverage, high volume work periods and periodic projects that are above and beyond current staffing level.

Funds of \$69,000 are appropriated with an offset amount of \$46,230 for interdepartmental charges from the General Fund as part of this ordinance to support the full-time position. It is anticipated that based on historical and anticipated need, the position will be charged out to other department budgets about 67% of the time creating a net impact to the General Fund of \$22,700.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Account: 100-27910	Amount: \$22,700.00
By: <i>AR</i>	Date: 6/23/2022

Introduced by: Mayor, Tupper
Date: 07/05/22
Hearing: 08/09/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-29**

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

WHEREAS, KPB 5.12.105(E) provides that Senior Citizen/Disabled Veteran Exemption Applications must be filed by March 31 of the year for which the exemption is sought; and

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

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

WHEREAS, the applicants have submitted affidavits stating extraordinary circumstances have prevented them from timely filing the 2022 Senior Citizen Exemption Applications and the 2021 Disabled Veteran Exemption Applications; and

WHEREAS, in accordance with KPB 5.12.040(B), the assessor shall not make changes to the assessment roll after June 1 except for the reasons provided therein, which do not include adjustments for the late-filed Senior and Disabled Veteran Exemption Applications; and

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

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

SECTION 1. That the assembly hereby waives the March 31 deadline for filing of the one 2022 Senior Citizen Application and two 2021 Disabled Veteran Exemption Applications submitted based upon a finding that the applicants were unable to comply with the deadline due to serious conditions or extraordinary events beyond their control.

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

SECTION 3. Notwithstanding KPB 5.12.040(B), in the event the assessor finds that the one late-filed Senior Exemption Application and two late-filed Disabled Veteran Exemption Applications should be otherwise approved, the assessor is hereby authorized to make a change to the assessment roll after June 1, 2022 to reflect the approved exemption.

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

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Assessing Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*
Mike Tupper, Assembly Member *MT*

FROM: Adeena Wilcox, Borough Assessor *aw*

DATE: June 23, 2022

SUBJECT: Ordinance 2022- 29, Authorizing the Assessor to Accept One Late-Filed Senior Citizen Exemption and Two Late-Filed Disabled Veteran Exemption Applications Filed After March 31 (Mayor, Tupper)

One applicant for the Senior Citizen Exemption and two applicants for the Disabled Veteran Exemption have requested the assembly allow the assessor to accept their late-filed real property tax exemption applications filed after March 31, 2022.

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

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

Please note: to protect the privacy of the applicants, only their initials are provided.

Senior Exemption Applicant: M.S. required out-of-state medical treatments that occurred during the application period, followed by extended rehabilitation therapy afterwards.

Page 2
June 23, 2022
Re: O2022-29

Based upon a review of M.S's exemption application and affidavit, M.S. would qualify for exemption if the assembly authorizes the late-filed request.

Disabled Veteran Exemption Applicant (1): D.I. has had a Disabled Veteran's Exemption since 2019. In February of 2021, D.I. printed the VA rating letter, a yearly requirement to maintain the Disabled Veteran's Exemption, and states that he believed he mailed it in to the borough. The borough did not receive D.I.'s rating letter. The borough sent a reminder letter to D.I. However, D.I. believed the rating letter was already sent and failed to respond. D.I. did not realize until February 2022 when it was time to file for the 2022 exemption that the 2021 exemption was not applied to the property.

Based upon a review of D.I's. exemption application, affidavit and V.A. documentation, D.I. would qualify for exemption if the assembly authorizes the late-filed request.

Disabled Veteran Exemption Applicant (2): A.H. is a 90% disabled veteran diagnosed with short-term memory issues. A.H. is also physically disabled and has had several surgeries and periods of recovery. A.H. recently lost the spouse who would normally assist in handling paperwork.

Based upon a review of A.H's. exemption applications, affidavit, and VA Rating Letter, A.H. would qualify for the exemptions if the assembly authorizes the late-filed requests.

Your consideration of the ordinance is appreciated.

Introduced by:	Mayor
Date:	07/05/22
Hearing:	08/09/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-25**

**AN ORDINANCE AMENDING KPB CHAPTER 21.50 RELATING TO STOP-WORK
ORDERS AND FINE AMOUNTS IN STIPULATED AGREEMENTS**

WHEREAS, Kenai Peninsula Borough (Borough) code at KPB 21.50.040 presently provides for various remedies for violations of KPB Title 21, including initiation of a civil action, initiation of an administrative enforcement proceeding, and permit revocation; and

WHEREAS, Borough code 21.50.090 allows the Borough to enter into stipulated agreements with an owner or occupant of property for violations on the property; and

WHEREAS, the presently-enumerated remedies are often inappropriate for first-time violators, minor violations, or an initial enforcement, thereby hampering the Borough's ability to take appropriate enforcement action or scale up enforcement action; and

WHEREAS, the availability of a stop-work order as an additional remedy provides Borough staff with a tool for less-severe enforcement action and a better starting point for any potential enforcement action or stipulated resolution; and

WHEREAS, the present maximum stipulated fine amount of one-half the fine for a one-day violation unnecessarily limits the Borough's ability to recoup enforcement costs such as assessment, investigation, surveying, and pursuing violations; and

WHEREAS, providing the Planning Director with greater discretion in the amount of a stipulated fine will allow the Borough to more effectively address and resolve violations without drawn out enforcement hearings or court actions;

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

SECTION 1. That KPB 21.50.030(A) is hereby amended as follows:

21.50.030. - Violations.

A. Each of the following is a violation of borough code:

1. A use or occupancy of land or a structure that conflicts with a provision of KPB Title 20 or 21, or a permit, entitlement or enforcement order issued under these titles.
2. The construction, alteration, repairing or moving of a structure or part thereof that conflicts with a provision of, or a permit issued under KPB Title 20 or 21.
3. The violation of the terms of an enforcement notice issued under this chapter.
4. The development, occupancy or use of any land or structure for which KPB Title 20 or 21 requires a permit, variance or exception without first obtaining the permit, variance or exception, or after a required permit has been suspended or revoked.
5. Acting in any manner that this title declares to be prohibited, unlawful, a violation, or an offense.
6. To cause or permit another to commit a violation of KPB Title 20 or 21.
7. Failure to obtain a permit required by this title is a violation. An application for a permit, permit modification, or variance may not be processed once an enforcement notice has been issued until the enforcement notice is resolved.
8. Ownership, control or the right to control land or a structure where the land or structure is used, occupied, maintained, kept, altered, constructed or established in violation of KPB Title 20 or 21, or a permit issued under this title.
9. Failure to abide by a stop-work order.

SECTION 2. That KPB 21.50.040 is hereby amended as follows:

- A. For any violation of this title the borough may bring a civil action against the violator for any one or more of the following:
 1. To enjoin or abate the violation. Upon application for injunctive relief and a finding that a person is in violation or threatening a violation, the superior court shall enjoin the violation.
 2. To require the restoration of any structure, vegetation, land, water body or other thing upon the land that is destroyed, damaged, altered or removed in such violation.
 3. To recover damages to the borough caused by the violation.
 4. To recover a civil penalty not exceeding \$1,000.00 for each violation.
- B. For any violation of this title, the borough may bring an administrative enforcement proceeding under this chapter against the violator for any one or more of the following:

1. To correct or abate the violation.
2. To recover a civil penalty not exceeding \$1,000.00 per day for each violation in accord with the fine schedule set forth at KPB 21.50.055.
3. To cease and desist a violation set forth in KPB 21.50.030.

C. Permit Revocation.

1. A permit may be revoked for failure to comply with the terms of the permit or with applicable provision of Title 21. Staff shall issue an enforcement notice pursuant to KPB 21.50.100 and make a request for a revocation hearing and a written recommendation to the hearing officer by filing the same with the borough clerk. The clerk shall issue notice to the permittee of the revocation hearing at least 20 but not more than 30 days prior to the hearing. The permittee and staff shall file all evidence relevant to the permit revocation with the borough clerk 7 days prior to the hearing. If the noncompliance which lead to the request for revocation is satisfactorily resolved the administrative official may dismiss the revocation proceeding.
2. Pursuant to the Alaska rules of appellate procedure an appeal from the hearing officer's decision on revocation may be taken to the superior court in Kenai within 30 days of the date of distribution.

D. For any violation of this title, the borough may issue a stop-work order against the violator.

[D]E. No remedy provided in this section is exclusive, but is cumulative of all other remedies available under this chapter or at law or in equity.

SECTION 3. That KPB 21.50.055(A) is hereby amended as follows:

21.50.055. - Fines.

- A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

Code Chapter & Section	Violation Description	Daily Fine
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00

KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00

KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
<u>KPB 21.50.030(A)</u>	<u>Violations</u>	<u>\$300.00</u>
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

SECTION 4. That KPB 21.50.090(B) is hereby amended as follows:

21.50.090. - Stipulated agreement.

- B. A stipulated agreement between the borough and a property owner or occupant shall constitute an admission and acknowledgement by the property owner or occupant of the alleged code violation and an agreement to remedy the violation and pay civil fines as described within the stipulation and within the timeframe agreed upon. [THE STIPULATED FINE SHALL BE ONE-HALF THE FINE FOR A ONE DAY VIOLATION. WHERE THERE IS MORE THAN ONE VIOLATION ASSOCIATED WITH THE STIPULATION THE STIPULATED FINE SHALL BE ONE-HALF OF THE HIGHEST ONE DAY FINE.] The stipulated fine amount will be set by the borough planning director or designee. Notwithstanding, if a violation or violations span more than one calendar week, the stipulated fine amount must be at least 25% of the total fine amount accrued during the period the property owner or occupant was in violation of borough code. The borough planning director, with concurrence of the borough mayor, may agree to a fine below this 25% threshold upon a finding in writing that the stipulated fine serves a public purpose.

SECTION 2. That this ordinance is effective immediately upon its enactment.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: Robert Ruffner, Planning Director RR

DATE: June 23, 2022

RE: Ordinance 2022-25 Amending KPB Chapter 21.50 Relating to Stop-Work Orders and Fine Amounts in Stipulated Agreements (Mayor)

Having appropriate mechanisms to address violations of code is an important means of ensuring code compliance. Presently there is a large gap between the kindest, gentlest approach and the heaviest mechanisms to achieve compliance. In many cases, this means stipulated agreements (SA) which are settled for half of the daily fine, regardless of how impactful the violation may be to residents and taxpayers. Stipulated agreements are an important tool and have been successfully used in many cases to keep violations from escalating to court or administrative proceedings. We are not proposing to eliminate the SA approach, but are seeking to make it more appropriate by providing the flexibility to make the fine commensurate with the violation(s). This should result in more timely responses and with violators coming into compliance through terms contained in the SA.

A tool we presently lack is a stop-work order which would assist in addressing violations without necessitating an SA. In those cases where a cease-and-desist order is issued and not followed—but eventually resolved with an SA—there is little incentive for the violator to actually stop, since the end fine as currently established in code results in half of a daily fine, regardless of what happened between issuing an order and signature on a stipulated agreement. This new stop-work tool adds the incentive to actually stop work with real consequences if work is not stopped.

Finally, many of the violations we are now addressing require substantial expense to the borough. Investigations, field surveys, repeat site visits and compliance efforts can easily cost thousands of dollars only to be settled for \$150 with the tools presently available; short of court or administrative action. These changes add more flexibility to help us resolve issues more quickly and more in line with the expenses borne by the taxpayer.

Your consideration of this ordinance is appreciated.

Introduced by:	Mayor
Date:	07/05/22
Hearing:	08/09/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-26**

**AN ORDINANCE AMENDING KPB CHAPTERS 7.20, 7.30 AND 21.44 RELATING TO
MARIJUANA ESTABLISHMENTS AND PROCESSING APPLICATIONS FOR
MARIJUANA ESTABLISHMENTS.**

WHEREAS, under KPB 7.20.010 and Alaska Statute (“AS”) 17.38, the Kenai Peninsula Borough Assembly (Assembly) is the regulatory authority for regulation of local marijuana establishments outside of the cities; and

WHEREAS, the Assembly is empowered to comment to the State of Alaska Marijuana Control Board on marijuana establishment applications within the Kenai Peninsula Borough (Borough) consistent with standards set forth in state law and regulation, and Borough code; and

WHEREAS, the Borough code does not require the Planning Commission to make recommendations to the Assembly regarding liquor license applications and renewals; and

WHEREAS, AS 17.38 does not define “commercial marijuana facilities” nor “commercial marijuana establishments”, but does define “marijuana establishments”;

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

SECTION 1. KPB 7.20.010 is hereby amended, as follows:

7.20.010. - Local Regulatory Authority.

- A. The Kenai Peninsula Borough Assembly is the local regulatory authority for regulation of local marijuana establishments in the area of the borough outside of the cities under AS 17.38 and any implementing regulations.
- B. The assembly is authorized to comment to the State of Alaska Marijuana Control Board on marijuana establishment license applications within the Kenai Peninsula Borough consistent with the standards set forth in AS 17.38, 3 AAC 306, and KPB 7.30. A public hearing shall be held by the assembly prior to submitting the borough's comments on a license application or relocation to the State of Alaska. License renewals and transfers shall be processed pursuant to KPB 7.30.010(D).

- C. The planning [COMMISSION] department [, CONSISTENT WITH AS 29.40 AND KPB 21.01.010, SHALL] will make recommendations to the [BOROUGH] assembly regarding land use regulation of [COMMERCIAL MARIJUANA FACILITIES] marijuana establishments as defined by AS 17.38 and administer and implement any land use regulations adopted by the borough assembly.

SECTION 2. That KPB 7.30.010 is hereby amended, as follows:

7.30.010. - Applications—Renewals—Hearings—Action.

- A. The assembly shall review and make recommendations to the state on applications submitted to the State Marijuana Control Board for marijuana establishment licenses within the borough in the following situations:
1. Applications for a new license; or
 2. Applications requesting approval of a relocation of the licensed premises.
- B. Prior to the assembly making a recommendation to the Marijuana Control Board the [PLANNING COMMISSION SHALL] assembly must hold a public hearing [AND MAKE A RECOMMENDATION TO THE ASSEMBLY] on the license application applying the standards set forth in KPB 7.30.020. The planning department [SHALL] will prepare a staff report for the [PLANNING COMMISSION] assembly addressing items set forth in KPB 7.30.020. [NOTICE OF THE PUBLIC HEARING SHALL BE GIVEN IN ACCORD WITH THE PROVISIONS OF KPB 21.11.]
- C. After assembly public hearing, review and action as provided in KPB 7.30.010(A) and 7.30.020, the borough clerk [SHALL] will provide a letter to the State of Alaska Marijuana Control Board informing it of the assembly's non-objection, protest, or recommended conditional approval as appropriate.
- D. Applications requesting renewal of a license or transfer of ownership shall be reviewed by the finance department and planning department for continued compliance. If the facility, licensee and licensee's affiliates are in compliance with KPB 17.30.020 the borough clerk shall provide a letter of non-objection to the State of Alaska Marijuana Control Board. If the facility, licensee or affiliate is non-compliant with KPB 7.30.020, the process in KPB 7.30.010(B) and (C) shall be followed.

SECTION 3. That KPB 21.44.130 is hereby amended, as follows:

21.44.130. Home occupations.

- A. *Purpose.* It is the purpose of this section to promote peace, quiet, and domestic tranquility within residential LOZDs, and to limit excessive noise, excessive traffic, diminished property values, fire hazard, threats to safety and health, and other possible negative effects of commercial uses conducted in residential areas.
- B. *Application.* A single home occupation may be operated on a lot in R-1, R-2, R-R, R-W, and R-M zones subject to the provisions of this section without a permit:
- C. *Standards.*
1. The outside appearance of a building or parcel shall not change so that it detracts from the dwelling's and parcel's principal use as a residence.
 2. The home occupation shall not generate traffic, parking, sewage or water use in excess of what is normal in a residential subdivision. There may be no more than twenty vehicle trips per day of combined residential and home occupation traffic.
 3. The home occupation shall not create a hazard to person or property, or become a nuisance.
 4. One permanent sign no greater than 16 square feet may be used to advertise a home occupation. Signs may not be illuminated.
 5. Retail sales of goods which generate traffic of customers, deliveries, or suppliers to the parcel are not allowed on the parcel, except where the sale of goods is incidental to the service provided by the home occupation.
 6. The use of a dwelling unit for home occupations shall be conducted solely within the confines of the main dwelling and accessory buildings, and shall be clearly incidental and subordinate to the main use of the dwelling as a residence. In-home adult or child care, or preschools may use outdoor space on the lot as long as the area used for the home occupation is fenced for the safety of persons on the premises as a result of the home occupation.
 7. The storage of toxic, explosive, or other dangerous or hazardous materials, substances, or chemicals for commercial purposes are not allowed on the premises, except for fuel storage of 55 gallons.
 8. There shall not be outside storage or display of any kind that is visible from the street or neighboring property other than personal or seasonal decorations.
 9. No commercial outdoor storage or outdoor loading of vehicles related to the home occupation shall be allowed, except that one operational work trailer, and one operational and registered work vehicle may park on the property. Licensed fishing guide operations are limited to two boats for the business per lot, each not exceeding 28 feet in length.

10. No on street parking shall be allowed or necessary to conduct the home occupation.
 11. The home occupation shall be conducted by the inhabitants of the principal permitted dwelling, and no more than one nonresident employee shall be permitted to work on site.
 12. All operators of home occupations are required to meet applicable registration requirements to collect borough sales tax as set for in KPB chapter 5.18.
- D. *Conditions.* All standards set forth in KPB 21.44.130 must be met on a continuing basis and are mandatory to operate a home occupation.
- E. Home occupations allowed in the R-1, R-R, R-W, and R-M districts may include but are not limited to: accountant/bookkeeping services; beauty parlor or salon/barber shop; computer programming, software instruction, web page development, and related computer services; consulting services; dressmaking, sewing, and tailoring; event planning services; in-home adult or child care, or preschool; home cooking and preserving; home crafts, such as model making, needlework, and rug weaving; photography studio; painting, sculpting, writing or other fine arts related crafts; telephone answering, telecommuting, secretarial and administrative services; tutoring and musical instruction.
- F. *Home occupations not allowed in the R-1, R-2, R-R, R-W, and R-M districts.* The following occupations are prohibited as home occupations: service, repair or painting of any vehicle; kennels; sexually oriented businesses; commercial composting; sale, repackaging or use of hazardous materials; retail sales unless clearly incidental and necessary to the service being provided by the home occupation; [COMMERCIAL] marijuana [FACILITIES] establishments as defined in AS 17.38, restaurants, alcoholic beverage premises licensed under title 4 of the Alaska statutes and other similar uses which are inconsistent with the purpose statement of KPB 21.44.010.
- G. Violation of the home occupation provisions of this section shall be processed in accord with the provisions of KPB 21.50. Each day a violation continues is a separate violation.

SECTION 4. That KPB 21.44.190 is hereby amended, as follows:

21.44.190. - Mixed use district (C-3).

- A. *Allowed Principal Uses:* Commercial, business, residential, institutional and public uses are allowed in this district. Industrial uses are prohibited in a C-3 LOZD.
- B. *Allowed Compatible Uses:* Compatible uses allowed in the C-3 zone are uses allowed in R-1 and R-M districts.

- C. *Development Standards.* Development standards apply to principal and accessory structures.
1. *Setbacks.* Setbacks shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 100 feet from the shore and where applicable subject to the provisions of KPB 21.18.
 2. *Lot size.* Minimum lot size shall be 40,000 square feet. Maximum lot size is 5 acres.
 3. *Drainage ways.* Existing natural drainage ways shall be retained.
 4. *Coverage.* Maximum coverage by structures is 20 percent of the lot.
- D. *Prohibited Uses.* The following uses are prohibited in C-3 LOZDs: [COMMERCIAL] marijuana establishments licensed under AS 17.38 and applicable regulations, alcoholic beverage premises licensed under Title 4 of the Alaska statutes, and sexually oriented business establishments.

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

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: Robert Ruffner, Planning Director RR

DATE: June 23, 2022

RE: Ordinance 2022-26, Amending KPB Chapters 7.20 and 21.44 Relating to Marijuana Establishments and Processing Applications for Marijuana Establishments (Mayor)

After six years, it has become apparent that Planning Commission review and comment is an unnecessary additional regulatory step. This ordinance amends KPB 7.20.010 by removing the Planning Commission from the application process for marijuana establishment license applications. It will result in the consistent treatment of the public review process for both marijuana and alcohol establishments because KPB 7.10.010 does not require the Planning Commission to make recommendations to the Assembly regarding liquor license applications and renewals.

Under 7.20.010 and AS 17.38, the Assembly is the regulatory authority for regulation of local marijuana establishments outside of the cities. It is duplicative to have the Planning Commission hold public hearings on applications for marijuana establishment license applications and also have the Assembly hold a public hearing on the same application when, ultimately, the Assembly is the body that provides a nonbinding recommendation to the Marijuana Control Board. This ordinance still requires a Planning Department report to ensure the application complies with all local ordinances and the Planning Department to present its report to the Assembly during a public hearing.

Additionally, KPB 7.20.010(C) and KPB 21.44.130(F) cite AS 17.38 for a definition for "commercial marijuana facilities", and KPB 21.44.190(D) cites AS 17.38 for a definition for "commercial marijuana establishments". But, AS 17.38 does not provide a definition for either "commercial marijuana facilities" or "commercial marijuana establishments". Instead, the appropriate term actually defined in AS 17.38 is "marijuana establishment", which encompasses marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, and retail marijuana stores. As such, this ordinance will align Borough code with state law.

Your consideration of this ordinance is appreciated.

Introduced by:	Mayor
Date:	07/05/22
Hearing:	08/09/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-27**

AN ORDINANCE AMENDING KPB 21.25 TO ADD DEFINITION OF “AGGRIEVED PARTY” AND AMENDING KPB 21.29 TO REMOVE THE TERM “IMPARTIAL”, TO CLARIFY THE WELL-MONITORING TIMELINE, TO DEFINE “QUARTERLY”, AND TO ADD A “DEFINITIONS” SECTION

WHEREAS, code related to material sites, found in KPB 21.25 and KPB 21.29, has not been substantially amended in over ten years; and

WHEREAS, Kenai Peninsula Borough Assembly President Johnson formed a subcommittee of the Assembly to review and discuss proposed amendments to KPB 21.29, KPB 21.25 and KPB 21.50.055 regarding Material Site Permits, Applications, Conditions, and Procedures; and

WHEREAS, the Material Site Assembly Subcommittee met on April 5 and April 19, 2022 but, due to scheduling conflicts, has postponed further meetings until September 6, 2022; and

WHEREAS, through recent public hearings held at Kenai Peninsula Borough Planning Commission meetings, staff have identified specific areas of code within KPB 21.25 and KPB 21.29 that would benefit from clarification, allowing for improved implementation of these chapters; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of June 27, 2022, recommended enactment by unanimous consent;

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

SECTION 1. That KPB 21.25.030 is hereby amended as follows:

21.25.030. Definitions.

A. Unless the context requires otherwise, the following definitions apply to CLUPs:

1. *Abandon* means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
2. *Aggrieved Party* means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation. For the purposes of this section, the Kenai Peninsula Borough will not be considered an aggrieved party unless it has a fee property interest that is affected by the decision. Notwithstanding, the Kenai Peninsula Borough will be considered a party of record and may enter an appearance in an appeal to defend claims of procedural error or claims that the decision violates borough code or state law.
3. *Animal feeding operation* means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.
 - a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
 - b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
 - c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
 - d. Slaughterhouses are animal feeding operations.
4. *Animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.
5. *Animal waste* means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.
6. *Animal waste management system* means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.
7. *Aquifer* means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

8. *Aquifer-confining layer* means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
9. *Child care facility* means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.
10. *Commercial* means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
11. *Concentrated animal feeding operation (CAFO)* means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.
12. *Conditioning or processing material* means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.
13. *Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.
14. *Correctional institution* means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.
15. *Exhausted* means that all material of a commercial quality in a sand, gravel, or material site has been removed.

16. *Federal prisoners* means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons. *Groundwater* means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
17. *Liquid manure* or *liquid animal waste system* means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.
18. *Multi-purpose senior center* is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.
19. *Person* shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
20. *Prisoner* means:
- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
 - b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.
21. *Private school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.
22. *Public school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.
23. *Quarter or Quarterly* means January through March, April through June, July through September, or October through December;
24. *Sand, gravel or material site* means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
25. *Seasonal high groundwater table* means the highest level to which the groundwater rises on an annual basis.
26. *Senior housing project* means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

27. *Stable condition* means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.
28. *Surface water* means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.
29. *Topsoil* means material suitable for vegetative growth.
30. *Waterbody* means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.
31. *Water source* means a well, spring or other similar source that provides water for human consumptive use.

SECTION 2. That KPB 21.29.050 is hereby amended as follows:

21.29.050. Permit conditions.

A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

4. *Water source separation.*
 - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
 - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation from the seasonal high water table be maintained.
 - c. All CLUPS shall be issued with a condition which requires that a two-foot vertical separation from the seasonal high water table be maintained.
 - d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified [IMPARTIAL] independent civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.
5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
 - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.

- b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
- c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in [THREE-MONTH] quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist, for at least [ONE YEAR] four quarters 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.

SECTION 3. That KPB 21.29 is hereby amended as follows:

21.29.130. Definitions.

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

1. Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
2. Aggrieved Party means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.
3. Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
4. Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
5. Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
6. Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.
7. Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.
8. Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

9. Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
10. Quarter or Quarterly means January through March, April through June, July through September, or October through December;
11. Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
12. Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.
13. Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.
14. Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.
15. Topsoil means material suitable for vegetative growth.
16. Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.
17. Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 4. That this ordinance shall become effective immediately upon enactment.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*
Robert Ruffner, Planning Director *RR*

FROM: Samantha Lopez, Senior Manager *SL*

DATE: June 23, 2022

RE: Ordinance 2022-27: Amending KPB 21.25 to Add Definition of "Aggrieved Party" and Amending KPB 21.29 to Remove the Term "Impartial", to Clarify the Well-Monitoring Timeline, to Define "Quarterly", and to Add a "Definitions" Section (Mayor)

The Material Site Assembly Subcommittee has been considering code revisions to KPB 21.25 Conditional Land Use Permits and KPB 21.29 Material Site Permits. The schedule has been slightly delayed, so staff is proposing some smaller code revisions which would provide clarification, and greatly assist staff in implementing these chapters of code:

- Amending KPB 21.25 Conditional Land Use Permits:
 - Define "Aggrieved Party". This would reduce the number of people who could file an appeal per KPB 21.25.100. Right now, chapter 21.25 lacks a definition for an "Aggrieved Party". Presently, this means individuals who are not adversely affected, but disagree, to appeal the decision of the hearing officer. By defining the term, it will reduce litigation to those people who can show they are directly and negatively impacted. Further, it clarifies that the KPB is not considered an aggrieved party unless it has a fee property interest that is affected by the decision, though it may still be a party of record and enter an appearance in an appeal to defend any claims of procedural error or claims that the decision violates KPB code or state law.
- Amending KPB 21.29 Material Site Permits:
 - Remove the term "impartial" from KPB 21.29.050(A)(4). This term proved contentious at the Planning Commission level during a recent Conditional Land Use Permit hearing. The term is not used elsewhere in code, and is not defined. Removing the term would eliminate any misperceptions.
 - Defining "quarterly" will provide much-needed clarification to the well-monitoring timeline found in KPB 21.29.050(A)(5)(C). Current code intends for quarterly water samples to be taken, but it is not

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June 23, 2022
RE: O2022-27

explicitly said. By using and defining the term, it will provide clear guidelines to both applicants and staff.

- Add a "definitions" section to KPB 21.29.

Your consideration of this ordinance is appreciated.

Kenai Peninsula Borough
Office of the Borough Clerk

MEMORANDUM

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

FROM: Johni Blankenship, Borough Clerk (JB)

DATE: July 5, 2022

RE: Ordinance 2022-27: Amending KPB 21.25 to Add Definition of "Aggrieved Party" and Amending KPB 21.29 to Remove the Term "Impartial", to Clarify the Well-Monitoring Timeline, to Define "Quarterly", and to Add a "Definitions" Section (Mayor)

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

Conforming to the advisory boards' actions, the final Whereas clause has been updated to read:

"WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of June 27, 2022, recommend enactment by unanimous consent;

Thank you.

Introduced by:	Mayor
Date:	07/05/22
Hearing:	08/09/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-30**

**AN ORDINANCE APPROVING STEPHENKIE ALASKA SUB BLOCK 8
RESIDENTIAL WATERFRONT (R-W) LOCAL OPTION ZONING DISTRICT AND
AMENDING KPB 21.46.110**

- WHEREAS,** an application was submitted to the Kenai Peninsula Borough (Borough) Planning Department signed by the Borough’s Land Management Division of all lots within the proposed local option zoning district (“LOZD”); and
- WHEREAS,** pursuant to KPB 21.44.040(A), a minimum 12 lots are included in the proposed LOZD. and contain at least 30 percent waterfront lots as required in a Residential Waterfront district; and
- WHEREAS,** the Borough currently has management authority over the subject parcel and the fee patent conveyance from the State of Alaska is imminent; and
- WHEREAS,** the Planning Department held a community meeting at the Donald E. Gilman River Center on May 25, 2022, regarding this proposed LOZD as required by KPB 21.44.040(C); and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A of the Kenai Peninsula Borough's 2019 Comprehensive Plan is to establish policies which better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and
- WHEREAS,** the Kenai Peninsula Borough Planning Commission reviewed the proposed LOZD at its regularly-scheduled meeting of July 18, 2022, and recommended _____;

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

SECTION 1. That the assembly finds the adoption of Stephenkie Alaska Sub Block 8 LOZD to be consistent with surrounding land uses and the 2019 Kenai Peninsula Borough Comprehensive Plan.

SECTION 2. That KPB 21.46.110 is hereby amended as follows:
21.46.110. Residential Waterfront Lot Residential (R-W) Districts.

A. The following Residential Waterfront (R-W) districts and official maps are hereby adopted:

2. Stephenkie Alaska Sub Block 8 is described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 8, Stephenkie Alaska Subdivision, according to Plat KN 79-83

a. Setbacks for permanent structures shall be 50-feet from the top of the bluff.

b. The local option zoning applies to any further replats within the Stephenkie Alaska Sub Block 8 LOZD.

SECTION 4. That Stephenkie Alaska Sub Block 8 LOZD will be recorded in the proper recording district.

SECTION 5. That this ordinance is effective immediately upon enactment.

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

1

Brent Johnson, Assembly President

ATTEST:

2 _____
Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*
Robert Ruffner, Planning Director *MMFRR*
Samantha Lopez, Planning & River Center Manager *SL*

FROM: Ryan Raidmae, Planner *RR*

DATE: June 23, 2022

RE: Ordinance 2022-30, Approving Stephenie Alaska Sub Block 8 Residential Waterfront (R-W) Local Option Zoning District and Amending KPB 21.46.110 (Mayor)

This ordinance approves the formation of a Residential Waterfront (R-W) Local Option Zoning District (LOZD) and, if approved, amend KPB 21.46.110 to include the Stephenie Alaska Sub Block 8 LOZD.

An application was submitted to the Kenai Peninsula Borough Planning Department signed by the Kenai Peninsula Borough (Borough). The Borough currently has management authority over the subject parcels and the fee patent conveyance from the State of Alaska is imminent. If patent is not received prior to public hearing on the ordinance, then a request will be made to postpone public hearing until patent is received from the State of Alaska. The proposed LOZD contains the necessary 12-lot minimum according to KPB 21.44.040. At least 30 percent of those are waterfront lots as required in an R-W district.

On May 25, 2022, the planning department held a neighborhood meeting at the Donald E. Gilman River Center.

This proposal is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan which states, "Establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms".

KPB 21.44.060(A) states, "The assembly shall approve, disapprove, or modify the proposed LOZD. The assembly, in its legislative capacity, may disapprove an LOZD notwithstanding the district's meeting the criteria of this chapter."

Your consideration of the ordinance is appreciated.

Introduced by:	Mayor
Date:	07/05/22
Hearing:	08/09/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-28**

**AN ORDINANCE PROVIDING FOR NECESSARY CODE UPDATES RELATING TO
DECLARATION OF DISASTER EMERGENCY AND THE ADMINISTRATION AND
SCOPE OF THE BOROUGH'S EMERGENCY POWERS AND DUTIES**

WHEREAS, the COVID-19 pandemic raised new issues related to the scope of the Kenai Peninsula Borough's (Borough) powers and the administration of its responsibilities during a disaster emergency; and

WHEREAS, an update to Borough code related to disaster emergencies will avoid unnecessary legal exposure, clarify the scope of the Borough's powers during a disaster emergency, and ensure effective administration of such powers during a disaster emergency;

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

SECTION 1. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section, KPB 1.12.080, which shall read as follows:

1.12.080. - Emergency Actions of the Assembly.

- A. In the event of a disaster as defined by AS 26.23.900 or other emergency, the assembly may adopt emergency ordinances effective upon adoption. Each emergency ordinance must contain a finding by the assembly that an emergency exists and a statement of the facts upon which the finding is based. An emergency ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The governing body will print and make available copies of adopted emergency ordinances.
- B. An emergency ordinance may not be used to levy taxes, to grant, renew, or extend a franchise, or to regulate the rate charged by a public utility for its services.
- C. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption of an emergency ordinance, the confirmation or extension of a local disaster declaration or the ratification of emergency actions taken by the executive.

- D. An emergency ordinance, or any other action taken under this section, is effective for 60 days.

SECTION 2. That KPB 2.04.040 is hereby amended as follows:

2.04.040. – Powers and duties - Involuntary Succession – Procedure Resumption.

Whenever the assembly president and two thirds of the members of the assembly file a written document with the borough clerk, or in the case of a disaster as defined in AS 26.23.900, if the assembly president issues a good faith declaration, showing good and sufficient cause that the borough mayor is [UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OFFICE DUE TO SOME DISABILITY] temporarily absent or disabled, then the administrative officer designated by the mayor under KPB 2.04.030 will exercise the powers and duties of borough mayor until such time as the borough mayor is able to resume [HIS] office. The administrative officer acting for the mayor shall have the qualifications for the position of mayor, but shall not have veto power. The actions of the administrative officer in exercising the powers and duties of the borough mayor shall be subject to the review of the assembly president. No administrative staff shall be dismissed or replaced during the mayor's absence except with the concurrence of a majority of the assembly. If the determination of the mayor's absence or disability is made by the assembly president alone, then the authority of the designated administrative officer will expire after seven (7) days unless ratified by the assembly.

SECTION 3. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section, KPB 2.04.090, which shall read as follows:

2.04.090. – Declaration of Disaster Emergency.

- A. If the borough mayor finds that a disaster as defined by AS 26.23.900 has occurred or that a disaster is imminent or threatened within the borough, the borough mayor may declare a condition of local disaster emergency for the Kenai Peninsula Borough. The borough mayor may make a declaration of disaster emergency when a disaster has occurred within the borough, regardless of any declaration in another municipality or the state.
- B. If the mayor is temporarily absent or disabled, the mayor's designee pursuant to KPB 2.04.030 may declare a disaster emergency and take such actions as are authorized in this section without action of the assembly.

C. The declaration must include:

1. A statement indicating the nature of the disaster or emergency, the area threatened or affected and the conditions that have brought it about or that make possible the termination of the disaster emergency;
2. An initial statement of available resources to address the disaster emergency;
3. An initial statement identifying any borough funds to be expended to respond to the disaster or emergency and any State or other third party funds which may be requested;
4. A statement confirming whether an emergency affecting life, health or safety exists for purposes of KPB 5.28.280.

D. The declaration of local disaster emergency activates the disaster response and recovery aspects of all relevant borough emergency operations plans applicable to the area in question and constitutes authority for the borough to spend emergency or other borough funds as authorized by the assembly, and to receive and administer state, federal or other funding within the bounds of the borough's legal authority.

E. The mayor or designee's declaration of local disaster emergency shall remain in effect for seven (7) days unless extended by the assembly.

SECTION 4. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section, KPB 2.04.100, which shall read as follows:

2.04.100. - Borough authority.

During the pendency of a disaster emergency declared by the mayor, and if sufficient resources (including personnel, facilities, equipment or any other resource necessary for the adequate exercise of the delegated authority) are determined to be available, the borough may accept and exercise authority expressly delegated by the State to the borough, as its agent, pursuant to AS 26.20.020.

SECTION 5. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section, KPB 2.04.110, which shall read as follows:

2.04.110. – Emergency Agreements.

- A. Following the declaration of a disaster emergency by the governor pursuant to 26.23.020(c) or by the borough mayor pursuant to AS 26.23.140, the mayor may execute an emergency mutual aid agreement or other cooperative agreement with the state, the federal government, or with any other municipality in the state pursuant to AS 29.35.010(13) for the exchange of aid upon request, including the loan of personnel, equipment and materials and the administration of funds or other resources, all as permitted by law.

- B. The borough will be obligated under such mutual aid agreements to perform duties (i) which are within its legal power and (ii) subject to the availability of sufficient resources.
- C. Any mutual aid agreement promulgated hereunder shall remain in effect until the earlier of (i) the rescission of the relevant local or state emergency disaster declaration or (ii) express rescission of the mutual aid agreement by the assembly.

SECTION 6. That KPB 2.45.010 is hereby amended as follows:

2.45.010. – Established.

There is established an office of emergency management as a department in the Kenai Peninsula Borough. The Senior Manager of the Office of Emergency Management shall administer the department, shall assume primary responsibility for managing and coordinating department responsibilities during a declared disaster emergency, and shall report to the mayor or designee. The department shall be responsible for response to, and recovery from, a declared disaster emergency, for development of borough and inter-jurisdictional disaster response and recovery plans, and for coordination of disaster management between the borough, the State of Alaska, and other municipalities and response and recovery organizations.

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

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Office of Emergency Management

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: Brenda Ahlberg, Emergency Manager *Ba*
A. Walker Steinhage, Deputy Borough Attorney *AWS*

DATE: June 23, 2022

RE: Ordinance 2022-28, Providing for Necessary Code Updates Relating to Declaration of Disaster Emergency and the Administration of the Borough's Emergency Powers and Duties (Mayor)

The COVID-19 pandemic raised new issues related to the scope of the Borough's powers and administration of its responsibilities during a disaster emergency. Ordinance 2020-19-25 approved federal pass-through grant funding for a project to review and update the KPB's disaster emergency code provisions. The project objective was to review and recommend potential updates to Borough code in attempt to clarify the scope of Borough powers during a disaster emergency in order to ensure efficient and effective administration of the Borough's disaster emergency powers. Following a competitive request for proposal process, the Borough contracted with the law firm of Holmes Weddle and Barcott (HWB) to complete the project.¹

The project contractor, HWB, worked with the Borough's Office of Emergency Management and Legal Department during its review, research, and recommendation process. HWB's executive summary, which accompanies the legislation, provides additional details and background related to this project.

Your consideration of the ordinance is appreciated.

¹ Funding Source: Alaska Department of Health and Social Services grant #C0621-570-H, a federal pass-thru grant. Federal funds for this project are identified by the Catalog of Federal Domestic Assistance (CFDA) #93.323, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, "Epidemiology and Laboratory Capacity for Infectious Diseases."



Borough Code Revision Project

RFP22-003

Spring 2022

HOLMES WEDDLE & BARCOTT
A PROFESSIONAL CORPORATION

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KPB Report Executive Summary

Introduction

Like many public institutions, the Kenai Peninsula Borough (“KPB”) faced an array of challenges presented by the COVID-19 pandemic. Those challenges revealed strengths and demonstrated that when pressed, the people of the Kenai Peninsula are resourceful and committed to their neighbors. However, they also revealed areas where KPB can re-examine its processes and legal code to become better prepared for the next major disaster.

Many of the challenges faced by KPB during the pandemic resulted from the unusual “top-down” implementation of disaster response mechanisms. Instead of developing from a local (and localized) disaster such as fire or flood, the pandemic was immediately national in scope, spreading quickly and unpredictably across the U.S. The typical process of local government seeking the assistance of “upstream” entities with more resources and authority was turned on its head. Instead, national and state governments declared emergencies first, leaving local governments in the awkward position of responding to an emergency which, in many cases, had not yet reached the local level. As the pandemic progressed, boroughs were pressed by the state to provide services and perform activities that were outside their statutory powers. This resulted in a blurring of the boundaries between state and borough powers.

KPB and other boroughs in the state are now re-examining the scope of their own powers, the limit of state powers exercised during the pandemic and what the last two years has to offer in terms of lessons for local government. Other second class boroughs participated with KPB in sending a letter to the Alaska Attorney General in November 2020 addressing the breadth of state and borough powers and their interaction during a disaster emergency. The response received is the genesis of the analysis, proposed ordinances and recommendations included in this report. These recommendations create a platform for KPB to lead in the area of municipal emergency management.

The citizens of KPB count on the borough to plan well and provide the tools for its citizens to protect themselves against a variety of threats. The COVID-19 pandemic presented a unique opportunity to stress test existing systems. Thanks to the ingenuity and professionalism of the borough staff, KPB’s systems largely held up. But in an era where even disasters are subject to politicization, those vested with representative power in local government owe it to their constituents to enact and refine laws that empower its people to protect life and limb, and to press against the overreach of the state, however well intentioned. With these tools in hand, KPB is far better prepared to do just that.

Background

All emergency response tools and powers are governed by statute and subject to legislative oversight. The federal government, as well as all state and local governments, have codes on their books defining their authority, including in an emergency. Just as in other organizations, emergency response policies are adopted to direct employees and the public to uniform methods and practices that facilitate efficiency and safety. Government entities (as well as private companies) also have emergency operations plans (each an “EOP”) which function as on-the-ground guides to carrying out an emergency response. EOPs implement the government’s statutory emergency powers. They include individualized responsibilities and roles, locations and maps, and policies and priorities for local government employees

carrying out the response. EOPs require regular updates to incorporate advances in emergency response techniques and technology, sensitivity to public priorities, and experience gleaned from recent disaster responses. KPB's Emergency Operations Plan has been in place for well over a decade and was most recently updated on July 1, 2020. As with most EOPs, it is formulated in compliance with guidance in the National Incident Management System. Federal law requires local jurisdictions to have such EOPs in place in order to receive certain federal funding, training, emergency response resources, and more. The relative uniformity of local, state and federal EOPs facilitates cooperation at both the operational and administrative levels.

To be more than simply a how-to emergency response guide, however, an EOP must be well supported by state and local code and statutory authority. The depth and breadth of a municipality's ability to meet the needs of its citizens may be as broad and comprehensive as the plans that have been developed, but if the code does not support the strategy and resources, the municipality can be exposed to a variety of risks. Emergency response involves inherently greater risks of death, disability, unequal treatment, impingement on property rights, and more. In order to provide emergency response services without exposing itself and its employees to excessive risk, the borough must work within its authority. The rapidly unfolding nature of an emergency may leave little time for ponderous government processes, but principles of fairness and due process are not suspended. Legislative approval must be obtained in advance to authorize emergency response actions that are yet to be determined. Assembly delegations of power to the executive (including sub-functions such as emergency management) must be limited in scope and/or time to ensure that the executive is not usurping legislative authority but broad enough to allow necessary emergency action.

EOPs provide structure and flexibility in rolling out disaster responses both when a declaration starts at a statewide level, and when it begins at a local level. Most plans are designed to handle more regularly occurring incidents like forest fires, oil spills, earthquakes, and localized flooding. All of these emergencies generally fall into a bottom-up emergency response, where a local government declares a disaster emergency, and turns to the next government entity up the food chain for assistance. This is particularly visible to local communities in the context of forest fires, where a city or borough will declare a disaster because of a fire outbreak and facilitate the presence of state emergency response teams or federal incident management teams. The borough may contribute, for example by coordinating evacuation and re-entry, but it relies upon state and federal firefighting assistance.

The COVID-19 pandemic presented a whole host of new issues for local governments because the typical fire- or flood- response tools simply weren't applicable or up to the task. Not only was the risk itself invisible, but the logistical challenges of implementing the various attempts to minimize spread of the disease while providing everyday essential services was outside the contemplated scope of codes and EOPs already in place.

Particularly unprecedented was the fact that instead of a local, bottom-up declaration of emergency, the COVID-19 declaration started from the federal government and worked its way down. Some local jurisdictions in Alaska had not even had a COVID-19 case when disaster was declared at the national level. The fact that the disaster declaration had occurred on the federal level, and that state governments had been invited by the federal government to declare as well, meant that responsibilities for response began to be handed down to the local level instead of requested up. The fact of the federal

declaration and the scope of the federal declaration were unprecedented. The federal government offered resources to state governments that had declared disaster emergencies and the states, in turn, attempted to deploy those and other resources on a state-wide scale. By declaring a disaster emergency, Alaska's state government activated local EOPs in jurisdictions where no disaster declaration had yet been made.

Even after local declarations were in place, local governments were in the uncomfortable position of being limited by their own EOPs and codes, but being assigned tasks outside those boundaries by the state. In the Kenai Peninsula Borough, which does not have law enforcement powers or health and safety authority, state officials required the local emergency medical services employees to become the de facto vaccine distributors, making fire stations and their crews responsible for vaccine storage, distribution, and recordkeeping. This not only introduced a huge burden to emergency responders who were still responsible for responding to car accidents, overdoses, and other emergency situations, it introduced a sizeable liability risk to the Borough, whose employees were suddenly responsible for maintaining temperature-sensitive drugs and carrying out graduated distribution schemes.

Additionally, as the pandemic progressed, many aspects of the response became politically charged. Vaccination, mask mandates, and shutdowns were not only logistical challenges, they also became points of controversy requiring enforcement and response outside the borough's powers.

In November 2020, as the responsibilities and tasks handed downstream to local municipalities like KPB became increasingly broad and unwieldy, several municipal attorneys wrote a letter to the Alaska attorney general, Ed Sniffen. The municipal attorneys explained the authority available to the boroughs and their concern that the state was instructing the boroughs to do things outside their legal powers, even in an emergency. In a letter dated December 4, 2020, the attorney general's office responded. Under its interpretation, because the Alaska Disaster Act makes local governments responsible for "disaster preparedness and coordination of response" under AS 26.23.060(b), additional powers are liberally conferred to carry out any actions necessary to respond to a disaster emergency. The attorney general emphasized the Alaska Constitution's rule providing that local government powers are to be liberally construed but ignored more restrictive language in the statute. Essentially, the attorney general urged the second class boroughs to stretch responsibility for preparedness and response coordination into a license to take any action the borough deemed necessary to respond to the pandemic or any other disaster-emergency.

The attorney general's broad interpretation of Alaska law ignored significant risk to the boroughs, which could be responsible for damages if Alaska courts found them to be working outside of their statutory authority. It also failed to consider the ancillary question of risk and requirements in the event that the borough's view of necessary actions differed from the State's. As the emergency conditions dragged on, confusion regarding the consequences of the top-down, state-borough emergency response persisted. With calls for termination of state and local disaster declarations rising, the borough was forced to consider the legal consequences of one entity, like the state, extending a disaster declaration past the end of the borough's declaration. Even as the fog of the early pandemic cleared, it became apparent to the borough's Office of Emergency Management that the borough would need increased clarity for the next big disaster.

The Project

KPB elected in its initial formation process to keep its government small and legislate only as necessary. One result is that KPB emergency management-related code sections are relatively few in number and rely heavily on references to Alaska statutes, leaving operational and liability holes where KPB powers and Alaska emergency statutes meet. Municipalities like Kenai Peninsula Borough have unique perspectives on what their citizens need and want, and are closest to real issues as they arise. KPB now has the opportunity to exploit its COVID-19 lessons, fine tune its disaster response mechanisms and bolster the borough's authority during a disaster emergency.

Given the broad interpretation of the boroughs' disaster powers propounded in the Attorney General's letter, KPB OEM wanted outside eyes on the problems. While OEM had been able to strategize in the moment, it was important for the borough to investigate the questions articulated in the Sniffen letter, and to develop some ideas and strategies for how to fix the holes that presented themselves. To do this, KPB OEM requested bids for a review and analysis of emergency-related law and EOPs at the state and local level. Following the bid process, the KPB hired Holmes Weddle & Barcott, PC ("HWB"), whose team is uniquely equipped with legal and local emergency response perspectives, to perform the analysis.

To understand and address the borough's concerns, HWB reviewed Alaska, KPB, other municipalities and states' laws, federal law and emergency management guidance, and state and local EOPs, to gain a comprehensive understanding of the legal framework for emergency response in which Alaska and the borough operate. HWB also reviewed contract addendums and other policy-related documents the borough had engineered to address the problems and weaknesses it perceived in the borough's emergency toolkit.

After reviewing and analyzing the law and the borough's management of the pandemic, HWB developed this analysis of the state of emergency response law in Alaska and the borough. The team developed a toolbox to improve the borough's position in the event of a top-down or bottom-up disaster, including proposed ordinances for consideration by the Assembly, a model declaration of disaster to ensure legality and autonomy in KPB's disaster response, and recommended procedures for accepting top-down directives and funding from the state.

Passing the proposed ordinances in the toolkit attached as Exhibit E to this report, would lead to increased clarity for the borough, its employees and citizens, and provide a legal roadmap for KPB's emergency response. It would also ensure that those who come after the KPB policy makers and staff that navigated the COVID-19 disaster over the past two years are better equipped to address future disasters.

Full use of this toolkit will also make clearer, more defined boundaries between the role of KPB and its larger, more powerful counterpart, the state. Before bringing on HWB, KPB OEM perceived that the state was forcing the borough into performing tasks and taking on responsibilities beyond the borough's authority. This put the borough at risk of litigation from individuals and entities affected by the pandemic and raised the danger of federal or other penalties for mismanagement of funds or programs, particularly in light of the valuable resources and health and safety issues involved. With this toolkit in the closet, the Borough may plan for the next disaster knowing exactly what it is able and not able to do, and how to clearly articulate and defend its role in handling various aspects of an emergency response.

With the benefit of experience and hindsight, combined with additional expertise and perspective, KPB can put itself in a far stronger position not only to defend itself against litigious individuals or a well-intentioned but overweening state, but to preserve its authority and resources to do what it does best – keep things safe and functional for the citizens of the borough, even when things are not going right.

Kenai Peninsula Borough Legal Framework for Emergency Response

Borough Code Revision Project RFP22-003

Review and Recommendations

I. Emergency Response Law: Alaska Statutes

The Alaska State Constitution articulates baseline standards and operating procedures for how the state runs under normal circumstances and what authorities are available in times of disaster. The constitution also grants subsidiary governments their powers, and outlines how independent subsidiary governments like home rule cities obtain theirs.¹ The constitution states clearly that maintaining the public health is a state function.² The governor is the prime authority of the executive branch when it comes to administering disaster related authorities within the state; the constitution states that the governor is also responsible for ‘faithful execution of the laws.’

The State of Alaska’s authority regarding emergency management for most types of disasters is codified at Art. 2 Ch. Tit. 26 Ch. 23 in the Alaska Disaster Act. Management of oil and hazardous substance spills are covered by similarly-structured statutes at Art. 2 Ch. Tit. 26 Ch. 46.

Under AS 26.23.020(c) the Governor of Alaska may declare a condition of disaster emergency upon a finding “that a disaster has occurred or that a disaster is imminent or threatened.” After the governor declares a disaster emergency, the legislature must extend the declaration by a concurrent resolution within 30 days, or the declaration will end as a matter of law.³

The governor’s declaration allows the state to employ special powers during a declared disaster emergency and also adds flexibility in its ability to access to its existing powers.⁴ Among other things, the governor may suspend regulations, shuffle personnel and allocate specialized funds.⁵ A variety of additional powers come with a state disaster declaration, such as the designation of the governor as “commander in chief of the organized and unorganized militia and of all other forces available for emergency duty.”⁶ Additionally, the governor’s declaration of a disaster emergency automatically activates the state’s emergency plans, as well as local disaster emergency plans like those adopted by the Kenai Peninsula Borough.⁷ At the state level, this may implicate the broad disaster emergency plans administered by the Alaska Division of Homeland Security and Emergency Management and/or specific plans, such as the public health emergency response operations program administered by the Alaska

¹ See AK Const. Art X.

² AK Const. Art VII, Sec. 4 “The legislature shall provide for the promotion and protection of public health.”

³ AS 26.23.020(c).

⁴ AS 26.23.020.

⁵ AS 26.23.020(g)(1), (g)(3), (h), (i).

⁶ AS 26.23.020(e).

⁷ AS 26.23.020(e).

Division of Public Health.⁸ Activation allows the State to have access to its own emergency resources, from stockpiled emergency supplies to funding.⁹

During a fiscal year the governor may expend up to \$500,000.00 in state funds for each disaster. Funds become available upon the governor's determination that a situation poses a direct and imminent threat of sufficient magnitude that the risk justifies state action.¹⁰ Once a disaster has been declared, the limit increases to \$1,000,000.00. Even higher limits are available on a statutory basis for certain types of disasters: if the disaster is a fire, there is no limit to the governor's spending authority to save lives, protect property, and protect public health and safety.¹¹ This broad power within the Alaska Disaster Act is tempered by the statutory requirement to convene the legislature and provide a financing plan for its approval within five days of declaring the disaster emergency.¹² Because of the need for legislative approval, the governor must make a case for the expenditures, typically in the reasoning attached to the declaration of disaster emergency and in the text of the financing plan sent to the legislature.

In addition to its own stockpiles of dedicated supplies, personnel and other resources, the state's disaster declaration and accompanying activation of local emergency plans gives it access to all reasonably available resources within downstream municipalities.¹³ The state has authority to access local resources whether or not there is a local declaration of disaster emergency. This authority can effectively limit the individual borough's ability to decide not to declare a local disaster emergency or elect to ignore the State's response measures completely. The implication is that for a local jurisdiction to have a say in the scope and usage of resources borrowed by the state, a local government has little choice but to declare a local disaster emergency and exercise its disaster authority once the state has declared.¹⁴

Although the Act grants far-reaching powers to the state during a disaster emergency, it also creates significant obligations to provide assistance to local governments to prepare for, respond to and recover from a disaster emergency.¹⁵ The state is tasked with helping local governments to develop effective emergency management plans, provide training to responders, identify local resources and expertise, and stockpile supplies.¹⁶ A declaration of local disaster emergency is typically a condition for submitting a request for a declaration from the governor and utilization of state resources, including money, and other assistance. The state maintains a disaster relief fund which may be used to assist local governments in the form of grants and loans.¹⁷ The governor may exercise the discretion to use a limited amount of state

⁸ See, e.g., <http://ak-prepared.com/Plans/Documents/2018-SOA-EOP.pdf> and <https://dhss.alaska.gov/dph/Emergency/Pages/prepared/default.aspx>

⁹ AS 26.23.040

¹⁰ AS 26.23.020(h).

¹¹ AS 26.23.020(j).

¹² AS 26.23.020(k).

¹³ AS 26.23.020(g)(2).

¹⁴ For a list of specific grants of power to the state to use local resources, see Exhibit B.

¹⁵ For a list of the statutory obligations of the state to local governments in the emergency context, see Exhibit B.

¹⁶ See generally, AS 26.23.040.

¹⁷ AS 26.23.300.

money for an immediate response, and to request legislative approval required for larger, ongoing expenditures or accessing special funds such as from the oil and hazardous substance response relief account.¹⁸ The state's public assistance programs are purposely designed to mirror similar FEMA programs for a seamless transition in case the state requests federal assistance and a federal disaster is later declared. Municipalities may apply to the state for assistance in connection with a variety of scenarios, from firefighting to hazardous spill clean up to natural disasters.¹⁹

It is the state's responsibility to coordinate federal aid from FEMA and other agencies, and to apply for federal funding at the request of the municipality or wherever other available assistance is appropriate.²⁰ When a president has declared a disaster at the request of the governor, the governor may also apply for a federal loan on behalf of a political subdivision that will suffer a substantial loss of tax or other revenue and demonstrates need of financial assistance to perform its governmental functions.²¹ During the recovery phase, the governor may also recommend, after review, the cancellation of all or part of repayment of that loan in certain circumstances. The governor may directly seek and receive a grant to provide financial support to individuals and families affected by disasters.²² This removes the burden of local governments seeking additional funding after a disaster, and lets them focus on actually recovering from a disaster.

II. Emergency Response Law: Second Class Boroughs and KPB Code

Local governments within a state may either receive their authority through adoption of a charter (home rule jurisdictions) or through a grant of the state. Second-class boroughs like the Kenai Peninsula Borough receive their powers through a statutory grant from the state.²³ The statute grants some powers outright, but a second class borough is not required to exercise all of the powers that are available to it. In addition, Alaska statute allows a second class borough to obtain additional powers by ordinance or by a vote of local populations, or expand the geographical scope of certain powers through an affirming vote of the cities within the borough.²⁴ A second class borough may adopt any power not prohibited by statute, as long as the power is approved by the appropriate method.²⁵ This places authority for the size and powers of the borough government squarely with the voters, with local legislative bodies such as assemblies or councils implementing adopted powers via ordinances. Without voter approval, expansion of the borough's powers beyond its basic statutory grants cannot happen. The logistics of legislative action or planning an election alone make it obvious that an expansion of borough powers during a disaster emergency is extremely unlikely.

¹⁸ AS 26.23.020, AS 46.08.010.

¹⁹ For a list of statutes containing state emergency related obligations to local governments, see Exhibit B.

²⁰ AS 26.23.010(6), AS 26.23.020(e)(9).

²¹ AS 26.23.080.

²² AS 26.23.090.

²³ AK Const. Art. 10, Sec. 3.

²⁴ AS 29.35.300(b).

²⁵ AS 29.35.210(c) and (d); AS 29.35.300.

Following the Sniffen letter’s interpretation of the Alaska Disaster Act as conferring broad emergency-related powers under AS 26.23.060(b) would be a dangerous road for the borough. An attorney general’s opinion may be deemed erroneous by the courts,²⁶ a real possibility in this instance, since AS 26.23.060(h) provides that the powers granted by AS 26.23.060 do “not empower a political subdivision to perform responsibilities that it is not otherwise empowered to perform.” Alaska case law provides a single reference, and no analysis, with regard to S 26.23.060.²⁷ Even if the statute was construed to provide KPB with the power to respond to a disaster emergency, Alaska case law requires that any implied powers claimed by KPB as stemming from the statute be strictly construed against KPB.²⁸ Powers outside of those expressly granted to the borough pursuant to Alaska statute are necessarily implied powers that require such strict construction. In the absence of a clear and express grant of authority to take actions outside of its usual powers in case of a disaster emergency, KPB cannot safely exercise the broad emergency powers urged by the Sniffen letter.

Thus, the extent of the response authority available to a municipality is the sum total of the legal authority vested in the municipality at the time of the disaster emergency and the resources and tools made available pursuant to that authority. Whether or not a municipality gains powers following an emergency declaration or simply gains the flexibility to use its powers with fewer checks and balances depends on the nature of the municipality itself. Although a second-class borough does not gain a statutory list of powers when a disaster has been declared, it gains flexibility in using its extant powers. For instance, it may suspend notice and comment periods in order to quickly implement ordinances in the face of a disaster emergency.²⁹ A list of the Alaska statutes expressly conferring specific emergency-related powers available to a second-class borough is contained in Exhibit A.

As previously discussed, Alaska statute makes each political subdivision responsible for its own disaster preparedness and coordination, either by itself or in conjunction with the Alaska Division of Homeland Security and Emergency Management.³⁰ Interjurisdictional service areas may be formed for several different purposes, including for the provision of emergency services not otherwise available and the formulation of plans ensuring the appropriate distribution of emergency response responsibilities.³¹ KPB has agreements for fire and other emergency services with a number of service areas established under the statute and KPB Code.³² Even local governments which are not part of an interjurisdictional agreement are encouraged to enter into mutual aid agreements with nearby authorities to ensure adequate planning and response.³³ KPB is party to a number of mutual aid agreements, generally for the provision

²⁶ See, e.g., *Girves v. Kenai Peninsula Borough*, 536 P.2d 1221, 1225 (Alaska 1975).

²⁷ *City of Seward v. Afognak Logging*, 31 P.3d 780, 785 (Alaska 2001).

²⁸ *Girves v. Kenai Peninsula Borough*, 536 P.2d 1221, 1224 (Alaska 1975).

²⁹ AS 29.25.030.

³⁰ AS 26.23.060(b).

³¹ AS 26.23.040.

³² KPB Ch. 16.

³³ AS 26.23.180.

of fire, including wildfire, and emergency response services. These mutual aid agreements can be between KPB departments, service areas, local cities and state agencies.³⁴

KPB also has a six cities within its boundaries which may choose to provide their own services. Mutual aid agreements between these cities and the borough streamline aid for interdependent areas. However, nothing in the Act exempts mutual aid agreements from the rules imposed by law on contracting by the local government. Since the borough's mutual aid agreements are typically limited in scope, it may be necessary to amend them at short notice to respond to an unanticipated type of disaster. An amendment to an existing agreement during a disaster is authorized under existing KPB disaster authorities.

While the Act provides a fairly comprehensive picture of the process and powers flowing before and after a state declaration of disaster emergency, the KPB code contains only a few references to its emergency response powers.³⁵ The existing code contains little guidance as to the powers that the borough may wield and the scope and process of emergency management functions. This means that KPB officials and citizens must have a strong knowledge of the Act and the scope of KPB's powers at the time that disaster strikes and apply that knowledge under stress. As an example, the mayor must remember to provide a legal underpinning for the disaster declaration, articulate a logic that will gain the support of the assembly, make the right findings to properly trigger emergency procurement and similar provisions, and consider whether the state will exercise its authority to reach in to use borough resources.³⁶

Strategic updates to the KPB code can provide a basic roadmap for handling of a disaster emergency and ensure that the borough's powers are clearly articulate and legally supported. This would both improve the borough's ability to manage the many facets of its disaster response and reduce uncertainty or liability for actions taken under time pressure and under extreme circumstances.

III. Ramifications for the Borough's Emergency Response:

Alaska and KPB law has proven effective in ensuring preparedness and advance planning. However, law relating to local action in the response phase of an emergency must cover both the traditional "bottom up" scenario, as well as the newer, "top down" scenario. Adjustments to KPB's existing code and practices will help to ensure that it has increased support and decreased liability with regard to emergency response.

A. Bottom Up Scenario

The traditional disaster response follows a "bottom-up" scenario. Because disasters tend to be local, local responders and local governments are usually the first to get involved. If response to the

³⁴ AS 26.23.180.

³⁵ For a list of all KPB code provisions relating to disaster emergencies, see Exhibit B.

³⁶ A template for the KPB mayor's declaration of disaster emergency is attached as Exhibit D.

disaster requires more than the day-to-day resources of the municipality, then it may request aid from a nearby municipality under a mutual aid agreement. In order to access stockpiled supplies or coordinate the actions of multiple agencies, the local government may declare a disaster emergency. This activates its emergency response plan, which may be scaled to meet the scope of the disaster emergency. In addition, the local disaster declaration allows the local chief executive to request help from the state in the form of resources and funds. If the scope of the disaster emergency is large, the state may in turn request assistance from the federal government.

In the bottom-up scenario, the local government maintains control of the situation, subject to its existing authorities, as it begins. It can ensure that the initial disaster declaration makes clear the character and scope of the disaster, that the proper response mechanisms and resources are requested and that its own resources are deployed in a way that responds to the disaster while maintaining the other necessary functions of the borough. A clear, comprehensive and authoritative declaration of disaster underpins all of this.

Since the nature of a disaster is extreme, the local government must consider how it will function in the face of hardship. If its usual decision-makers – the mayor, assembly members, department heads – are incapacitated or otherwise unavailable to act, KPB must still be able to issue an authoritative disaster declaration, approve an extension of the declaration, implement its emergency response plan and request aid. If communications are disrupted on a broad scale, it must still have the ability to procure, legislate and support the emergency response. To ensure these functions continue, the KPB code should provide for backup to the mayor’s emergency response functions. In addition, it should ensure that streamlined assembly processes are available for ratification of the mayor’s actions and any necessary emergency legislation. Several ordinances are proposed to ensure continuity of these functions.³⁷

B. Top Down scenario

One of the main lessons of the COVID-19 pandemic was the real possibility of a “top-down” disaster emergency. Although the SARS flu epidemic had ensured that a page of most emergency response plans was devoted to pandemic, the plans were vague and provided little concrete guidance on how a top-down response to an event that can at least somewhat be anticipated by larger government entities with some time to prepare would work. Statutes were drafted and adopted with a traditional bottom-up scenario in mind. Now, for the first time, local governments have the opportunity to evaluate the real world interplay of state and local powers when the disaster begins on the state (or even federal) level.

In the top-down scenario, the state or even the federal government declares a disaster emergency based on a threatened disaster. The disaster may not have reached most, or even any, of the state at the time of the declaration. Activating state and local disaster plans is intended to allow mechanisms to be

³⁷ A crosswalk of proposed ordinances, relevant Alaska statute and relevant KPB code is attached as Exhibit E.

put in place as the disaster approaches. The state may want to beef up its own resources and encourage local governments to do the same. Declaring a disaster emergency preemptively also gives state governments the opportunity to receive and distribute federal response funds so that there are resources readily available to local authorities to contract with local providers and procure goods ahead of the need. It may also want to assess the resources of the local governments that can be used in the state's efforts. Because the state has the ability to use all available resources of the local governments, it is important to identify on the local level which resources can be contributed without gutting the borough's ability to carry out its obligations every day to its constituents.

While in terms of mobilizing resources, a top-down declaration can be speedy and efficient, it poses unique problems for local governments "downstream" of the declaring government. First, smaller municipalities may not have the statutory authority to receive or distribute resources in the manner the state expects them to. This puts the local government in the untenable position of overreaching its own authority on behalf of another government without clarity as to what level of protection it has against liability in the event that something goes wrong. The COVID-19 pandemic and ensuing response was one such top-down response where the borough was directed to take responsibility for tasks and resources outside its normal powers, and which could put the borough at serious risk of incurring liability for overstepping its authority.

Downstream governments have several options to minimize their exposure. The surest way for a local government like a borough to protect itself against liability is to only conduct response actions that fit within the statutory authority the borough already has. Even if it is at the behest of the state, staying within the boundaries of its inherent power would mean the borough is protected by its own limits on discretionary authority, whether it is acting on its own initiative or at the direction of the state.

Alternatively, the borough could take on response tasks from the state under agency authority. If the borough is simply taking on tasks and resources "in the shoes" of the state, with the state's instruction and by the state's authority, then the risk of something going wrong will also be attributable to the state, at least partially insulating the borough from the risks associated with carrying out its part of the response. Agency is particularly important where the borough does not have the power to carry out its assigned task. In that case, it can only take action as an agent of the state, and where possible, should obtain an express grant of authority.³⁸

Another manner in which a borough might protect itself from the risks that come with being the "tip of the spear" in a response is to include explicit language in agreements between the borough and the state allocating liability in a way that suits both parties and minimizes risk to the borough. While the state may not agree to an outright acceptance of all liability, articulating the boundaries the borough expects to operate within and obtaining acknowledgment from an agent of the state can provide great assurance to the borough's risk managers that they will not be unduly or unknowingly exposed to an overwhelming amount of risk and potential legal liability.

³⁸ See additional details regarding the extent of local government liability in Exhibit C.

Because the state has access to “all available” borough resources in the context of a declared disaster emergency, the borough might also protect itself by maintaining records and articulating the exact extent of the resources the borough has available. If resources are already allocated for necessary operations of the borough, they may not be deemed “available” for state use and then cannot become sources of loss or risk to the borough. The proposed ordinances accompanying this report meet the concerns articulated in the top-down model of response and give the borough tools to reallocate risks in ways that leave the borough in the best position to respond to the next disaster.³⁹

IV. Conclusion

Based on the interplay of federal, state and local law, and considering the borough’s desire to maximize its ability to provide effective emergency preparation, response and recovery while minimizing liability, it is the HWB team’s recommendation that KPB adopt the proposed ordinances and use the information and templates attached to this report to reach its goals. Moderate updates to the KPB code, a thorough understanding of the extent of KPB’s legal powers and a continued reliance on the borough’s strong emergency planning, response and recovery expertise will place KPB in the strongest possible position to manage future emergencies.

³⁹ See attached Exhibit D.

EXHIBIT A

Recommendations

A comprehensive review of the Alaska and Kenai Peninsula Borough legal framework for emergency planning indicates that the borough should fill in gaps where legal support for its actions might not be clear. The state gains a purposefully broad grant of authority in the event of a disaster, while the extent of the borough's powers remains unchanged. In most disaster scenarios, the borough benefits from the state's powers and assistance. However, in a top-down scenario, the borough may need to set boundaries, supported by legal authority, to ensure that the state's demands do not degrade the borough's ability to serve its constituents or expose it to unnecessary liability.

To support the borough's ability to assist itself, its neighbors and the state during a disaster emergency, we recommend that the KPB Assembly consider and approve each of the amendments to the KPB code that we have proposed. The proposed amendments and supporting statements are contained in Exhibit E to this report.

Additional information and templates attached as Exhibits B-D to this report are designed to provide a primer on important concepts and a guide to issues should be considered when a declaration of disaster emergency must be made or the borough must calibrate its emergency response.

Finally, we urge the borough to consider how the pandemic section of its emergency response plan should be amended based on this report and lessons learned from the COVID-19 pandemic. Although a comprehensive review and recommendations for the EOP was not a part of the scope of this report, it is clear that Alaska's emergency response plans, both state and local, do not provide a clear framework for this kind of novel, top-down scenario.

Given the strong expertise available within and to the Kenai Peninsula Borough government, we believe that these tools will give the borough the necessary legal support to weather future disasters with confidence.

EXHIBIT B

Kenai Peninsula Borough Legal Framework for Emergency Response

Relevant Statutory Provisions

I. Emergency powers granted to a second class borough under Alaska Statute:

AS 29.35.040	Nonareawide ability to provide for housing, urban renewal and redevelopment in the same manner as a home rule city if governor/president has declared borough to be a disaster area
AS 29.25.030(a)	Emergency ordinances allowed - may become effective immediately upon adoption by assembly, require affirmative vote of lesser of all members present or $\frac{3}{4}$ of total membership, can't be used to levy taxes, grant franchise, regulate public utility rates
AS 29.25.030(c)	Emergency ordinance is effective for 60 days
AS 29.35.130	May establish emergency services communication center
AS 26.23.060	May designate emergency liaison, identify agency head for emergency management, prepare for disaster response and preparedness, prepare written emergency plan <u>BUT</u> only if not outside the powers of the relevant political subdivision
AS 26.23.073	May create local emergency planning committee
AS 26.23.100	May acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, that are necessary to prepare or equip those sites to receive and use the housing units
AS 26.23.140	May declare local disaster emergency to activate emergency response plan(s)
AS 26.23.190	Free access for emergency responders to public and private land and public buildings without consent if necessary to take appropriate emergency measures
AS 26.23.500	Participants in intrastate mutual aid plan may request and receive assistance from one another
AS 46.09.060(b)	Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.04, AS 46.08 and AS 46.09, is granted to municipalities that do not otherwise have that authority.

However, note the following limitations:

AS 26.23.060	Notwithstanding the definition of “political subdivision” in AS 26.23.900 , this section does not empower a political subdivision to perform responsibilities that it is not otherwise empowered to perform. In this section, “political subdivision” includes only a political subdivision that is otherwise empowered to perform the responsibilities assigned under this section.
AS 26.23.200	<p>Nothing in AS 26.23.010 — 26.23.220</p> <p>(1) interferes with or allows interference with the course or conduct of a labor dispute, except that actions otherwise authorized by AS 26.23.010 — 26.23.220 or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;</p> <p>(2) interferes with or allows interference with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency, in a manner that encroaches as little as possible upon the normal functions of the news media;</p> <p>(3) affects the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or of any personnel of them, when on active duty; but state, local, and interjurisdictional disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies;</p> <p>(4) limits, modifies, or abridges the authority of the governor to proclaim martial law, or exercise any other powers vested in the governor under the constitution, statutes, or common law of this state independent of, or in conjunction with, any provision of AS 26.23.010 — 26.23.220; or</p> <p>(5) authorizes the confiscation of a firearm lawfully owned, possessed, or carried by a law-abiding citizen.</p>
AS 46.04.110 and AS 46.09.060(b)	Local government may exercise its police powers within the area of its municipality despite the priority given to the emergency response powers awarded under AS 46.04 and AS 46.09 (hazardous materials and oil spills)

II. Current KPB Code provisions relating to disaster emergencies:

KPB 3.04.270	Suspend employee policies under Title 3 of KPB Code
KPB 5.04.080	Make emergency appropriations
KPB 5.28.280	Waiver of requirement for assembly approval of purchases over \$40,000 when mayor determines existence of emergency affecting life, health or safety exists
KPB 5.28.290	Purchasing officer may waive competition, notice and other procedural requirements for award of procurement contracts upon mayor's determination that emergency threatening public health, safety, property or welfare requires that contract be awarded without delay
KPB 5.28.300	Mayor may waive formal bidding procedures
KPB 16.40.030	Provide joint emergency services on areawide basis
KPB 1.26.030	Planning department may issue temporary oral permits to "protect life and property from imminent danger or to restore, repair or maintain public works, utilities or services destroyed, damaged, or interrupted by the emergency." (KPB 21.18.135) Permit fees may be waived in emergency situation (KPB 1.26.030)
KPB 5.12.114	Reassess tax value of property upon request of owner whose property damaged by disaster or by assessor sua sponte if mayor determines property in borough damaged by disaster and owner applies.
KPB 5.12.250	Impose a tax not to exceed 8 mills to "meet an emergency threatening the public peace, health or safety"

III. State powers to use borough resources (specific grants):

AS 46.09.060 (a)-(b) and AS 46.04.110	Municipality may exercise its police power unless the exercise conflicts with a provision of AS 46.09 (Hazardous Substance Release Control) or regulation promulgated pursuant to AS 46.09 and 46.04 (oil and hazardous substances)
AS 26.23.020(e)	Proclamation of a disaster emergency activates the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivisions or areas in question, and constitutes authority for the deployment and use of any force to which the plan or plans apply and for use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available under AS 26.23.010 — 26.23.220 or any other provision of law relating to disaster emergency response.
AS 26.23.020(g)(2)	Governor may use all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency
AS 26.23.040	Alaska division of homeland security may suggest or require revisions to local and interjurisdictional disaster plans
AS 26.23.070	Governor may require interjurisdictional emergency plan
AS 46.09.040	Re hazardous substance spill, the department may <u>contract</u> with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter

IV. State obligations to boroughs in emergency context:

AS 26.23.040(b), (c), (e)	Assist with development of emergency response plans, seek advice of local governments in preparing state emergency response plans and position and provide emergency response resources as listed in the statute
AS 26.23.080(1)	Apply for financial help on behalf of a political subdivision in event of presidential declaration of disaster emergency, recommend repayment forgiveness, etc.
AS 26.23.100	Assist or partner with local government for acquisition of sites necessary for temporary housing, preparation and use of the site and housing, lend funds available to the state
AS 26.23.110	May assist with debris removal and funding for same
AS 26.23.160	May compensate for use or destruction of real property, if commandeered in connection with disaster emergency

EXHIBIT C

Local Liability

Borough liability in the emergency management context:

In the modern world, local governments are generally liable for injuries stemming from the negligence of the municipality or its agents in most circumstances, including during a disaster emergency. Under Alaska law, local governments and their employees may be sued except in narrow circumstances typically related to the exercise of, or decision not to exercise, discretionary functions.⁴⁰ However, Alaska statute does provide immunity in certain instances related to emergency management. Immunity is available to a local government acting within its corporate character and within the scope of its authority for

- (a) the exercise of a duty or function performed at the request of, or by the terms of an agreement or contract with, the state to meet emergency public safety requirements; and
- (b) the exercise of a duty in connection with an enhanced 911 emergency system in the absence of gross negligence or intentional misconduct.

It's also worth noting that suit may not be maintained against employees or members of a fire department maintained by a local government when carrying out their duties.

These statutory provisions provide some comfort with regard to liability for emergency actions taken at the request of the state that are within the borough's powers. However, case law indicates that an express request from the state is required; general approval of emergency management plans is not sufficient to invoke the statute.⁴¹

The wording of the statute underlines the importance of ensuring that the borough is working within the scope of its authority. If a particular action is not part of the borough's statutory authority (including authorities obtained by agreement or election under the statute), then authority must come from another source, such as an agency relationship with the state. Note that the delegation of a function to a local government by the state does not automatically create an agency relationship because the local government acts independently to implement the delegated function. A borough's participation in a federal housing loan program or a school board's arrangements for bus transportation are examples of authority delegated by the state which do not create an agency relationship. The state must exercise a much higher degree of control for a court to infer an agency relationship.⁴² An express grant of agency is the best way to extend immunity to a local government, since it leaves no question as to the authority of the agent to act on behalf of the state. That said, the borough's reasonable belief that it is acting as an agent in accordance with the state's (or any principal's) manifestation to the agent, is recognized as actual authority by Alaska courts.⁴³

⁴⁰ See AS 09.65.070 and see generally, 2 Antieau on Local Government Law, Second Edition §§35.01, et. seq. and *Lane v. City & Borough of Juneau*, 421 P.3d 83 (Alaska 2018).

⁴¹ *City of Seward v. Afognak Logging*, 31 P.3d 780 (Alaska 2001).

⁴² *Kenai Peninsula Borough v. State*, 532 P.2d 1019 (Alaska 1975).

⁴³ *Askinuk Corp. v. Lower Yukon Sch. Dist.*, 214 P.3d 259, 264 (Alaska 2009).

Alaska statute limits liability of emergency responders to actions that qualify as intentional misconduct or gross negligence. It apportions any remaining liability for responders that are “lent” from one local government to another. Personnel acting under the control of the requesting government are considered to be acting as its agents and any liability for their actions is taken on by the requesting government.⁴⁴ The agency relationship does not create an employer-employee relationship, however. All employment benefits (including for death or injury during the emergency) are provided by the responding government who is the regular employer of the emergency responder.⁴⁵

The following provisions of the Alaska Disaster Relief Act implicate the liability of a borough during disaster response and recovery.

⁴⁴ AS 26.23.540.

⁴⁵ AS 26.23.520-525.

Relevant Alaska statutes	Comments	Related KPB Code
<p>Suits Against Incorporated Units of Local Government</p> <p>AS 09.65.070. Suits Against Incorporated Units of Local Government.</p> <p>(a) Except as provided in this section, an action may be maintained against a municipality in its corporate character and within the scope of its authority...</p> <p>(c) An action may not be maintained against an employee or member of a fire department operated and maintained by a municipality or village if the claim is an action for tort or breach of a contractual duty and is based upon the act or omission of the employee or member of the fire department in the execution of a function for which the department is established.</p> <p>(d) An action for damages may not be brought against a municipality or any of its agents, officers, or employees if the claim...</p> <p>(5) is based upon the exercise or performance of a duty or function upon the request of, or by the terms of an agreement or contract with, the state to meet emergency public safety requirements; or</p> <p>(6) is based on the exercise or performance of a duty in connection with an enhanced 911 emergency system and is not based on an intentional act of misconduct or on an act of gross negligence...</p>		None

<p>Tort claims related to disaster response</p> <p>Sec. 26.23.540. Tort liability of participating political subdivisions and emergency responders.</p> <p>For purposes of liability, all persons responding under the operational control of the requesting political subdivision shall be considered to be agents of the requesting political subdivision. An action for damages for an act or omission may not be brought against a responding political subdivision, or an officer or employee of a responding political subdivision, in providing assistance under AS 26.23.500 - 549. This section does not preclude liability for civil damages that are the result of gross negligence or reckless or intentional misconduct.</p>	<p>Apportions tort liability between local governments only. But this may serve as a template for a borough acting in an agency capacity on behalf of the state.</p>	<p>None. The only indemnification addressed in the KPB code is KPB 2.34.120-130, addressing indemnity of school district employees acting within the scope of their employment.</p>
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<p>Employer liability</p> <p>AS 26.23.520. Emergency responder not an employee of a requesting political subdivision. An emergency responder from a political subdivision that responds to a political subdivision requesting assistance is not an employee of the political subdivision requesting assistance and is not entitled to any right, privilege, or benefit of employment from the requesting political subdivision, including compensation, wages, salary, leave, pension, health, or another benefit.</p> <p>AS 26.23.525. Workers' compensation and benefits following injury to or death of emergency responder. An emergency responder that is responding to and rendering assistance in a political subdivision that has requested assistance under AS 26.23.510 who sustains an injury or dies in the course of providing assistance to the requesting political subdivision under AS 26.23.500 — 26.23.549 is entitled to receive only the benefits otherwise authorized by law for an injury sustained, or a death that occurs, in the course of employment with, or while providing services to, the responding political subdivision...</p>	<p>Responsibilities of employer of emergency responders <u>do not</u> shift to jurisdiction requesting help during disaster. Benefits, including for injury and death remain with the original employer.</p> <p>AS 26.23.530 provides that a requesting jurisdiction shall reimburse a responding local government for the assistance provided.</p>	<p>Note that KPB 3.04.270 allows the borough mayor to suspend its employment regulations under Title 3 of the code during a disaster emergency.</p> <p>KPB 3.04.270 - Emergency suspension. Emergency suspension of this title and personnel resolutions of Title 3 (Employee Classification and Pay) and resolutions adopted under its authority may be suspended temporarily in whole or in part by the mayor in the event of a natural disaster or major civil disturbance.</p>
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<p>Liability for unauthorized actions</p>	<p>Unauthorized or “ultra vires” actions of a local government are void, but if the action is outside the government’s powers due only to a procedural irregularity, it may be later be ratified.</p> <p><i>Stevens v. State, Alcoholic Beverage Control Bd.</i>, 257 P.3d 1154, 1158 (Alaska 2011). Ultra Vires action can expose the borough to liability for damages, whether or not the borough was aware that it had exceeded its power.</p>	<p>KPB 2.45.020 creates service areas for disaster planning and response. If these service areas were established pursuant to a gubernatorial directive under AS 26.23.070, by election under AS 29.35.300, or by transfer of the powers by the cities inside the borough under AS 29.35.310, then the borough may exercise its powers on an <u>areawide</u> basis. However, the extend of KPB’s response powers within the service areas depends upon the extent of the grant of legal authority. Otherwise, they borough’s emergency response powers are strictly <u>nonareawide</u>.</p>
<p>Housing</p> <p>AS 29.35.040. Emergency Disaster Powers. (a) A municipality that is wholly or partially in an area that is declared by the President or governor to be a disaster_area may participate in and provide for housing, urban renewal, and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough shall be on a nonareawide basis, except a borough may exercise the powers transferred to it by a city as provided by AS 29.35.310...</p>	<p>As above, taking action on an areawide basis without the approval of the cities within the borough would create liability.</p>	

EXHIBIT D

Template: Declaration of Disaster Emergency

This template is intended to ensure that the language of the declaration provides the legal support necessary to support the borough's emergency powers, including activating emergency plans, streamlining procurement or accessing funds. It is also intended to provide information that the assembly can rely upon in extending the disaster emergency or ratifying the mayor's emergency actions. Finally, it is intended to provide sufficient support for the various funding requests that the borough made need to make.

**KENAI PENINSULA BOROUGH
DECLARATION OF DISASTER EMERGENCY**

The following clauses should always be included in the Declaration:

WHEREAS, [describe nature of disaster/imminent threat and how it was brought about];

WHEREAS, [define the area that is affected/threatened and the expected duration of the disaster emergency];

WHEREAS, _____ threatens the life, health and safety [specify one or more, as appropriate] of borough residents so that streamlined contracting and procurement procedures under KPB 5.28.280 – 5.28.300 must be implemented [give specifics if helpful to justify procurement without assembly approval – in the best interests of the borough or insufficient time to follow full procurement process] (see KPB 5.28.280-300);

WHEREAS, [describe declarations, findings of state, other municipalities, etc. that support KPB's declaration];

WHEREAS, [describe resources already being applied to disaster emergency];

WHEREAS, the borough's remaining resources are limited by obligations unrelated to the disaster emergency. Currently, the borough's available resources to address the disaster emergency are _____ [describe extent of resources currently available to address disaster emergency while still fulfilling borough's other obligations][**Alternative:** are being assessed by the Office of Emergency Management] ;

WHEREAS, [describe amount and source of borough funds initially expected to be used to respond to the disaster emergency];

The following clauses may be included in the Declaration, if applicable:

WHEREAS, [describe any state, federal, other outside funds which have been or may be requested][**Alternative:** it is anticipated that the additional resources borough and funding beyond what is currently available to the borough will be required to respond to the disaster emergency];

WHEREAS, the effects of the natural disaster/major civil disturbance [choose one] make it necessary to suspend KPB Title 3/KPB 3.XX.XXX - .XXX [Entire employment title can be suspended, but better approach is to suspend specific provisions, e.g. KPB 3.04.051 (Discharge Authority), KPB 3.04.080 (Hours of Work), or KPB 3.04.230 (Legal Liability – Conduct)].

WHEREAS, I will be requesting that the assembly make emergency appropriations to [See KPB 5.04.080 – must be to meet the public emergency – describe any specific needs that are known].

Always conclude with:

WHEREAS, a borough-wide response is needed to fully address this condition of importance to the life, health and safety of borough residents;

NOW THEREFORE, under the authority granted by Alaska Statute 26.23.140 [and Kenai Peninsula Borough Code Section 2.04.090], I hereby declare that a condition of disaster emergency exists [throughout the borough][in _____location], and this condition is of sufficient severity and magnitude to warrant a declaration of disaster emergency in order to activate the emergency resources of the borough and request assistance from state and municipal partners.

FURTHER, the Kenai Peninsula Borough Office of Emergency Management is hereby authorized to use funds made available for these purposes, to access other available emergency resources, and to task borough departments and personnel in accordance with the Kenai Peninsula Borough Emergency Response Plan, as necessary to respond to the condition of disaster emergency.

FURTHER, [if the borough wishes to request specific state or other assistance at the time of this declaration, a statement to that effect may be included.]

FURTHER, [if specific KPB sections have been invoked in the whereas clauses, those items should be actuated here, e.g. “the authority of designated administrative officers to suspend, discharge, or demote employees is hereby suspended in _____ area during the pendency of the disaster emergency.”]

By: _____

Dated: _____

Mayor / [Authorized Designee]

EXHIBIT E

Proposed Code Updates

Proposed Ordinance	Existing KPB Code	Relation to Alaska Statutes	Reasoning
KPB 2.04.090			This ordinance provides a concise roadmap to the disaster declaration process, since KPB code does not contain a section dedicated to emergency management and references to emergency powers are scattered throughout the code. It also bolsters the legitimacy of the mayor's initial actions in response to a disaster by giving legislative approval to the procedure.
<i>a) If the borough mayor finds that a disaster as defined by AS 26.23.900 has occurred or that a disaster is imminent or threatened within the borough, the borough mayor may declare a condition of local disaster emergency for the Kenai Peninsula Borough. The borough mayor may make a declaration of disaster emergency when a disaster has occurred within the borough, regardless of any declaration in another municipality or the state.</i>	Mayor's power to declare is not explicitly set forth in the code. It is referenced in KPB 2.45.020 (Emergency Planning) and 5.12.114 (Tax Exemptions).	AS 26.23.140 gives the power to declare a local disaster emergency to the principal executive officer of a political subdivision.	(a) Points executive to legal definition of disaster to underpin decision to declare and clarifies that decision is an independent one, whether in top-down or bottom-up situation.
<i>b) If the mayor is temporarily absent or disabled, the mayor's designee pursuant to KPB 2.04.030 may declare a disaster emergency and take such actions as are</i>	See KPB 2.04.030		(b) Bolsters mayor's ability to name a designee to make the declaration and the authority of the designee through legislative approval. Tracks AS 29.20.260 language re absence/disability.

<p><i>authorized in this section without action of the assembly.</i></p> <p>c) <i>The declaration shall include:</i></p> <ul style="list-style-type: none">i. <i>A statement indicating the nature of the disaster or emergency, the area threatened or affected and the conditions that have brought it about or that make possible the termination of the disaster emergency;</i>ii. <i>An initial statement of available resources to address the disaster emergency,</i>iii. <i>An initial statement identifying any borough funds to be expended to respond to the disaster or emergency and any State or other third party funds which may be requested;</i>iv. <i>A statement confirming whether an emergency affecting life, health or safety exists for purposes of KPB 5.28.280.</i>	<p>None.</p>	<p>Adapted from governor’s declaration required contents, AS 26.23.020(c) with additions for KPB’s needs.</p>	<p>(c)(i) Provides details necessary for assembly to understand and confirm actions; (ii) protects borough resources from being appropriated by state by defining what’s available for use in this situation; (iii) gives early direction re funds and indicates possible sources; (iv) incorporates statement that triggers streamlined procurement procedures.</p>
<p>d) <i>The declaration of local disaster emergency activates the disaster response and recovery aspects of all relevant borough emergency operations plans applicable to the area in question and constitutes authority for the borough to spend emergency or other borough funds as authorized by the assembly, and to receive and administer state, federal or other funding within the bounds of the borough’s legal authority.</i></p>	<p>None.</p>	<p>AS 26.23.140(b). Note that a disaster declaration by the Governor for an area automatically activates local emergency plans without a local declaration.</p>	<p>(d) clarifies result of declaration and limits use of internal and outside funds to uses within borough’s authority.</p>
<p>e) <i>The mayor or designee’s declaration of local disaster emergency shall remain in effect for seven (7) days unless extended by the assembly.</i></p>	<p>None.</p>	<p>AS 26.23.140. The assembly could extend for 60 days as an emergency ordinance or longer if it is able to meet normal quorum and voting requirements.</p>	<p>(e) incorporates 7 day maximum and need for assembly ratification.</p>

<p>KPB 2.04.100</p> <p>Borough authority:</p> <p><i>During the pendency of a disaster emergency declared by the Mayor, and if sufficient resources (including personnel, facilities, equipment or any other resource necessary for the adequate exercise of the delegated authority) are determined to be available, the borough may accept and exercise authority expressly delegated by the State to the borough, as its agent, pursuant to AS 26.20.020.</i></p>	<p>None.</p>	<p>AS 26.23.020(g)(2) allows the Governor to use “all available resources of...each political subdivision of the state as reasonably necessary to cope with the disaster emergency.” The statute does not define resources.</p> <p>Per AS 26.23.060, local governments are responsible for disaster preparedness and coordination of response in conjunction with the Alaska Division of Emergency Management, but they are not empowered to perform responsibilities outside their normal powers in this context.</p> <p>AS 09.65.070 immunizes local governments against actions within their powers taken at the request of the state.</p>	<p>Allows mayor to regulate when borough will accept agency authority, gather input on what resources are available, and require express delegation of state’s disaster authority.</p> <p>Governor’s use of local resources in manner beyond the powers of the local government must be effected under the state’s powers, e.g. under agency authority.</p> <p>An agency grant could be considered to confer powers and create access to state immunity.</p>

<p>KPB 2.04.040</p> <p>Involuntary Succession</p> <p>Whenever the assembly president and two thirds of the members of the assembly file a written document with the borough clerk, <i>or in the case of a disaster as defined in AS 26.23.900, if the assembly president issues a good faith declaration</i>, showing good and sufficient cause that the borough mayor is temporarily absent or disabled, then the administrative officer designated by the mayor <i>under KPB 2.04.030</i> will exercise the powers and duties of borough mayor until such time as the borough mayor is able to resume <i>[his]</i> office. The administrative officer acting for the mayor shall have the qualifications for the position of mayor, but shall not have veto power. The actions of the administrative officer in exercising the powers and duties of the borough mayor shall be subject to the review of the assembly president. No administrative staff shall be dismissed or replaced during the mayor's absence except with the concurrence of a majority of the assembly. <i>If the determination of the mayor's absence or disability is made by the assembly president alone, then the authority of the designated administrative officer will expire after seven (7) days unless ratified by the assembly.</i></p>	<p>KPB 2.04.040</p> <p>Whenever the assembly president and two thirds of the members of the assembly file a written document with the borough clerk showing good and sufficient cause that the borough mayor is unable to discharge the powers and duties of his office due to some disability, then the administrative officer designated by the mayor will exercise the powers and duties of borough mayor until such time as the borough mayor is able to resume his office. The administrative officer acting for the mayor shall have the qualifications for the position of mayor, but shall not have veto power. The actions of the administrative officer in exercising the powers and duties of the borough mayor shall be subject to the review of the assembly president. No administrative staff shall be dismissed or replaced during the mayor's absence except with the concurrence of a majority of the assembly.</p>		<p>Emergencies generally require an immediate response. This amendment assures quick succession and legal authority for a disaster declaration and emergency actions in the absence of the mayor. Note that it is an underlying assumption of the KPB Emergency Operations Plan that all municipal employees will ensure the safety of their own families before turning to public duties.</p> <p>The emergency ordinance parameters are drawn from AS 29.25.030.</p>
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<p>KPB 2.04.110</p> <p>Emergency Agreements</p> <p>(a) <i>Following the declaration of a disaster emergency by the governor pursuant to 26.23.020(c) or by the borough mayor pursuant to AS 26.23.140, the mayor may execute an emergency mutual aid agreement or other cooperative agreement with the state, the federal government, or with any other municipality in the state pursuant to AS 29.35.010(13) for the exchange of aid upon request, including the loan of personnel, equipment and materials and the administration of funds or other resources, all as permitted by law.</i></p> <p>(b) <i>The borough shall be obligated under such mutual aid agreements to perform duties (i) which are within its legal power and (ii) subject to the availability of sufficient resources.</i></p> <p>(c) <i>Any mutual aid agreement promulgated hereunder shall remain in effect until the earlier of (i) the rescission of the relevant local or state emergency disaster declaration or (ii) express rescission of the mutual aid agreement by the assembly.</i></p>	<p>None.</p>	<p>AS 26.23.180 encourages mutual aid in coping with disasters, even where interjurisdictional agreements are not already in place.</p> <p>AS 26.23.060 gives local governments responsibility for coordinating interjurisdictional planning and service areas for disaster response.</p>	<p>Although the borough has the authority to enter into mutual aid agreements, the agreements must typically be ratified by the assembly before going into effect. During the COVID-19 pandemic, in the absence of an express delegation of power from the state, the borough was forced to enter into last-minute mutual aid agreements that allowed it to distribute federal aid money funneled through the state. This code provisions would ensure the legal authority of the borough mayor to sign such temporary agreements and ensure that the expanded powers do not live on past the needs of the disaster.</p>
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<p>KPB 1.12.080 <i>Emergency Actions of the Assembly</i></p> <p>(a) <i>In the event of a disaster as defined by AS 26.23.900 or other emergency, the assembly may adopt emergency ordinances effective upon adoption. Each emergency ordinance shall contain a finding by the assembly that an emergency exists and a statement of the facts upon which the finding is based. An emergency ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The governing body shall print and make available copies of adopted emergency ordinances.</i></p> <p>(b) <i>An emergency ordinance may not be used to levy taxes, to grant, renew, or extend a franchise, or to regulate the rate charged by a public utility for its services.</i></p> <p>(c) <i>The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption of an emergency ordinance, the confirmation or extension of a local disaster declaration or the ratification of emergency actions taken by the executive.</i></p> <p>(d) <i>An emergency ordinance, or any other action taken under this section, is effective for 60 days.</i></p>	<p>None.</p>	<p>AS 29.25.030 authorizes the passage of emergency ordinances effective upon adoption and good for 60 days “to meet a public emergency.” Appropriate voting requirements and other restrictions specified in the statute.</p>	<p>This code section is designed to streamline assembly actions during a disaster emergency where assembly members are unable to attend a meeting and communications systems are unavailable or unreliable. The actions taken under this section are limited in time so that the assembly must take additional action within 60 days. At that point, the longer term response to the disaster should be more in focus.</p>
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<p>KPB 1.09 <i>Enumeration of Powers</i></p> <p><i>The mayor shall supervise the compilation and maintenance of a list enumerating the powers that may be exercised by the borough, whether bestowed by statute or acquired by other legal means. The list of powers shall be readily available for reference by the borough's departments and the general public.</i></p>	<p>None.</p>	<p>The Fairbanks-Northstar Borough Code contains an example of a comprehensive statute which codifies a list of the borough's powers. To draft the appropriate statute for KPB, it would be necessary to research which KPB powers have been obtained by statute, by election and by agreement. The alternative is to ensure that a list of powers is compiled and maintained within the KPB government. In either case, this code section would provide certainty with regard to the extent of the borough's powers, useful at any time but especially in the midst of a disaster emergency.</p>	<p>The Alaska statutes (a) require second class boroughs to exercise certain powers, (b) bestow the ability to exercise certain powers, (c) allow second class boroughs to acquire certain powers by ordinance or agreement, and (d) allow second class boroughs to acquire certain powers by election. Because each second class borough maintains its own character, the powers that each borough government has chosen to wield vary widely. A roadmap defining the powers that the KPB government exercises will aid it in determining the extent of its powers under the pressure of a disaster emergency, in addition to providing a conceptual base for how the assembly chooses to govern the borough.</p>
<p>2.45.010. Established.</p> <p>There is established an office of emergency management as a department in the Kenai Peninsula Borough. The Senior Manager of the Office of Emergency Management shall administer the department, <i>shall assume primary responsibility for managing and coordinating department responsibilities during a declared disaster emergency</i>, and shall report to the mayor or designee. The department shall be responsible for <i>response to, and recovery from, a declared disaster emergency</i>, for the development of borough and inter-jurisdictional disaster response and recovery plans, and for coordination of disaster management between the borough,</p>	<p>None.</p>	<p>Under AS 26.23.060, each political subdivision is responsible for its own disaster preparedness, for preparation of a local emergency plan and for coordination of response with the state and other local governments.</p>	<p>The edits to existing code make clear that OEM is responsible not just for disaster planning but also for response and recovery. It places the management of any disaster response primarily in the hands of the borough department with the appropriate expertise (OEM) and prevents misunderstanding of the scope of any other emergency powers, such as those that may fall upon the mayor's designee.</p>

the State of Alaska, and other municipalities and response and recovery organizations.			
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Introduced by:
Date:
Action:
Vote:

Mayor
08/09/22

**KENAI PENINSULA BOROUGH
RESOLUTION 2022-045**

**A RESOLUTION AUTHORIZING A STANDARDIZATION POLICY WITH NC
MACHINERY FOR SOLID WASTE CAT® EQUIPMENT**

WHEREAS, the Kenai Peninsula Borough (Borough) Solid Waste Department owns several pieces of Cat® Equipment; and

WHEREAS, NC Machinery is the designated service shop and parts supplier for our Cat® equipment; and

WHEREAS, the Borough's Solid Waste Department makes regular purchases in excess of \$5,000 for parts or services for their Cat® equipment to NC Machinery that require separate Assembly approval in order to maintain warranties and consistent service; and

WHEREAS, it is in the best interests of the Borough to approve a standardization policy for NC Machinery for all parts, repairs and maintenance work on Solid Waste Cat® equipment in order to maintain compatibility with existing requirements per section 5.28.280 of Borough Code;

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

SECTION 1. That the mayor is authorized to approve all purchases from NC Machinery for work on Cat® equipment operated and maintained by the Borough's Solid Waste Department.

SECTION 2. That this resolution is effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 9TH DAY OF AUGUST 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Solid Waste Department

MEMORANDUM

TO: Brent Johnson, Assembly President

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

FROM: Lee Frey, Solid Waste Director *LF*

DATE: July 28, 2022

RE: Resolution 2022-045, Authorizing a Standardization Policy with NC Machinery for Solid Waste Cat® Equipment

The Kenai Peninsula Borough Solid Waste Department requests a standardization policy with NC Machinery for all Cat® equipment used by the Solid Waste Department. The intent of this policy would be to allow the Borough's Solid Waste and Purchasing & Contracting Departments to execute purchases of all parts, repairs or maintenance on Solid Waste Cat® equipment through a proprietary procurement standardization policy per KPB 5.28.280(B)(2).

NC Machinery is the designated service shop and parts supplier for our CAT equipment. They have provided consistent quality service for many years for the Solid Waste Department. In many cases these parts and service must be completed by NC Machinery as the Borough's local authorized dealer to maintain warranties on equipment.

Approval of this standardization policy would reduce staff and Assembly time and paperwork currently necessary for each separate legislative approval of proprietary procurement requests related to NC Machinery services. The policy will streamline the process and allow for the purchase of parts faster and services quickly when needed; all of which is in the best interest of the Borough and helps maintain compatibility with existing requirements. All work would still have a quote requested from NC Machinery requesting and showing all government discounts that are applicable for requested parts or work.

Your consideration of the resolution is appreciated.

Introduced by: Mayor
Date: 08/09/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2022-047**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A JOINT FUNDING
AGREEMENT WITH THE U.S. DEPARTMENT OF THE INTERIOR U.S.
GEOLOGICAL SURVEY TO COOPERATIVELY MAINTAIN THE STREAM RIVER
GAGES AND GAGING STATIONS**

WHEREAS, the stage-only gaging station located on the Anchor River near Anchor Point and the continuous record stream gaging stations located on Grouse Creek near Seward, the Snow River near Seward, the Kenai River at Cooper Landing, and the Kenai River below Skilak Lake outlet near Sterling provide valuable hydrological data collected for flood warning and flood forecasting purposes on the Kenai Peninsula; and

WHEREAS, the gages have been jointly used by the Kenai Peninsula Borough (“Borough”) and the U.S. Geological Survey (“USGS”) for several years under a Joint Funding Agreement (“JFA”); and

WHEREAS, this proposed JFA is for a one-year period from July 1, 2022, through June 30, 2023, with the Borough paying \$76,563 and USGS paying \$75,000; and

WHEREAS, sufficient funds were appropriated for the JFA in the FY2023 annual budget; and

WHEREAS, the Borough’s best interests are served by entering into this JFA to assist in minimizing flood damage by providing early warning of impending flood hazards to property owners in low-lying areas;

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

SECTION 1. That the mayor is authorized to execute a Joint Funding Agreement with the U.S. Department of the Interior U.S. Geological Survey substantially in the form of the accompanying agreement in which the Borough contributes \$76,563 towards joint funding of costs of field maintenance and of analytic work using the above-described stream gages.

SECTION 2. That this resolution takes effect retroactively on July 1, 2022.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 9TH DAY OF AUGUST 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:


Absent:


Kenai Peninsula Borough

Emergency Management

MEMORANDUM

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

THRU: Charlie Pierce, Mayor 

FROM: Brenda Ahlberg, Emergency Manager 

DATE: July 28, 2022



RE: Resolution 2022-047, Authorizing the Mayor to Execute a Joint Funding Agreement with the U.S. Department of the Interior, U.S. Geological Survey to Cooperatively Maintain the Stream River Gages and Gaging Stations (Mayor)

The Kenai Peninsula Borough ("Borough") has a long-standing, beneficial partnership with the U.S. Geological Survey ("USGS") to jointly fund stream gages which collect hydrologic data for flood warning and forecasting on the Kenai Peninsula. USGS will provide, operate and maintain the gages as well as provide near real-time data online at <http://waterdata.usgs.gov/nwis/> and publish finalized data to the same site. The total project cost under the one-year agreement is \$151,563, which is jointly funded:

	KPB	USGS	TOTAL
July 1, 2022 to June 30, 2023	\$76,563	\$75,000	\$151,563

Funds were appropriated in the FY23 budget.

Your consideration of this resolution is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Account:	<u>100.11250.43011</u>
Amo	<u>76,563</u>
By: 	Date: <u>7/27/2022</u>
By: 	

Enclosed: USGS FY23 Draft Agreement



United States Department of the Interior

U.S. GEOLOGICAL SURVEY

ALASKA SCIENCE CENTER

4210 University Drive
Anchorage, Alaska 99508-4626

June 25, 2022

Honorable Charlie Pierce, Mayor
Kenai Peninsula Borough
144 North Binkley
Soldotna, Alaska 99669
Attention: Brenda Ahlberg

Dear Mayor Pierce:

Thank you for your interest in the continuation of hydrologic data collection for flood warning and flood forecasting on the Kenai Peninsula. We have enclosed a Joint Funding Agreement (JFA) to continue operation for the stage-only gaging station on Anchor River near Anchor Point, and the continuous record stream gaging stations on Grouse Creek near Seward, Snow River near Seward, Kenai River at Cooper Landing, and Kenai River below Skilak Lake Outlet near Sterling.

A reduction in federal funding for our Cooperative Water Program required a reduction in the amount of the U.S. Geological Survey (USGS) contribution to the JFA from previous years. This reduction will not result in an increase from the Kenai Peninsula Borough (KPB) or a reduction in services from the USGS. We are able to redirect funding from the National Streamflow Information Program to offset the reduction in Cooperative Water Program Funding. Annual costs to KPB and USGS for our existing JFA are summarized below

	KPB	USGS	TOTAL
July 1, 2022 to June 30, 2023	\$76,563	\$75,000	\$151,563

Costs by stream gaging station for this year and projections of future years are listed in the appendix.

As part of the operation of the gages, the USGS will:

- Operate and maintain the streamgage.
- Maintain datum at the site.
- Record stage data every 15 minutes.
- Make discharge measurements during visits to maintain the stage-discharge rating curve and to define the winter hydrograph.
- Post near real-time stage and discharge data in the USGS online *USGS Water Data for the Nation* from <http://waterdata.usgs.gov/nwis/> and publish finalized data to the same site.

- Store the data in the USGS databases.

The Kenai Peninsula Borough will be billed quarterly, beginning September, 2022. The USGS UEI number is NJQMLNG5L8A5. Work performed with funds from this agreement will be conducted on a fixed-cost basis. The USGS will retain all equipment purchased with funds from this agreement. It is understood that data obtained during the course of this work will be available to the USGS for publication and use in connection with related work. This agreement operates under the authority of statute 43 USC 50, which allows us to perform this work.

Please contact Starlyn Lenore at (907) 786-7117 with any billing concerns. Thank you for your understanding and cooperation in this matter. If you have any technical questions, please call Jeff Conaway at (907) 786-7041. We appreciate your support of this valuable water resources program.

Sincerely,

Christian E. Zimmerman
Director, Alaska Science Center

cc: Chad Smith (USGS-ASC)
Jeff Conaway (USGS-ASC)

APPENDIX

Annual flood warning gage costs State Fiscal Year 2022

This agreement covers July 1, 2022 through June 30, 2023, only.

State Fiscal Year 2021			
	KPB	USGS COOP	TOTAL
Grouse Creek near Seward	\$18,657	\$15,000	\$33,657
Snow River near Seward	\$18,070	\$15,000	\$33,070
Anchor River near Anchor Point	\$3,696	\$15,000	\$18,696
Kenai River at Cooper Landing	\$18,070	\$15,000	\$33,070
Kenai River below Skilak Lake	\$18,070	\$15,000	\$33,070
TOTAL	\$76,563	\$75,000	\$151,563

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Customer #: 6000001104
Agreement #: 22WBJFA00000004
Project #: WB00GR1
TIN #: 92-0030894

Fixed Cost Agreement YES[X] NO[]

THIS AGREEMENT is entered into as of the July 1, 2022, by the U.S. GEOLOGICAL SURVEY, Alaska Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the Kenai Peninsula Borough party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation Water Resource Investigations (per attachment), herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of \$0.00

- (a) \$75,000 by the party of the first part during the period
July 1, 2022 to June 30, 2023
- (b) \$76,563 by the party of the second part during the period
July 1, 2022 to June 30, 2023
- (c) Contributions are provided by the party of the first part through other USGS regional or national programs,
in the amount of: \$0

Description of the USGS regional/national program:

- (d) Additional or reduced amounts by each party during the above period or succeeding periods as may be
determined by mutual agreement and set forth in an exchange of letters between the parties.
- (e) The performance period may be changed by mutual agreement and set forth in an exchange of letters
between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program, and if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the Scope of Work (SOW) are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices website (<https://www.usgs.gov/about/organization/science-support/science-quality-and-integrity/fundamental-science-practices>).

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR

Customer #: 6000001104
Agreement #: 22WBJFA000000004
Project #: WB00GR1
TIN #: 92-0030894

Water Resource Investigations

9. Billing for this agreement will be rendered quarterly. Invoices not paid within 60 days from the billing date will bear Interest, Penalties, and Administrative cost at the annual rate pursuant the Debt Collection Act of 1982, (codified at 31 U.S.C. § 3717) established by the U.S. Treasury.

USGS Technical Point of Contact

Name: Jeff Conaway
Associate Center Director Water, Ice,
and Landscape Dynamics
Address: 4210 University Drive
Anchorage, AK 99508
Telephone: (907) 786-7041
Fax: (907) 786-7150
Email: jconaway@usgs.gov

Customer Technical Point of Contact

Name: Charlie Pierce
Honorable Mayor
Address: 144 North Binkley
Soldotna, Alaska 99669
Telephone: (907) 714-2150
Fax:
Email: cpierce@kpb.us

USGS Billing Point of Contact

Name: Starlyn Lenore
Budget Analyst
Address: 4210 University Drive
Anchorage, AK 99508
Telephone: (907) 786-7117
Fax:
Email: slenore@usgs.gov

Customer Billing Point of Contact

Name: Brenda Ahlberg
Emergency Manager
Address: 144 North Binkley
Soldotna, Alaska 99669
Telephone: (907) 262-2098
Fax:
Email: bahlberg@kpb.us

U.S. Geological Survey
United States
Department of Interior

Kenai Peninsula Borough

Signature

By _____ Date: _____
Name: Christian E. Zimmerman
Title: Director, Alaska Science Center

Signatures

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
Title:

Introduced by: Mayor
Date: 08/09/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2022-048**

**A RESOLUTION AUTHORIZING ONE FULL-TIME BUSINESS SOLUTIONS
DEVELOPMENT MANAGER ADMINISTRATIVE SERVICE POSITION**

WHEREAS, in the Kenai Peninsula Borough (Borough) Fiscal Year 2023 (FY2023) budget there is a developer position within the Information Technology (IT) Department; and

WHEREAS, it would be in the best interests of the Borough to change that position to a middle management position as a Business Solutions Development Manager; and

WHEREAS, the Business Solutions Development Manager position will focus on implementing and documenting business processes deployed by Borough departments and service areas; and

WHEREAS, the position will function in both a supervisory role as well as a working manager implementing or migrating business processes; and

WHEREAS, this position is necessary and vital to operational needs and maintaining current levels of in-house development; and

WHEREAS, based on current available information, sufficient funds exist in the current FY2023 budget and no additional fiscal appropriations will be necessary;

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

SECTION 1. That the assembly hereby authorizes the addition of one new full-time permanent Business Solutions Development Manager. This position is an administrative service position under KPB 3.04.070.

SECTION 2. That this resolution is effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 9TH DAY OF AUGUST 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Information Technology Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP
Brandi Harbaugh, Finance Director BH
Aaron Rhoades, Chief of Staff/Acting HR Director CPEAR

FROM: Ben Hanson, IT Director BH

DATE: July 28, 2022

RE: Resolution 2022-048 Authorizing One Full-Time Business
Solutions Development Manager Administrative Service Position
(Mayor)

This resolution will change a current, vacant, full-time developer position at the Kenai Peninsula Borough to a full-time manager position that will have both developer and supervisor duties.

This position is necessary and vital to operational needs and maintaining current levels of in-house development. Due to a number of current vacancies within the IT Department, sufficient funds exist in the current FY2023 budget and no additional fiscal appropriations will be necessary. This position will be classified as an administrative service, Appendix A, position.

Your consideration of the resolution is appreciated.

Introduced by:

Mayor

Date:

08/09/22

Action:

Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2022-046**

**A RESOLUTION SUPPORTING THE ALASKA LNG PROJECT, REQUESTING
TIMELY COMPLETION OF FEDERAL REVIEW AND PERMITTING PROCESSES,
INCLUDING A DEPARTMENT OF ENERGY EXPORT LICENSE, AS BEING IN THE
BEST INTERESTS OF LOCAL, STATE, AND FEDERAL ENERGY SECURITY AND
RESILIENCY**

- WHEREAS,** the history of Alaska Gasline Development Corporation (AGDC) dates back to 2009 when declining Cook Inlet gas supplies caused concern in communities throughout Southcentral Alaska; and
- WHEREAS,** in 2013 the Alaska State Legislature formally established AGDC to advance an in-state natural gas pipeline; and
- WHEREAS,** in 2014 the mission and authority of AGDC expanded to include having primary responsibility for developing an Alaska liquefied natural gas (LNG) project on the state's behalf; and
- WHEREAS,** in December 2016 AGDC assumed 100 percent of the responsibility to progress an Alaska LNG project to build the infrastructure necessary to monetize North Slope natural gas resources; and
- WHEREAS,** in April 2017 AGDC filed its application with the Federal Energy Regulatory Commission (FERC) to construct and operate the Alaska LNG project; and
- WHEREAS,** in May 2017 FERC deemed the application complete; and
- WHEREAS,** this project has undergone a comprehensive review, resulting in more than seven years of analysis, many public meetings, and impact assessments that total close to 6,000 pages when looking at both the Department of Energy (DOE) and FERC processes; and
- WHEREAS,** in 2020, FERC issued its authorizations for the AGDC's project, but the authorizations have since been appealed by environmental groups to the U.S. Court of Appeals for the DC Circuit, the parties to the appeals – FERC, AGDC, and the environmental groups finished their briefings in February 2022 with oral arguments scheduled for September 14, 2022; and
- WHEREAS,** in August 2020 the DOE issued a final, unconditional order authorizing the Alaska LNG project to export LNG; and

WHEREAS, on April 15, 2021, the DOE granted a request for rehearing of a final order to Alaska LNG Project for the purpose of conducting two Alaska-specific environmental studies; and

WHEREAS, on July 1, 2022, the DOE issued a draft Supplemental Environmental Impact Statement (SEIS) supporting the export authorizations previously granted, consistent with the National Environmental Policy Act, and addressing potential environmental impacts associated with natural gas production on the North Slope of Alaska as well as a life cycle analysis calculating the greenhouse gas emissions for LNG exported from the proposed Alaska LNG Project; comments on the draft are due by August 15, 2022, and a virtual public hearing was held on July 20, 2022; it is anticipated that the DOE will finalize the SEIS by November 14, 2022, and issue a final decision on the requested export authorizations by February 13, 2023; and

WHEREAS, the Kenai Peninsula Borough finds that a comprehensive substantial analysis has been completed and the required ‘hard look’ review standard has been met; and

WHEREAS, a DOE export license is critical for long-term economic viability of the Alaska LNG Project; and

WHEREAS, upon information and belief, a DOE export license will also lead to improved air quality in the state by providing an economic way to decrease greenhouse gas emissions that result from higher emissions sources of energy production; and

WHEREAS, the SEIS shows greenhouse gas emissions will be higher without the Alaska LNG Project than with it under each of the scenarios evaluated; and

WHEREAS, the DOE should complete the SEIS process and uphold the August 2020 DOE order allowing an export license for the Alaska LNG Project; and

WHEREAS, based on the information in the FERC Environmental Impact Statement, and on AGDC’s web site, the Alaska LNG Project could create up to 10,000 jobs during design and construction, with approximately 1,000 permit operational jobs; and

WHEREAS, the Alaska LNG will increase Alaska jobs, expand revenue for natural gas exports, and provide critical energy security;

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

SECTION 1. That the Alaska LNG Project is a benefit to the Alaska economy, Alaska air quality, and Alaska and Federal Energy Security and Resiliency. The assembly finds that the Alaska LNG Project’s plant and marine terminal in Nikiski, Alaska is in the best interests of the residents of the Kenai Peninsula Borough and the assembly continues to fully support all aspects of the Alaska LNG Project.

SECTION 2. That state and federal agencies are urged to conclude that the required ‘hard look’ analysis has been met. This assembly specifically requests that the DOE complete the SEIS process and uphold its order allowing an export license for the Alaska LNG Project.

SECTION 3. That applicable regulatory agencies and decisionmakers should recognize that time is of the essence and that expeditiously moving this project forward is in the best interests of local, state, and federal energy policy and security.

SECTION 4. That copies of this resolution be sent to U.S. Senator Lisa Murkowski, U.S. Senator Dan Sullivan, Alaska's U.S. Congressional Representative, Alaska Governor Mike Dunleavy, the Alaska State Legislature, Secretary Jennifer Granholm U.S. Department of Energy, and President Biden.

SECTION 5. That this resolution is effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 9TH DAY OF AUGUST, 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:



Absent:

Kenai Peninsula Borough

Mayor's Office

MEMORANDUM

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

FROM: Charlie Pierce, Mayor 
Dil Uhlin, Special Assistant to the Mayor 

DATE: July 28, 2022

RE: Resolution 2022-046 Supporting the Alaska LNG Project, Requesting Timely Completion of Federal Review and Permitting Processes, including a DOE Export License, as Being in the Best Interests of Local, State, and Federal Energy Security and Resiliency (Mayor)

This resolution provides the Kenai Peninsula Borough's unconditional ongoing support for the Alaska LNG Project. Importantly, this resolution identifies the extensive benefits of this project to the Alaska economy, as well as Alaska and Federal energy security & resiliency. Additionally, this resolution urges all state and federal agencies to conclude that the required 'hard look' analysis has been met and specifically requests that the Department of Energy (DOE) complete the SEIS process and uphold its order allowing an export license for the Alaska LNG Project.

This project will be good for Alaska and is in the best interests of the citizens of the Kenai Peninsula Borough. Federal regulatory agencies need to recognize that time is of the essence and conclude the federal permitting puzzle. It is time for the Alaska LNG Project to move forward.

Your consideration of this resolution is appreciated.

Introduced by:	Mayor
Date:	08/09/22
Hearing:	08/23/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-19-59**

**AN ORDINANCE RECORDING FY2022 EXPENDITURES PAID BY THE STATE OF
ALASKA DEPARTMENT OF ADMINISTRATION, DIVISION OF RETIREMENT &
BENEFITS ON BEHALF OF THE KENAI PENINSULA BOROUGH TOWARD THE
BOROUGH'S UNFUNDED PERS LIABILITY**

WHEREAS, the 2021 Alaska Legislature enacted HB69 which appropriated funds to the Department of Administration, Division of Retirement & Benefits on behalf of the Kenai Peninsula Borough, to reduce the liability of political subdivisions to the Public Employees Retirement System (PERS) for FY2022; and

WHEREAS, the Kenai Peninsula Borough ("Borough") was notified on July 25, 2022, that the amount received by the Department of Administration, Division of Retirement & Benefits on behalf of the Borough is estimated to be \$1,854,372.93, an amount equal to the difference between the Borough's budgeted PERS rate of 22 percent and a total contribution rate of 30.11 percent; and

WHEREAS, Generally Accepted Accounting Principles (GAAP) require the Borough to record expenditures paid on its behalf; and

WHEREAS, FY2022 expenditure budgets should be increased (for which there will be a corresponding revenue adjustment) to reflect the receipt of these funds by the Department of Administration, Division of Retirement & Benefits on behalf of the Borough;

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

SECTION 1. That FY2022 revenue budgets are increased by the following amounts to reflect funds the Department of Administration, Division of Retirement & Benefits received on behalf of the Kenai Peninsula Borough:

Fund	Amount
General fund	\$ 591,929.00
Nikiski Fire Service Area	195,186.00
Bear Creek Fire Service Area	11,420.00
Western Emergency Service Area	65,556.00
Central Emergency Services	319,344.00
Kachemak Emergency Service Area	43,259.00
North Peninsula Recreation Service Area	43,326.00
Road Service Area	45,303.00
School Maintenance	264,039.00
Land Trust	25,773.00
Seward Bear Creek Flood Service Area	7,921.00
911 Emergency Communications	124,891.00
Solid Waste	96,865.00
Risk Management	19,560.93
Fund	<u>\$ 1,854,372.93</u>

SECTION 2. That \$1,854,372.93 is appropriated to the following accounts:

Account	Amount
100-11120-00000-40221	\$ 22,582.00
100-11140-00000-40221	10,791.00
100-11210-00000-40221	29,544.00
100-11227-00000-40221	314.00
100-11227-00000-40221	49,782.00
100-11230-00000-40221	25,438.00
100-11231-00000-40221	73,763.00
100-11232-00000-40221	16,682.00
100-11233-00000-40221	5,014.00
100-11235-00000-40221	5,499.00
100-11250-00000-40221	26,572.00
100-11310-00000-40221	33,978.00
100-11410-00000-40221	23,025.00
100-11430-00000-40221	42,016.00
100-11440-00000-40221	33,409.00
100-11441-00000-40221	20,337.00

100-11510-00000-40221	50,440.00
100-11520-00000-40221	61,380.00
100-21110-00000-40221	37,288.00
100-21135-00000-40221	24,075.00
206-51110-00000-40221	195,186.00
207-51210-00000-40221	11,420.00
209-51410-00000-40221	65,556.00
211-51610-00000-40221	319,344.00
212-51810-00000-40221	43,259.00
225-61110-00000-40221	43,326.00
236-33950-00000-40221	45,303.00
241-11235-00000-40221	5,498.00
241-41010-00000-40221	258,541.00
250-21210-00000-40221	25,773.00
259-21212-00000-40221	7,921.00
264-11255-00000-40221	124,891.00
290-32010-00000-40221	29,902.00
290-32122-00000-40221	60,646.00
290-32310-00000-40221	6,317.00
700-11234-00000-40221	19,560.93
	<hr/>
	\$ 1,854,372.93

SECTION 3. That upon enactment this ordinance is effective retroactively on June 30, 2022.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:


Absent:

Kenai Peninsula Borough

Finance

MEMORANDUM

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

THRU: Charlie Pierce, Mayor 

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: July 28, 2022

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

As part of the 2021 legislative session, the Alaska legislators passed HB69 which appropriated funds to help defray the cost of increased employer contributions to the Public Employees' Retirement System (PERS) for fiscal year 2022. The purpose of this legislation was to contribute to the PERS system an amount estimated to be equal to the difference between the Borough's budgeted PERS rate of 22 percent and the actuarially determined rate of 30.11 percent. Pursuant to the attached letter from the Division of Retirement and Benefits, the amount contributed on the Borough's behalf for FY2022 is estimated to be \$1,854,372.93.

Generally Accepted Accounting Principles require that the Borough record expenditures paid on its behalf. This ordinance also amends the budget to reflect these expenditures; there will be no impact to fund balances of any fund as revenues equal to the expenditures will also be recorded.

Your consideration of the ordinance is appreciated.



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Administration

DIVISION OF RETIREMENT AND BENEFITS

6th Floor State Office Building
333 Willoughby Avenue
P.O. Box 110203
Juneau, AK 99811-0203
Phone: (907) 465-4460
Toll-Free: (800) 821-2251
FAX: (907) 465-3086
Alaska.gov/drb

July 25, 2022

Brandi R Harbaugh, Finance Director
Kenai Peninsula Borough
144 N Binkley St
Soldotna AK 99669

Sent via email to: bharbaugh@borough.kenai.ak.us

RE: FY2022 FINAL Employer On-Behalf Funding Statement - PERS ER 180

During the 2021 legislative session, House Bill HB69 (CCS HB69) passed providing on-behalf funding for PERS employer contributions for Fiscal Year 2022 (FY2022). HB69, Section 73 reads as follows:

*(b) The sum of **\$97,699,500** is appropriated from the general fund to the Department of Administration for deposit in the defined benefit plan account in the **public employees' retirement system** as an additional state contribution under AS 39.35.280 for the fiscal year ending June 30, 2022.*

HB69 at <http://www.akleg.gov/PDF/32/Bills/HB0069Z.PDF> (Section 73, page 160).

The Alaska Retirement Management Board approved the actuarially determined rate of 30.11% for FY2022, with HB69 providing an on-behalf rate of 8.11% for each FY2022 employer payroll. On-behalf funding is applied with the processing of each employer payroll with payroll end dates between July 1, 2021 and June 30, 2022 and fully received by the Division by July 15, 2022. A fully received and processable payroll must include payment, an employer summary, and any other required documentation (WIRE and ACH payments must have a corresponding Memo). All such payrolls have been processed, thus we have trued-up your account and made an adjusting entry.

Included is a report detailing the Employer On-Behalf Funding allocated for fiscal year 2022 payrolls. **This is your final adjusted statement for FY2022.** Please work with your accountant or auditor to determine where to show this funding on your financial statements. Feel free to contact me at tamara.criddle@alaska.gov if you have questions or need additional information regarding HB69.

Sincerely,

State of Alaska, Division of Retirement and Benefits
FY2022 - HB69 Employer On-Behalf Detail as of 7/22/2022
Kenai Peninsula Borough - ER 180

Payroll Ending Date	On-Behalf		Total
	Pension	Other Post-employment Healthcare	
07/02/2021 B	67,417.35	0.00	67,417.35
07/16/2021 B	70,555.63	0.00	70,555.63
07/30/2021 B	69,849.28	0.00	69,849.28
08/13/2021 B	70,426.64	0.00	70,426.64
08/27/2021 B	70,880.72	0.00	70,880.72
09/10/2021 B	71,163.37	0.00	71,163.37
09/24/2021 B	70,703.70	0.00	70,703.70
10/08/2021 B	69,824.05	0.00	69,824.05
10/22/2021 B	70,122.01	0.00	70,122.01
11/05/2021 B	69,344.04	0.00	69,344.04
11/19/2021 B	68,941.78	0.00	68,941.78
12/03/2021 B	70,240.47	0.00	70,240.47
12/17/2021 B	68,924.84	0.00	68,924.84
12/31/2021 B	71,854.56	0.00	71,854.56
01/14/2022 B	70,744.80	0.00	70,744.80
01/28/2022 B	72,522.60	0.00	72,522.60
02/11/2022 B	71,201.57	0.00	71,201.57
02/25/2022 B	71,476.19	0.00	71,476.19
03/11/2022 B	70,742.71	0.00	70,742.71
03/25/2022 B	71,770.35	0.00	71,770.35
04/08/2022 B	69,946.27	0.00	69,946.27
04/22/2022 B	73,821.03	0.00	73,821.03
05/06/2022 B	70,825.95	0.00	70,825.95
05/20/2022 B	73,325.83	0.00	73,325.83
06/03/2022 B	72,335.96	0.00	72,335.96
06/17/2022 B	73,028.54	0.00	73,028.54
Year-end Adjustment	12,382.69	0.00	12,382.69
<hr/>			
Kenai Peninsula Borough			
Totals	\$1,854,372.93	\$0.00	\$1,854,372.93

DISCLAIMER: The information contained in this letter is based on the specific facts and circumstances presented and cannot be applied to other facts and circumstances. This letter may contain a summary description of benefits, costs, rates, valuations, other calculations, policies or procedures for one or more pension or benefit plans administered by the Division of Retirement and Benefits, including but not limited to, the Public Employees' Retirement System, the Teachers' Retirement System, the Judicial Retirement System, the Supplemental Annuity Plan, the Deferred Compensation Plan, the AlaskaCare Employee Health Plan, or the AlaskaCare Retiree Benefit Plan. The Division of Retirement and Benefits has made every effort to ensure, but does not guarantee, that the information provided is accurate and up to date. Where this letter conflicts with the relevant Plan Document, the Plan Document controls.

Introduced by:	Mayor
Date:	08/09/22
Hearing:	08/23/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-19-60**

**AN ORDINANCE EXPANDING THE SCOPE OF WORK FOR THE SOUTH
PENINSULA HOSPITAL'S AIR CONDITIONING FOR LONG-TERM CARE AND
REHAB PROJECT**

WHEREAS, through enactment of the Fiscal Year 2022 (FY22) budget, the Kenai Peninsula Borough (Borough) appropriated funding, at the request of the South Kenai Peninsula Hospital Service Area Board and South Peninsula Hospital, Inc.(SPHI) to address air conditioning issues in the Long-Term Care and Rehabilitation department (HVAC); and

WHEREAS, in the interest of efficiency and to obtain greater value for the services, the development and design work for the HVAC Project was also contracted to included professional services for development and design of the Hot Water System Replacement Project; and

WHEREAS, in error, dating back to 2021, approximately \$90,000 in costs associated with development, design, and project management services for the Hot Water System Replacement Project have been billed to the HVAC Project account; and

WHEREAS, funding is available in the HVAC project account to cover up to \$90,000.00 in design and project management services associated with the domestic hot water project; and

WHEREAS, in coordination with the SPH administration, the Borough's Purchasing and Contracting Department recommends that the scope of work for the HVAC Project be expanded to include the development, design, and project management services work for the domestic hot water project; and

WHEREAS, at its meeting on _____, the SPHI Finance Committee discussed this ordinance and recommended _____;

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

SECTION 1. That the scope of the Long-Term Care and Rehabilitation department project 22SHB is expanded to include costs associated with development, design, and project management services for South Peninsula Hospital's domestic hot water system.

SECTION 2. That this ordinance shall be effective retroactively to July 1, 2021.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:


Absent:



Kenai Peninsula Borough

Purchasing & Contracting Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor 

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

DATE: July 28, 2022

RE: Ordinance 2021-19-60, Expanding the Scope of Work for the South Peninsula Hospital's Air Conditioning for Long-Term Care and Rehab Project (Mayor)

Through enactment of the Fiscal Year 2022 (FY22) budget, the Kenai Peninsula Borough (Borough) appropriated funding, at the request of the South Kenai Peninsula Hospital Service Area Board (SKPH SAB) and South Peninsula Hospital, Inc.(SPHI) for the Air Conditioning (HVAC) for Long-Term Care and Rehab Project.

During FY22, the Borough's Purchasing and Contracting Department was also assisting SPH in developing a scope of work to replace the dilapidated domestic hot water system in the hospital facility. At this time no funding had been appropriated for the hot water rehabilitation project.

In the interest of efficiency, it was decided to hire a mechanical consultant to assist in scope development and design for both projects under the same contract. The intent was to seek funding for the domestic hot water project once a value for the services was provided by the successful consultant. The entire scope development and design contract was fund verified under the HVAC funding instead of broken down by the two projects; HVAC and domestic hot water projects. This error was not caught until the funding for the hot water project was appropriated through Ordinance 2021-19-53.

In coordination with the SPH administration, the Borough's Purchasing and Contracting Department recommends that the scope of work for the HVAC project be expanded to include the development, design, and project management services work for the domestic hot water project. Funding is available in the HVAC project account to cover up to \$90,000.00 in design and

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July 28, 2022
RE: O2022-31

project management services
associated with the domestic hot
water project.

Your consideration of the ordinance is
appreciated.

**FINANCE DEPARTMENT
FUNDS/ACCOUNT VERIFIED**

Account: 491.81210.22SHB.48516

Amount: up to \$ 90,000.00

By:  Date: 7/25/2022

Introduced by:	Mayor
Date:	08/09/22
Hearing:	08/23/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-07**

**APPROPRIATING UP TO \$4,565,000 FROM THE LAND TRUST FUND, FUND
BALANCE TO BE TRANSFERRED TO THE LAND TRUST INVESTMENT FUND
REPRESENTING THE FISCAL YEAR 2022 TRANSFER OF LAND SALES REVENUE
TO THE LAND TRUST INVESTMENT FUND PER KPB 5.20.080(B)**

- WHEREAS,** the Land Trust Investment Fund (LTIF) was established in September 2018 per KPB Ordinance 2018-29 to manage the financial assets related to borough lands for the long-term benefit of the borough residents; and
- WHEREAS,** per KPB 5.20.080(B) the net proceeds of land sales will be transferred from the Land Trust Fund (LTF) to the LTIF provided that the fund balance policy minimum requirements of the LTF are met; and
- WHEREAS,** the June 30, 2022 ledger has been tentatively closed and is currently pending completion of the fiscal year 2022 audit; and
- WHEREAS,** the LTF currently has a fund balance of approximately \$6,018,000, which is \$4,565,000 above the minimum fund balance requirements prior to the transfer; and
- WHEREAS,** this ordinance transfers up to \$4,565,000 in FY2022 land sale revenues from the LTF to the LTIF per KPB 5.20.080(B) while meeting the LTF minimum fund balance requirements;

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

SECTION 1. That up to \$4,565,000 is appropriated from the Land Trust Fund fund balance to be transferred from the Land Trust Fund account 250.21210.50252 to the Land Trust Investment Fund account 252.38250 per KPB 5.20.080(B).

SECTION 2. That this ordinance is effective immediately upon enactment.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:



Absent:


Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor 
Marcus Mueller, Senior Manager Land Management 

FROM: Brandi Harbaugh, Finance Director 

DATE: July 28, 2022


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

The Land Trust Investment Fund (LTIF) was established in September 2018 per KPB Ordinance 2018-29 to manage the financial assets related to borough lands for the long-term benefit of the borough residents.

KPB 5.20.080(B) sets out that the net proceeds of land sales will be transferred from the Land Trust Fund (LTF) to the LTIF if the fund balance policy minimum requirements of the LTF are met. The June 30, 2022 ledger has been tentatively closed and is currently pending completion of the fiscal year 2022 audit. The LTF currently has a fund balance of approximately \$6,018,000, which is \$4,565,000 above the minimum fund balance requirements prior to the transfer.

This ordinance transfers up to \$4,565,000 from the LTF to the LTIF per KPB 5.20.080(B), representing the fiscal year 2022 land sales revenues less the LTF minimum fund balance requirements.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	250.27910 Amount: <u>Up To \$4,565,000</u>
By: 	Date: <u>7/25/2022</u>

Introduced by:	Mayor
Date:	08/09/22
Hearing:	08/23/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-33**

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

WHEREAS, KPB 5.12.105(E) provides that an application for one (1) disabled veteran exemption application and three (3) senior citizen exemption applications must be filed by March 31 of the year for which the exemption is sought; and

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

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

WHEREAS, the applicants have submitted affidavits stating that they had extraordinary circumstances which prevented them from timely filing a 2022 disabled veteran exemption application and the 2022 senior citizen exemption applications; and

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

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

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

SECTION 1. Upon reviewing the disabled veteran exemption and senior citizen exemption applications and affidavits submitted, the assembly hereby waives the March 31 deadline for filing applications for the 2022 disabled veteran and senior citizen exemptions based upon a finding that the applicants were unable to comply with that deadline due to a serious condition or extraordinary event beyond their control.

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

SECTION 3. Notwithstanding KPB 5.12.040(B), in the event the assessor finds that the one (1) late-filed disabled veteran application and four (4) senior citizen applications should be otherwise approved, the assessor is hereby authorized to make a change to the assessment roll after June 1, 2022 to reflect the approved exemption.

SECTION 4. That this ordinance shall take effect immediately upon enactment.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:


Absent:

Kenai Peninsula Borough

Assessing Department

MEMORANDUM

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

THRU: Charlie Pierce, Kenai Peninsula Borough Mayor 

FROM: Adeena Wilcox, Borough Assessor *aw*

DATE: July 28, 2022

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

One applicant for the Disabled Veteran Exemption and four (4) applicants for the Senior Citizen Exemption have requested the Assembly allow the Borough Assessor to accept their late-filed real property tax exemption applications filed after March 31, 2022.

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

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

Disabled Veteran Exemption Applicant (1): S.C. was a previous recipient of the Disabled Veteran Exemption. S.C. went out of state to attend university (an allowable absence reason) and provided satisfactory proof of his enrollment in school. Due to his out of state schooling, his status changed from his normal rollover-style exemption process to a yearly reapplication protocol. During the 3-year absence for schooling, S.C. changed schools from Idaho to Maine and

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July 28, 2022
Re: O2022-33

the Assessing Department was not updated with his new mailing address. All requests to reapply were returned by the U.S. Postal Service resulting in him not applying for exemption timely for the 2022 assessment year.

Based on a review of S.C.'s exemption application he would qualify for the veteran exemption if the assembly authorizes his late-filed request.

Senior Citizen Exemption Applicant (1): L.N. is a disabled applicant for the Senior Citizen Exemption. Prior to her stroke, she handled all paperwork for herself and her spouse. Since her stroke, her spouse has been overwhelmed with providing care for her and taking over all the responsibilities that L.N. normally took care of. As her power of attorney, he failed to apply for L.N.'s senior citizen exemption timely as he was unable to keep up with all his new responsibilities. Additionally, they both had COVID-19, which her caregiver believes may have been during the application period.

Based on a review of L.N.'s exemption application, she would qualify for the senior citizen exemption if the Assembly authorizes her late-filed request.

Senior Citizen Exemption Applicant (2): M.S. has been a previous senior exemption recipient, who needed to reapply for the 2022 tax year. He had end stage COPD and a heart condition. During the reapplication period he was hospitalized off and on and eventually had a surgery to implant a pacemaker.

Based on a review of M.S.'s exemption application, he would qualify for the senior citizen exemption.

Senior Citizen Exemption Applicant (3): N.F. was required to reapply for the Senior Citizen Exemption for the 2022 year. N.F. does not understand English well-enough to deal with her paperwork and N.F.'s spouse has long-term memory illness and no longer can manage the family affairs. She depends on her son, who lives out of state, to assist her. She states that her spouse often checks the mail and that she never did see or receive the letter requiring that she reapply for the exemption. Additionally, her PFD was delayed approval and that may have caused some confusion over the reapplication process in a timely manner.

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Re: O2022-33

Based on a review of N.F.'s exemption application, she would qualify for the senior citizen exemption.

Senior Citizen Exemption Applicant (4): R.D. would like to receive the Senior Citizen Exemption as she is now 78 years old and eligible for exemption. R.D.'s spouse deceased 1/2020 and her only child in 11/2020. Those events were life altering for R.D. and she failed to pay attention to many of her personal affairs for quite some time. Her husband was the property owner and previous senior exemption applicant. When he deceased, the exemption remained for 1 year, giving R.D. time to start probate and gain title to the property. She failed to begin the process early and did not realize it would affect her exemption. When notified that her exemption ended she quickly initiated a probate matter and now requests consideration of circumstances and losses that led to an inability to timely file.

Introduced by:	Mayor
Date:	08/09/22
Hearing:	08/23/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-34**

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

WHEREAS, KPB 5.12.100(B) provides that an application for one (1) community purpose exemption application must be filed by March 31 of the year for which the exemption is sought; and

WHEREAS, KPB 5.12.119(A) allows for the mayor to grant an extension of filing time; and

WHEREAS, in accordance with KPB 5.12.119(C) the applicants have submitted an application stating that they had extraordinary circumstances which prevented them from timely filing a 2022 community purpose exemption application; and

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

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

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

SECTION 1. That upon reviewing the community purpose exemption and application submitted, the assembly hereby waives the March 31 deadline for filing an application for the 2022 community purpose exemption based upon a finding that the applicants were unable to comply with that deadline due to a serious condition or extraordinary event beyond their control.

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

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

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

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:


Absent:

Kenai Peninsula Borough

Assessing Department

MEMORANDUM

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

THRU: Charlie Pierce, Kenai Peninsula Borough Mayor 

FROM: Adeena Wilcox, Borough Assessor *aw*

DATE: July 28, 2022

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

Bridges Community Resource Network, Inc. (Bridges), an applicant for the Community Purpose exemption, has requested the Assembly allow the Borough Assessor to accept their late-filed real property tax exemption application filed after March 31, 2022.

KPB 5.12.119(A) allows for the mayor to grant an extension of filing time and KPB 5.12.119(C) allows for a late-filed exemption based upon a serious condition or event for the failure to comply with the deadline defined as:

... serious medical condition or other similar serious condition or event that prevented the applicant from timely filing the application. Absent extraordinary circumstances, a failure to pick up or read mail or to make arrangements for an appropriate and responsible person to pick up or read mail or a failure to timely provide a current address to the Department of Assessing will not be deemed to result in an inability to comply.

Community Purpose Exemption Applicant: This late-filed exemption application concerns the Nikiski Shelter of Hope homeless center. According to the letter requesting a late-filed exemption, many groups were part of the effort but Bridges ended up being the 501(c)(3) entity that owned the facility as of December 2021. In the course of these laudable multi-layered efforts, applying for a community purpose tax exemption prior to March 31, 2022 was inadvertently overlooked.

Based on a review of the exemption application they would qualify for the community purpose exemption if the assembly authorizes late-filed request.

Your consideration of the ordinance is appreciated.

Introduced by:	Mayor
Date:	08/09/22
Hearing:	08/23/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-19-08**

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF REAL PROPERTY
LOCATED IN ANCHOR POINT, ALASKA ON BEHALF OF WESTERN EMERGENCY
SERVICES THROUGH AN INTERFUND LOAN FROM THE LAND TRUST
INVESTMENT FUND, APPROPRIATING LOAN PROCEEDS FOR THE PROPERTY
ACQUISITION, AND APPROPRIATING WESTERN EMERGENCY SERVICE AREA
OPERATING FUNDS FOR THE ANNUAL LOAN PAYMENT TO THE LAND TRUST
INVESTMENT FUND**

WHEREAS, the Kenai Peninsula Borough’s Western Emergency Service Area (“WESA”) provides for the operation of fire and emergency service operations serving borough residents and visitors within the service area and mutual aid areas; and

WHEREAS, the WESA Anchor Point Station 3 is an important facility serving a growing area on the Kenai Peninsula as a point of operational command, equipment storage, servicing, and deployment; and

WHEREAS, WESA is currently under a five-year lease, at \$2,000.00 per month, for a portion of the subject property, for the storage and maintenance of a ladder truck and emergency related equipment; and

WHEREAS, the proposed purchase involves four parcels under the ownership of two separate owners immediately adjacent to the existing WESA Anchor Point Station 3; and

WHEREAS, acquisition of the subject properties will provide WESA the land holdings necessary for immediate use and future expansion; and

WHEREAS, the funding for the acquisition will be provided though an interfund loan to WESA from the Land Trust Investment Fund (“LTIF”) as outlined by Ordinance 2018-29 and KPB 5.10.200, in addition to funds appropriated from the FY2023 WESA budget; and

WHEREAS, WESA will make efforts to recover land acquisition costs through grants or other funding assistance when eligible; and

WHEREAS, the Western Emergency Service Area Board at its July 13, 2022, meeting unanimously recommended to proceed with the proposed acquisition; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of August 22, 2022, recommended _____;

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

SECTION 1. That the assembly finds that purchasing the following described real property pursuant to KPB 17.10.040 is in the best interest of the borough:

Clark Properties:

LOT 20, 21, and 24, SPRUCE ACRES SUBDIVISION, ACCORDING TO PLAT NUMBER 60-45, RECORDS OF THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (Parcel Numbers: 165-170-24, 165-170-27, 165-170-22)

Andrews Property:

LOT 22, SPRUCE ACRES SUBDIVISION, ACCORDING TO PLAT NUMBER 60-45, RECORDS OF THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (Parcel Number: 165-170-26)

SECTION 2. That the terms and conditions substantially in the form of the purchase agreements accompanying this ordinance are hereby approved. The purchase price shall be \$660,000.00 for the Clark properties and \$75,000.00 for the Andrews property, plus surveying, title, closing costs, and due diligence fees not to exceed \$20,000.00, for a total not to exceed \$755,000.00.

SECTION 3. That this acquisition is for immediate use and future expansion of fire and emergency medical services by WESA.

SECTION 4. That the above-described land is classified under KPB 17.10.080 as “Government” for the property to be held and used for fire and EMS.

SECTION 5. An interfund loan through the LTIF to WESA is authorized as provided in KPB 5.10.200(B)(10) for the acquisition of real property described in Section 1.

SECTION 6. That the LTIF interfund loan shall be for an amount up to \$755,000 at the prime rate on the enactment date of this ordinance, to be repaid by WESA on a ten-year term in equal annual installments.

SECTION 7. The mayor is authorized to execute any and all documents necessary to purchase the real property described in Section 1 in accordance with the terms and conditions contained in this ordinance and the accompanying purchase agreements, consistent with applicable provisions of KPB Chapter 17.10 along with any documents necessary to implement the authorized LTIF interfund loan to WESA and repayment thereof.

SECTION 8. That \$52,560 is appropriated from the Western Emergency Service Area Operating Fund Balance to account 209.51410.50252 for the first of ten annual loan payments to the LTIF.

SECTION 9. That up to \$755,000 in loan proceeds from the LTIF are appropriated to the Western Emergency Service Area Capital Project Fund account 444.51410.23WLD.49999 for the acquisition and related costs of the property listed in Section 1 above.

SECTION 10. That appropriations made in Section 9 of this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

SECTION 11. That this ordinance shall be effective immediately upon adoption.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*
Robert Ruffner, Planning Director *RR*
Marcus A. Mueller, Land Management Officer *RRFMM*

FROM: Aaron Hughes, Land Management Agent *AH*
Jon Marsh, Western Emergency Services Fire Chief *JM*
Brandi Harbaugh, Finance Director *BH*

DATE: July 28, 2022

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

Western Emergency Service Area (WESA) provides fire and emergency response services to residents and visitors of the borough. WESA's Anchor Point Station 3 is located adjacent to the parcels proposed for acquisition.

WESA is currently under a 5-year lease in the amount of \$2,000.00 per month for building space within Lot 20 that is currently being utilized for the storage and maintenance of a ladder truck and related equipment.

Although there are no current plans for expansion of the WESA Anchor Point Station 3 facility, the subject parcels have been determined to support future WESA operational needs and growth. The proactive acquisition of the subject properties will provide the real estate necessary for future expansion while converting an existing leased facility into a KPB-owned facility.

The proposed land acquisition involves 4 individual parcels of land from two different property owners. Two of the parcels contain improvements to be immediately utilized by WESA. The agreement reached with the respective

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 July 28, 2022
 RE: Ordinance 2022-19-08

property owners is based on fair market valuations determined by third-party appraisals.

The funding for the acquisition as proposed is to originate from the Land Trust Investment Fund ("LTIF") as outlined in KPB Ordinance 2018-29, which established the LTIF. KPB 5.10.200 and KPB 5.20.200 provides for the use of the LTIF as an interfund loan funding source for approved borough land acquisitions and capital improvements and provides for the terms and conditions of such loans.

From its inception, the LTIF has been utilized to preserve borough land sale proceeds within an investment strategy that provides returning benefits to the borough and financial tools to achieve long-term land program objectives. This transaction marks the first interfund loan funding from the LTIF which will be leveraged for the purpose to assist a service area meeting its land needs, showcasing the success of the LTIF framework and the importance of the continued stewardship of the fund as a powerful financial tool for the benefit of the borough for generations to come. Utilizing the fund in this manner will diversify the LTIF investment portfolio while providing a direct financial and operational benefit to borough taxpayers.

Acquisition of the proposed properties is an important proactive step in securing a long-term campus for WESA Station 3. As a part of the fiscal year 2023 budget process, Western Emergency Services appropriated \$44,400.00 to be applied as installment payments for the proposed land acquisition. The ordinance authorizes the acquisitions at a total price of \$735,000.00 plus surveying, title and closing costs, and due diligence fees not to exceed \$20,000. This ordinance also appropriates an additional \$52,560 from WESA's operating fund balance to provide for the first of ten annual loan

payments of \$92,960 and appropriates the LTIF loan proceeds in the WESA Capital Project Fund for the proposed land acquisition of up to \$755,000.

Your consideration of the ordinance is appreciated.

**FINANCE DEPARTMENT
 ACCOUNT / FUNDS VERIFIED**

Acct. No. 252.10210

Amount: Not to exceed \$755,000

Acct. No. 209.27910

Amount: \$ 52,560

By:  Date: 7/27/2022

Introduced by:	Mayor
Date:	08/07/18
Hearing:	09/04/18
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2018-29**

**AN ORDINANCE ESTABLISHING THE LAND TRUST INVESTMENT FUND, AND
SETTING PARAMETERS FOR FUNDING, USES AND INVESTMENTS OF THE FUND**

- WHEREAS,** the Land Trust Fund, per KPB 5.20.080, accounts for activities related to the acquisition, sale and use of Kenai Peninsula Borough (“borough”) lands; and
- WHEREAS,** borough lands, especially lands acquired from the State of Alaska as a result of formation of the borough, have significant value for all current and future generations of borough residents, and therefore should be managed for the long-term benefit of borough residents; and
- WHEREAS,** the creation of a Land Trust Investment Fund (“LTIF”) to account for the proceeds of borough land sales and the financial assets of the Land Trust Fund in excess of annual operating needs will enhance the ability to manage borough lands for the long term; and
- WHEREAS,** a portion of the fund balance of the Land Trust Fund will capitalize the LTIF; and
- WHEREAS,** financial endowments, due to their long time horizons, are typically invested in instruments which carry more risk and volatility and have the potential of greater returns over the long term than short term investment instruments; and
- WHEREAS,** the financial assets in the LTIF shall essentially be an endowment intended to preserve the value of land assets that are sold and to generate investment income to support and supplement the operating revenue of the Land Trust Fund and for other uses as determined by the assembly; and
- WHEREAS,** the initial capitalization of the LTIF will not exceed normal fund balance policy requirements of the Land Trust Fund; and
- WHEREAS,** this ordinance provides benefits to the General Fund including long-term autonomous funding for borough land programs and the ability in the future to utilize earnings generated by the LTIF for General Fund purposes;

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

SECTION 1. That KPB 5.10.010 Scope is amended as follows:

5.10.010. Scope.

- A. This chapter applies to the investment of all borough moneys, unless otherwise provided expressly by ordinance.
- B. Sections 5.10.040 through 5.10.120 apply to all fund types except the Land Trust Investment Fund.
- C. Objectives. The borough investment portfolio shall be managed so that the portfolio, as a whole, meets the objectives set forth below. All persons selecting investments for borough moneys shall adhere to these objectives, which are listed in order of relative importance.

SECTION 2. That KPB 5.10.200 Authorized Investments for the Land Trust Investment Fund is hereby enacted as follows:

5.10.200. Authorized Investments For The Land Trust Investment Fund

- A. Land Trust Investment Fund investments include two categories: Financial Assets and Non-Financial Assets outlined in sections B and C below. Financial assets shall be managed by the finance director with the following conditions:
 - 1. The borough shall contract for management of the financial asset investments for the Land Trust Investment Fund with one or more professional investment managers with experience handling institutional endowment investments.
 - 2. The financial asset investments of the Land Trust Investment Fund shall be approved by resolution annually, usually during the budget process, in the form of an asset allocation plan. The asset allocation plan shall have specific categories of investments for the fund with percentage targets that allow for reasonable fluctuations above and below the target percentage. The plan will establish benchmarks for evaluating the performance of each investment manager and asset classification. Investments shall be managed to adhere to the target ranges of the asset allocation plan.

3. The finance director shall submit quarterly to the assembly an investment report that summarizes the portfolio in terms of investment securities, maturities, risk categories, returns and other features.

B. Authorized Investments - Financial Assets

Moneys in the Land Trust Investment Fund shall be invested only in the following instruments and subject to the applicable limitations and requirements.

1. Investments authorized by KPB 5.10.040.
2. Bonds or other U.S. dollar denominated debt instrument of this state, its agencies, municipalities, any other state which at the time of investment have an investment grade rating by a nationally recognized rating agency. If, after purchase, these obligations are downgraded below investment grade, the obligations shall be sold in an orderly manner within ninety days of downgrading.
3. Corporate obligations of investment-grade quality as recognized by a nationally recognized rating organization. If, after purchase, these obligations are downgraded below investment grade, the obligations shall be sold in an orderly manner within ninety days of downgrading.
4. Domestic equities, which taken as a whole, attempt to mirror the characteristics or replicate the Standard and Poor's 500 Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).
5. Domestic equities, which taken as a whole, attempt to replicate the Standard and Poor's 400 Mid-Cap Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).
6. Domestic equities, which taken as a whole, attempt to replicate the Standard and Poor's 600 Small-Cap Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).
7. International equities, which taken as a whole, attempt to replicate the Financial Times Stock Exchange Developed ex North America Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).

8. Equities, which taken as a whole, attempt to replicate the universe of domestic real estate investment trusts as represented by the Standard and Poor's REIT composite index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
9. Emerging market equities, which taken as a whole, attempt to replicate the Financial Times Stock Exchange Emerging Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
10. Interfund loans for land or capital improvements.
 - a) Loans shall only be for the purpose of financing the acquisition of land or capital improvements for the borough including its service areas;
 - b) The rate of interest shall be the prime rate in effect on the date of ordinance approval;
 - c) The term of a loan shall not be longer than the term allowed for a land sale contract of similar size;
 - d) Payments shall be paid in equal annual installments upon adoption of each year's annual budget until the loan is paid in full and each payment is subject to the appropriation of available funds; and
 - e) All such loans must be approved by the assembly by ordinance, and the assembly may add such additional terms and conditions as appropriate.

C. Authorized Investments - Non-Financial Assets

Land Trust Investment Fund assets may be used to supplement Land Trust Fund assets for investment in the following:

1. Land which will be added to the inventory of land assets.
2. Income producing assets such as improvement to borough lands.

SECTION 3. That KPB 5.20.030. Special revenue funds are amended as follows:

5.20.030. Special revenue funds.

Special revenue funds account for the proceeds from specific revenue sources (other than expendable trust or major capital projects) that are legally restricted to expenditures for specific purposes. These funds consist of the following:

Nikiski Fire Service Area Fund
Bear Creek Fire Service Area Fund
Anchor Point Fire and Emergency Medical Service Area Fund

Central Emergency Service Area Fund

Kachemak Emergency Service Area Fund
Lowell Point Fire Service Area
Central Peninsula Emergency Medical Service Area Fund
North Peninsula Recreation Service Area Fund
Road Service Area Fund
Road Improvement Assessment District Engineer's Estimate Fund
RIAD Match Fund
School Fund
Post-Secondary Education Fund
Land Trust Fund
Land Trust Investment Fund
Kenai River Center Fund
Coastal Zone Management Fund
Seward Bear Creek Flood Service Area
Disaster Relief Fund
Environmental Protection Programs Fund
Underground Storage Tank Removal and Upgrade Fund
Pass-Through Grants Fund
Miscellaneous Grants Fund
Nikiski Senior Citizen Service Area Fund
Solid Waste Fund
Local Emergency Planning Committee Fund
Central Kenai Peninsula Hospital Service Area Fund
South Peninsula Hospital Service Area Fund

SECTION 4. That KPB 5.20.080 is amended as follows:

5.20.080. Land Trust Fund.

- A. The land trust fund is established to receive, disburse, and account for all moneys accruing to the borough in lieu of lands or from the use or sale of lands. Disbursement from said fund shall be for the acquisition of property and expenses related to the borough land management operations, or such other purposes as the assembly may authorize.
- [B. FIFTY PERCENT OF ANY AMOUNT IN EXCESS OF THE HIGHEST PREVIOUS FUND BALANCE MAY BE AVAILABLE FOR APPROPRIATION TO THE GENERAL FUND. FUND BALANCES PRIOR TO 2005 SHALL NOT BE CONSIDERED WHEN DETERMINING THE HIGHEST FUND BALANCE. FOR PURPOSES OF COMPUTING REVENUES THAT MAY BE AVAILABLE FOR APPROPRIATION TO THE GENERAL FUND, ON MARCH 1 OF EACH YEAR THE BALANCE OF THE BUDGET NOT YET SPENT FOR LAND MANAGEMENT ADMINISTRATION FOR THAT FISCAL YEAR WILL BE SUBTRACTED FROM THE LAND TRUST FUND BALANCE. ALSO, REVENUES EXPECTED TO BE RECEIVED AFTER MARCH 1 AND BEFORE JULY 1 OF THAT YEAR MAY BE ADDED TO THE LAND TRUST FUND BALANCE.]

B. The net proceeds of land sales will be transferred to the Land Trust Investment Fund provided that the fund balance policy minimum requirements of the Land Trust Fund are met.

C. After the first five years, if the fund balance of the Land Trust Fund is more than 125 percent of the maximum established in the fund balance policy the amount greater than 125 percent may be transferred to the general fund or may be used for any other purpose as determined by the assembly.

SECTION 5. That KPB 5.20.200 – Land Trust Investment Fund is enacted as follows:

5.20.200. Land Trust Investment Fund.

The Land Trust Investment Fund is established to manage the proceeds of land sales and the financial assets of the Land Trust Fund in excess of annual operating needs of the Land Trust Fund and to generate investment earnings to be used for Land Trust Fund operations, General Fund functions, or for other purposes as determined by the assembly.

A. Transfers to support operations in the Land Trust Fund or the General Fund shall be limited to 5 percent of the market value (5% POMV) of the Land Trust Investment Fund. The allocation of the 5% POMV shall be first to the Land Trust Fund to subsidize operations and to ensure compliance with the fund balance policy. If the transfer to the Land Trust Fund is less than 5% POMV the excess may be transferred to the General Fund at the direction of the assembly.

B. Transfers to the Land Trust Fund to invest in non-financial assets such as land or income producing investments shall not exceed 10 percent of the market value of the Land Trust Investment Fund in any year or 25 percent in any five-year period. These limits do not apply to investment in Interfund Loans or any other allowable financial asset.


C. The Land Trust Fund may utilize an interfund loan from the Land Trust Investment Fund if the fund balance in the Land Trust Fund falls below the minimum requirements of the fund balance policy. Any such interfund loan must be repaid within five years.

D. The Land Trust Investment Fund is a special revenue fund and shall not require an annual budget.

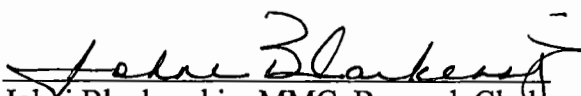
SECTION 6. That \$5,275,000 is appropriated from the Land Trust Fund balance, account 250.27910 for the initial operating transfer to the Land Trust Investment Fund.

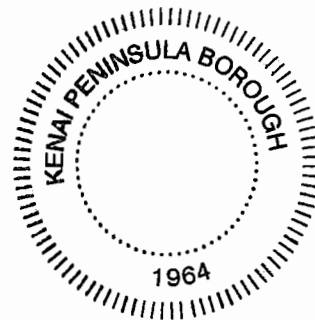
SECTION 7. That this ordinance takes effect upon enactment; however, no operating transfer may be made from the Land Trust Investment Fund to the Land Trust Fund until after commencement of the first full budget year following enactment of this ordinance.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF SEPTEMBER, 2018.


Wayne H. Ogle, Assembly President

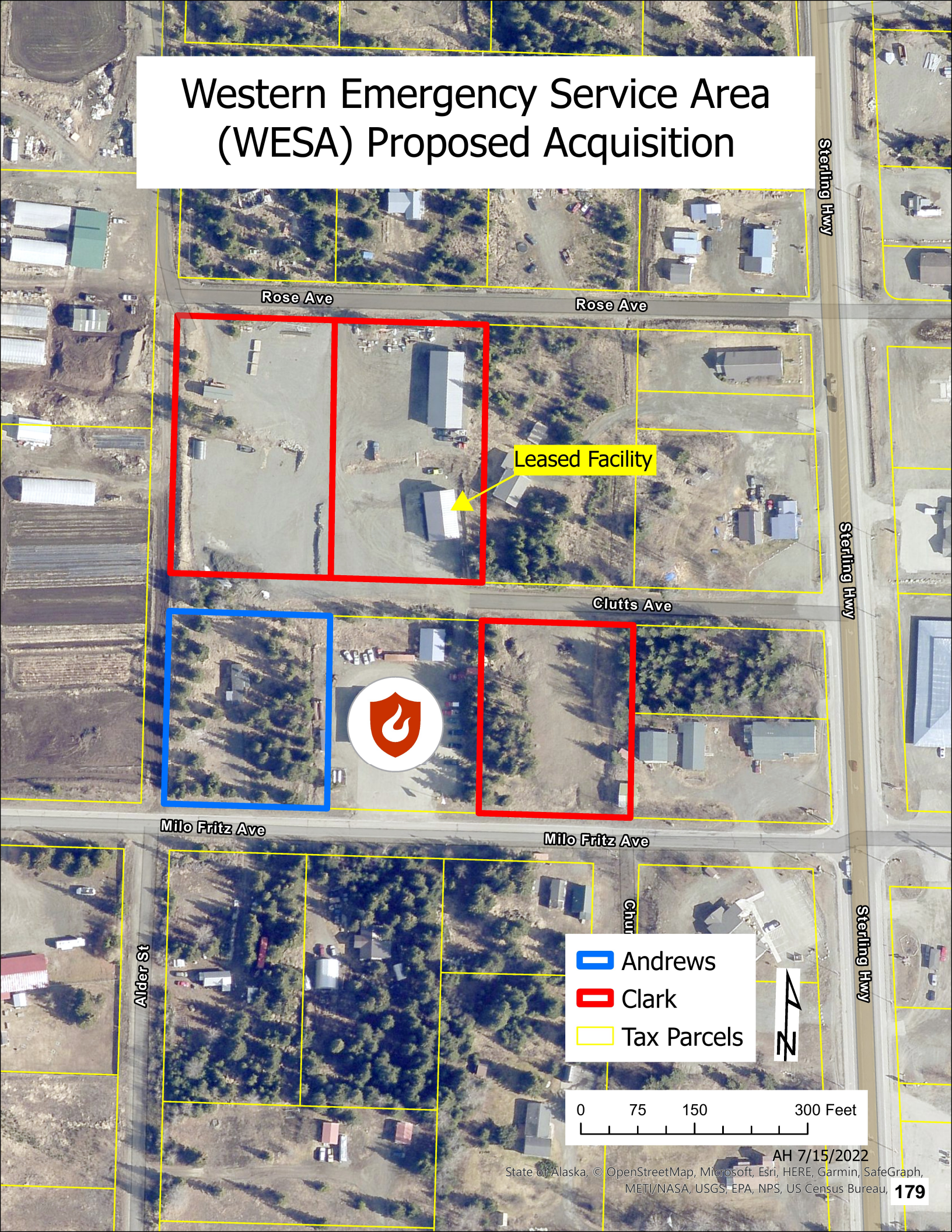
ATTEST:


John Blankenship, MMC, Borough Clerk



Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle
No: None
Absent: None

Western Emergency Service Area (WESA) Proposed Acquisition

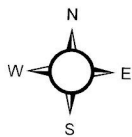




Western Emergency Service Area (WESA)

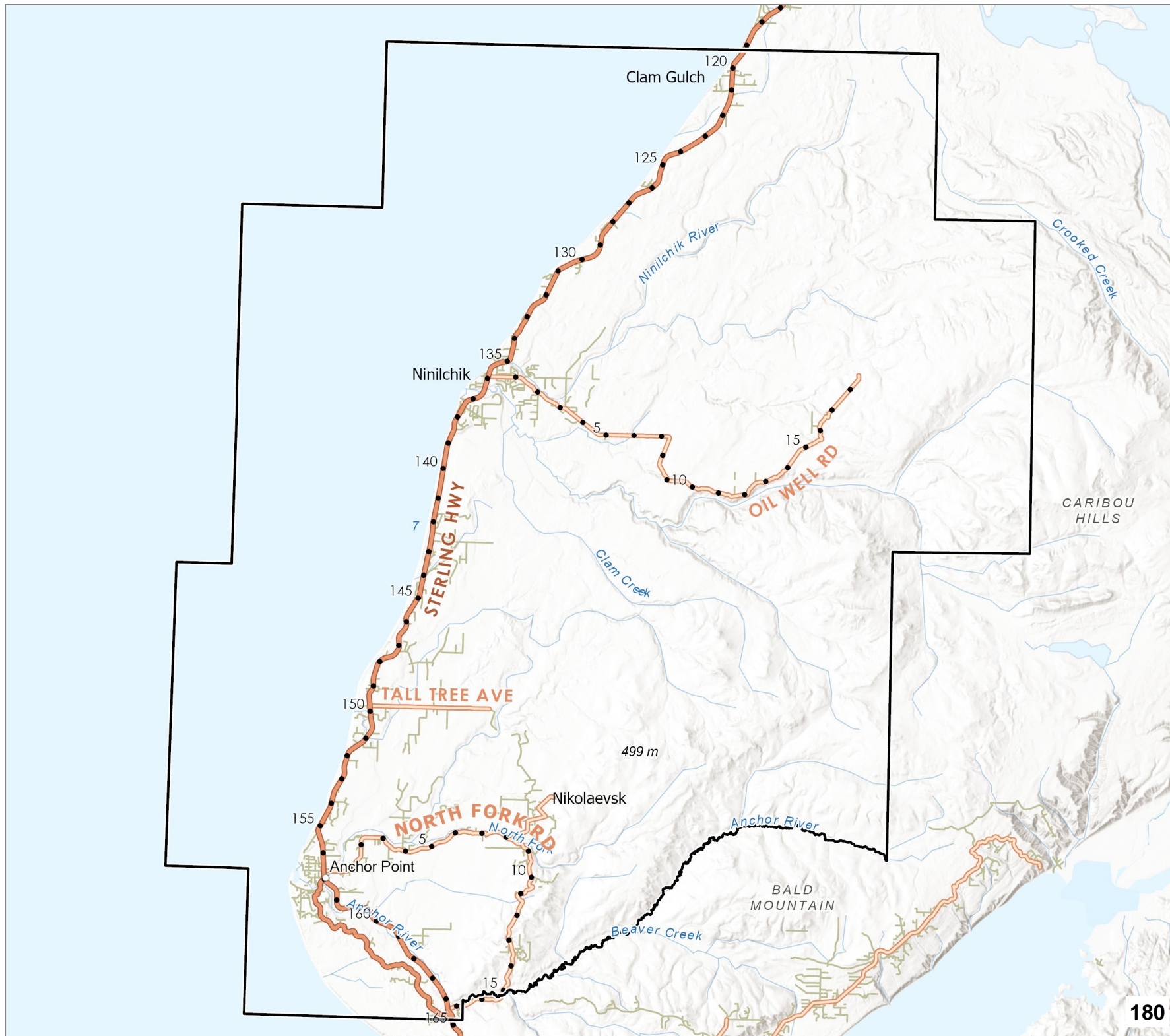
Map Data: 12/9/2020

- State Highway
- Major Road
- Minor Road



0 1 2 Miles

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



PURCHASE AGREEMENT

This Purchase Agreement (hereinafter the "Agreement") is made by and between Thomas Clark, whose address is P.O. Box 962, Anchor Point, AK 99603, (hereinafter referred to as "SELLER") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, as buyer whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB").

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

LOT 20, 21, and 24, SPRUCE ACRES SUBDIVISION, ACCORDING TO PLAT NUMBER 60-45, RECORDS OF THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (Parcel Numbers: 165-170-24, 165-170-27, 165-170-22)

**72405 and 72470 Clutts, Anchor Point, AK 99556
72485 Rose Ave, Anchor Point, AK 99556**

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

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

1. **PURCHASE PRICE**

The purchase price of the Property is Six Hundred and Sixty Thousand Dollars and NO cents (**\$660,000.00**). Purchase price shall be subject to the completion of an independent third-party appraisal, with the final property valuation to be not less than the referenced purchase price. Final payment to be made by KPB at time of closing. The purchase of the property and appropriation for the purchase are subject to approval by the Borough Assembly.

2. **EXPIRATION OF OFFER**

SELLER shall sign and return this Purchase Agreement to KPB on or before **July 5, 2022** otherwise this offer shall terminate.

3. **TITLE**

Title shall be delivered at time of closing by Statutory Warranty Deed, which shall be issued to KPB. SELLER warrants and covenants that at the time of closing there shall be no liens or

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

6. ESCROW AND CLOSING COSTS

Except as described in this paragraph, in addition to the purchase price, KPB agrees to pay for buyer related customary closing costs including the appraisal, inspection and recording fees for the conveyance deed in addition to 1/2 of the closing fee. Seller shall pay for seller related customary costs including the title insurance premium, 1/2 of closing fees and all other seller related fees. Property taxes for the current year, if any, will be prorated the date of closing. SELLER is responsible for Realtor's commission, if any, all unpaid taxes for prior years, if any, and all unpaid outstanding assessments, if any. All costs will be paid in full at the time of closing.

7. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days, or as specifically agreed to by both parties. At closing, KPB will pay the balance of the purchase price. Both parties will execute all documents required to complete the Purchase Agreement and, if applicable, establish an escrow account.

8. POSSESSION

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

9. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

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

10. DISCLOSURES

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

11. CONTINGENT ON INSPECTION

This offer and agreement is contingent upon the completion of a property inspection satisfactory to KPB for its use and at KPB's expense. SELLER shall, upon reasonable notice, provide access to the property for inspection purposes to KPB and its representatives. Any invasive inspection procedures shall require SELLER's express permission and shall be promptly repaired or

replaced by KPB in a workman-like manner. KPB shall have 45 days from the execution of this agreement to complete inspections and determine its satisfaction unless otherwise provided in writing.

12. HAZARDOUS MATERIAL

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

13. ENVIRONMENTAL CONTINGENCY

If during the course of KPB's due diligence of the Property pursuant to Section 11, Purchaser discovers the presence of Environmental hazards on or released from the Property in any quantity or concentration exceeding the limits allowed by applicable law, or that are deemed undesirable by purchaser, Purchaser shall have the right to give notice to Seller, accompanied by a copy or copies of the Third-Party Report(s) disclosing and confirming the presence of such hazardous materials. The notice and accompanying Third-Party Report must be given no later than 60 days from receipt of said report. The notice under this section shall state:

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

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

It is expressly understood, by execution of this agreement, seller hereby indemnifies buyer for any and all CERCLA related claims, liabilities or matters, unless otherwise provided for in this agreement. Said indemnification shall survive closing and termination of this agreement. Upon successful close of escrow said indemnification shall continue for a period of not less than 36 months, from the date of closing unless otherwise provided for in this agreement.

If this Agreement is terminated pursuant to any report detailing environmental conditions that may or may not exist on the Property, such report(s) shall remain confidential and proprietary.

The report(s) will be marked as confidential and will not be released to a private individual, entity, or non-profit without express agreement of the parties hereto. Notwithstanding, the report will be released pursuant to a valid court order and may be released to the State of Alaska upon request.

14. ENTIRE AGREEMENT

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

15. BREACH REMEDY

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

16. PERSON PROPERTY

It is understood and agreed to by both KPB and seller that any and all personal property located on the property (mobile structure / office), shall remain the property of the seller. It is the seller's responsibility to move the mobile home from the property prior to the close of escrow. Upon notice of removal, KPB will be entitled to conduct a final inspection of the property prior to closing.

17. MISCELLANEOUS

- A. Time. Time is of the essence in performance of this Agreement.
- B. Cancellation. This Agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by SELLER and the KPB mayor. This Purchase Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts. Buyer may cancel this agreement without penalty in the event additional contracts are not secured required of this project.
- C. Notice. Any notice or demand, which under the terms of this Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the

addressor.

- D. Interpretation. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.
- E. Condition of Property.
SELLER shall deliver the property in its as-is condition.
- F. Confidentiality. This Agreement shall be considered proprietary to the parties until closing occurs. Following closing, this Agreement may be considered a public record.
- G. Counterparts. This Agreement may be executed in counterpart, and may be executed by way of copy, facsimile or verified electronic signature in compliance with AS 09.80, and if so, each of which shall be deemed an original but all of which together will constitute one and the same instrument

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

KENAI PENINSULA BOROUGH:

SELLER:

Charlie Pierce, Mayor

Thomas Clark

Thomas Clark

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

A. Walker Steinhage,
Deputy Borough Attorney



RE: **4.36-Acre Anchor Point Property**

As a result of research and analysis, the value estimate(s) for the subject is/are as follows:

FINAL MARKET VALUE ESTIMATE	
4.36-Acre Anchor Point Property	
Property Rights	Fee Simple
Condition	As Is
Effective Date of Appraisal	February 18, 2022
Vacant Lot 21 (16517027)	\$81,500
Improved Lot 20 (16517024)	\$454,100
Vacant Lot 24 (16517022)	\$64,400
Final Market Value Estimate - Bulk Sale	\$600,000

The value estimates are based on a marketing period of approximately 9 months and an exposure period of approximately 9 months. The value opinion reported above is qualified by certain assumptions, limiting conditions, certifications, and definitions, which are set forth in the body of the report. This letter is invalid as an opinion of value if detached from the report, which contains the text, exhibits and Addendum. Thank you for the opportunity to be of service. If you have any questions, please feel free to call.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'B.T. Bowman'.

Beverly Bowman

Appraiser

Alaska Certified General – No. 134284

bbowman@reliantadvisory.com

A handwritten signature in blue ink, appearing to read 'E. Bjorn-Roli'.

Per E. Bjorn-Roli, MAI

Managing Member

Alaska Certified General – No. 302

PURCHASE AGREEMENT

This Purchase Agreement (hereinafter the "Agreement") is made by and between Karen A. Andrews, whose address is 2298 Mount Augustine, Homer, AK 99603, (hereinafter referred to as "SELLER") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, as buyer whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB").

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

**LOT 22, SPRUCE ACRES SUBDIVISION, ACCORDING TO PLAT NUMBER
60-45, RECORDS OF THE HOMER RECORDING DISTRICT, THIRD
JUDICIAL DISTRICT, STATE OF ALASKA. (Parcel Number: 165-170-26)**

72478 Milo Fritz Avenue, Anchor Point, AK 99556

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

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

1. PURCHASE PRICE

The purchase price of the Property is Seventy-Five Thousand Dollars and NO cents (**\$75,000.00**). Purchase price shall be subject to the completion of an independent third-party appraisal, with the final property valuation to be not less than the referenced purchase price. Final payment to be made by KPB at time of closing. The purchase of the property and appropriation for the purchase are subject to approval by the Borough Assembly.

2. EXPIRATION OF OFFER

SELLER shall sign and return this Purchase Agreement to KPB on or before **July 1, 2022** otherwise this offer shall terminate.

3. TITLE

Title shall be delivered at time of closing by Statutory Warranty Deed, which shall be issued to KPB. SELLER warrants and covenants that at the time of closing there shall be no liens or judgments recorded against SELLER in the same recording district in which the Property subject to this purchase agreement is situated. Title shall be clear of liens and encumbrances

except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record as agreed to by buyer.

6. ESCROW AND CLOSING COSTS

Except as described in this paragraph, in addition to the purchase price, KPB agrees to pay for buyer related customary closing costs including the appraisal, inspection and recording fees for the conveyance deed in addition to 1/2 of the closing fee. Seller shall pay for seller related customary costs including the title insurance premium, 1/2 of closing fee and all other seller related fees. Property taxes for the current year, if any, will be prorated the date of closing. SELLER is responsible for Realtor's commission, if any, all unpaid taxes for prior years, if any, and all unpaid outstanding assessments, if any. All costs will be paid in full at the time of closing.

7. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days, or as specifically agreed to by both parties. At closing, KPB will pay the balance of the purchase price. Both parties will execute all documents required to complete the Purchase Agreement and, if applicable, establish an escrow account.

8. POSSESSION

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

9. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

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

10. DISCLOSURES

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

11. CONTINGENT ON INSPECTION

This offer and agreement is contingent upon the completion of a property inspection satisfactory to KPB for its use and at KPB's expense. SELLER shall, upon reasonable notice, provide access to the property for inspection purposes to KPB and its representatives. Any invasive inspection procedures shall require SELLER's express permission and shall be promptly repaired or replaced by KPB in a workman-like manner. KPB shall have 45 days from the execution of this agreement to complete inspections and determine its satisfaction unless otherwise provided in writing.

KS

12. HAZARDOUS MATERIAL

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

13. ENVIRONMENTAL CONTINGENCY

If during the course of KPB's due diligence of the Property pursuant to Section 11, Purchaser discovers the presence of Environmental hazards on or released from the Property in any quantity or concentration exceeding the limits allowed by applicable law, or that are deemed undesirable by purchaser, Purchaser shall have the right to give notice to Seller, accompanied by a copy or copies of the Third-Party Report(s) disclosing and confirming the presence of such hazardous materials. The notice and accompanying Third-Party Report must be given no later than 60 days from receipt of said report. The notice under this section shall state:

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

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

It is expressly understood, by execution of this agreement, seller hereby indemnifies buyer for any and all CERCLA related claims, liabilities or matters, unless otherwise provided for in this agreement. Said indemnification shall survive closing and termination of this agreement. Upon successful close of escrow said indemnification shall continue for a period of not less than 36 months, from the date of closing unless otherwise provided for in this agreement.

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

report will be released pursuant to a valid court order and may be released to the State of Alaska upon request.

14. ENTIRE AGREEMENT

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

15. BREACH REMEDY

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

16. PERSONAL PROPERTY

It is understood and agreed to by both KPB and Seller, that any and all personal property located on the property (mobile home) shall remain the property of the seller. It is the seller's responsibility to move the mobile home from the property prior to the close of escrow. Upon notice of removal, KPB will be entitled to conduct a final inspection of the property prior to closing.

17. MISCELLANEOUS

- A. Time. Time is of the essence in performance of this Agreement.
- B. Cancellation. This Agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by SELLER and the KPB mayor. This Purchase Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts. Buyer may cancel this agreement without penalty in the event additional contracts are not secured required of this project.
- C. Notice. Any notice or demand, which under the terms of this Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

- D. Interpretation. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.
- E. Condition of Property.
SELLER shall deliver the property in its as-is condition.
- F. Confidentiality. This Agreement shall be considered proprietary to the parties until closing occurs. Following closing, this Agreement may be considered a public record.
- G. Counterparts. This Agreement may be executed in counterpart, and may be executed by way of copy, facsimile or verified electronic signature in compliance with AS 09.80, and if so, each of which shall be deemed an original but all of which together will constitute one and the same instrument

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

KENAI PENINSULA BOROUGH:

SELLER:

Charlie Pierce, Mayor



Karen A. Andrews

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

A. Walker Steinhage,
Deputy Borough Attorney

Kenai Peninsula Borough, Alaska

Andrews / KPB – Purchase Agreement

Page 5 of 5



RE: **Lot 22, Spruce Acres Subdivision**

As a result of research and analysis, the value estimate(s) for the subject is/are as follows:

<u>FINAL MARKET VALUE ESTIMATE</u>	
<u>Lot 22 of the Spruce Acres Subdivision</u>	
<u>Property Rights</u>	<u>Fee Simple</u>
<u>Condition</u>	<u>As Is</u>
<u>Effective Date of Appraisal</u>	<u>February 18, 2022</u>
<u>Final Market Value Estimate</u>	<u>\$74,400</u>

The value estimates are based on a marketing period of approximately 8 months and an exposure period of approximately 8 months. The value opinion reported above is qualified by certain assumptions, limiting conditions, certifications, and definitions, which are set forth in the body of the report. This letter is invalid as an opinion of value if detached from the report, which contains the text, exhibits and Addendum. Thank you for the opportunity to be of service. If you have any questions, please feel free to call.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'B.T. Bowman'.

Beverly Bowman

Appraiser
Alaska Certified General – No. 134284
bbowman@reliantadvisory.com

A handwritten signature in blue ink, appearing to read 'E. Bjorn-Roli'.

Per E. Bjorn-Roli, MAI

Managing Member
Alaska Certified General – No. 302

**WESTERN EMERGENCY SERVICE AREA
PO BOX 350
72440 MILO FRITZ AVENUE
ANCHOR POINT, AK 99556-0350
REGULAR BOARD MEETING MINUTES
WEDNESDAY EVENING, July 13, 2022
18:30 HOURS**

CALL TO ORDER

Chairman, Dawson Slaughter called the meeting to order at 18:34 hours.

PLEDGE OF ALLEGIANCE

All rose for the Pledge of Allegiance. Chief, Jon Marsh led the pledge of allegiance.

ROLL CALL

Board Members Present: Dawson Slaughter, Seat B; Kathryn Lopeman, Seat C; Katherine Covey, Seat D; Janice Nofziger, Seat E

Staff Members Present: Jon Marsh, Chief; Cassie Parkinson, FF Tech/ Acting Secretary; Robert Dash, Training Captain/56 hour

Absent: Cherie Richter, Seat A; David Bear, Assistant Chief; Rob Mathis, Deputy Chief

Visitors: None

APPROVAL OF THE AGENDA

Discussion: none

 K Covey / **J Nofziger** moved and seconded to approve the Agenda as written.

 4 Yes, 0 No, 1 Absent Motion Passed

APPROVAL OF THE MINUTES, Regular Board Meeting, May 11, 2022.

Discussion: None

 K Covey / **J Nofziger** moved and seconded to approve the minutes of the April 13, 2022 Regular Board Meeting as written.

 4 Yes, 0 No, 1 Absent Motion Passed

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

Comments:

No Public Comments.

REPORTS

A. Chief's Report ~ Jon Marsh, Chief: (see attached)

Key Points:

Not much to report.

Training: All classes have been completed. No new training scheduled for the summer.

Previous 12 Month Billing collection rate is at 77%. Collection is at 276,977.71 total charges for the year, 155,039.18 in payments with pending charges of 75,871.82.

2022 Calls for Assistance: 286 total, with 114 calls since last meeting.

Board Chair, Dawson Slaughter asked about the final FY22 amounts. He noted that the Admin Fee was showing as not paid for FY22. Chief explained that Finance will input a journal entry to remove the funds. Also, the minor fire coding has an extra 21K showing. It looks like this amount was a reimbursement from the Safer Grant for turnouts purchased during the Fiscal Year. The final budget looks good. It looks like roughly \$140,000 will be going back into the fund balance.

B. SREMSC / KPESI Report ~ Ryon Turley:

Absent, No report.

PENDING BUSINESS & FOLLOW-UP FROM LAST MEETING

A. Purchase of adjoining parcels of land to Station 3:

There are four parcels of land surrounding Station 3. The parcel to the west (left side of station) is 72478 Milo Fritz Ave. The Parcel to the east (right side of station) is 72405 Clutts Ave. The two adjoining parcels located directly behind the station are 72470 Clutts Ave and 72485 Rose Ave.

The original estimate from Land Management was \$300,000.00. This was based on Borough assessed values. The actual, independent appraisal came in at \$674,400.00 for all four properties combined.

The appraisal for 72478 Milo Fritz came in at \$74,400.00, the owner wanted \$75,000. The deal was negotiated.

The appraisals for the other three parcels came in at \$600,000.00. The owner initially wanted \$150,000.00 over the appraisal amount, which is 25%. Land Management negotiated an agreement for 10% over the appraisal which totals \$660,000.00 for all three properties.

The total cost to the Service Area for the purchase of all four parcels will be \$735,000.00. The Service Area will be paying roughly \$100,000.00 annually for this purchase. The purchase process is moving forward.

The Borough Departments working on this project want to ensure the Service Area Board is in agreement and in support of moving forward.

 K Covey / **J Nofziger** moved and seconded to support and recommend the purchase of these properties for the amount of \$735,000.00.

 4 Yes, **0** No, **1** Absent Motion Passed

B. Station 4 (Nikolaevsk) Plumbing/Heating Repairs: The plumbing and heating repairs for Station 4 have been completed and paid in FY 22.

NEW BUSINESS

A. DHSS Sponsorship Funding:

This is sponsorship from the Department of Homeland Security and the State of Alaska, pass through funds from the Center for Disease Control for technology to combat opioid and alcohol addiction. We applied for this grant and we were awarded \$15,000.00 to purchase smart boards for training purposes for Station 3 and Station 1.

The funds have already been received and an Ordinance is being drafted to accept the funding on behalf of WES.

___K Covey___/ ___J Nofziger___ moved and seconded to recommend acceptance and appropriation of grant funds received from the Center for Disease Control, on behalf of Western Emergency Services, for the purchase of smart boards.

___4___ Yes, ___0___ No, ___1___ Absent Motion Passed

INFORMATIONAL MATERIAL

Expense Report
Chief's Report

PUBLIC COMMENTS

None

BOARD COMMENTS

Seat A; Vice Chair, Cherie Richter: none

Seat B; Chair, Dawson Slaughter: none

Seat C; Kathryn Lopeman: none.

Seat D; Katherine Covey: none.

Seat E; Janice Nofziger: none.

EXECUTIVE SESSION

None

NOTICE OF NEXT REGULAR BOARD MEETING

Discussion: There was discussion of the need for an August meeting. We have ended last Fiscal Year and are beginning the new Fiscal Year. Historically there is little to no business to attend to during this timeframe. Board members decided to cancel the August 10th meeting, as there is no new business at this time. If a business matter comes up, the meeting will be called and convened.

Wednesday, September 14, 2022 will be the next regularly scheduled meeting.

ADJOURNMENT

Chairman, Dawson Slaughter adjourned the meeting at 18:49.

Dawson Slaughter, Board Chair

09/14/2022
Date Approved

Cassie Parkinson, Acting Secretary WES Board

09/14/2022
Date Approved

Introduced by: Johnson, Chesley
Date: 08/09/22
Hearing: 09/06/22 & 09/20/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-36**

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

- WHEREAS,** there are goals and objectives within the 2019 Kenai Peninsula Borough Comprehensive Plan to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms, as well as strategy objectives to update the Borough's existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and
- WHEREAS,** land use conflicts related to earth materials extraction and processing sites remain a point of contention within the Borough; and
- WHEREAS,** under current state law a first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis, except where such powers have been delegated to a city within the Borough; and
- WHEREAS,** land use regulation includes zoning powers; and
- WHEREAS,** the Borough has enacted KPB Chapter 21.04, Zoning Districts, and has established two zoning districts: the municipal district and the rural district; and
- WHEREAS,** within the rural district, KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and
- WHEREAS,** approximately 253 registered prior existing use material sites and approximately 104 conditional land use permits for material sites have been granted since 1996; and
- WHEREAS,** the assembly established a material site work group by adoption of Resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** the ordinance, Ordinance 2019-30, incorporating the final report and work group recommendations, failed enactment following public hearing and a vote during the assembly's October 24, 2019 meeting; and

- WHEREAS,** in late 2021, due to continued conflict including costly administrative and court appeals, the administration brought this land use issue back to the assembly and requested assembly action regarding the permitting process related to earth materials extraction and processing; and
- WHEREAS,** throughout this process the planning department, the material site work group, the planning commission, and the assembly have received many verbal and written public comments from Borough residents, professionals, and site operators; and
- WHEREAS,** the assembly first considered this issue by looking at the same ordinance that failed in 2019, relabeled Ordinance 2021-41; and
- WHEREAS,** Ordinance 2021-41 and a related substitute ordinance were tabled by the assembly at its February 1, 2022 to allow for consideration by the assembly as a committee of the whole, and
- WHEREAS,** the availability of three different types of conditional land use permits for material sites are designed to separate impacts of such uses and tailor applicable conditions and requirements to the associated impacts; and
- WHEREAS,** the Kenai Peninsula Borough recognizes the importance of implementing bonding, as applicable, to ensure neighboring properties and water sources are insured; and
- WHEREAS,** implementing a systematic process to determine a prior-existing use will allow the planning department to better identify the number of and types of pre-existing use sites in existence on the Kenai Peninsula and address complaints regarding nonconforming prior existing material sites; and
- WHEREAS,** requiring all prior-existing use operations to comply with reclamation plan and hours of operation requirements protects public health, safety, and general welfare; and
- WHEREAS,** requiring all prior-existing use operations which extract material below or within four feet of the seasonal highwater table to conduct operations in accordance with the requirements outlined in the relevant sections of code protects public health, safety, and general welfare; and
- WHEREAS,** buffer zones, dust control, hours of operation, and setbacks as mandatory conditions applicable to all permits, along with the discretionary conditions and conditions specific to processing or extraction with the water table, will reduce dust, noise, and attractive nuisances, thereby promoting public health, safety, and general welfare; and

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

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

WHEREAS, the planning commission at its regularly scheduled meeting held on _____ 2022, recommended _____;

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

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

21.25.050. Permit considerations—Public hearing required.

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

...

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

21.25.060. Notice.

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

B. Required forms of notice are as follows:

1. Notice of the pending application will be published on the borough website.
2. When available, the notice will also be posted on a public bulletin of the impacted community.
3. At the beginning of the notice period a copy of the notice will be sent by First Class U.S. Mail to all owners and/or leaseholders of record of property located with a radius of one-half mile of the subject property.

C. The notice must contain a description of the proposed location, the type of proposed land use or a description of the action requested, as applicable, the applicant's name, where written comments may be submitted, the last deadline for submitting written comments to the planning commission, and the date, time and location of the public hearing.

D. The failure of any person to receive any notice required under this section, where the records of the borough indicate the notice was provided in a timely and proper manner, shall not affect the validity of any proceeding under this title or be basis for appeal.

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

21.29.005. Intent and Purpose.

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

21.29.010. Applicability.

- A. This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a local option zoning district or exempt under KPB 21.29.015.
- B. This chapter does not apply within the incorporated cities of the Kenai Peninsula Borough.

- C. Earth material extraction within 300 linear feet from riparian wetlands and the seasonal high-water level of naturally-occurring open water bodies, such as a lake, pond, river, stream, or ocean, is prohibited. This prohibition does not apply to man-made water bodies or isolated ponds of less than one acre on private property.
- D. All operations must be conducted in accordance with the current publication of the State of Alaska, Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects. In the event a provision of this chapter conflicts with the State of Alaska's manual, this chapter controls.

21.29.015. Material extraction exempt from obtaining a permit.

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

21.29.020. Types of permits available.

- A. Counter permit. A counter permit is required for earth material extraction which disturbs more than one acre and less than 10 cumulative un-reclaimed acres. Material processing, screening, or crushing, and material extraction within four feet of the seasonal high-water table is prohibited under a counter permit. A counter permit is valid for a period of two years. Upon request from the applicant, the planning director, or designee, may grant one 12-month extension on a counter permit. Counter permits are approved by the planning director, or designees, and are not subject to notice requirements under KPB 21.25.060. The planning director's decision to approve or deny a counter permit may be appealed to the planning commission, which must act as the hearing officer, in accordance with KPB 21.20.
- B. Conditional land use permit. A conditional land use permit (CLUP) is required for the following types of earth material extraction or uses:

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

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

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP under this chapter, an applicant must first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application must include the following items, without which the application will be deemed incomplete:
 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
 2. Expected life span of the material site;

3. A buffer plan consistent with KPB 21.29.050(A)(1);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted;
7. A site map provided by a professional surveyor licensed in the State of Alaska to include the following:
 - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(1), or alternate buffer plan;
 - c. Identification of all encumbrances, including but not limited to, easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to submitting the application;
 - e. Anticipated haul routes, contingent on approval from the governmental agency with regulatory jurisdiction over the road;
 - f. Location of any processing areas on the parcel, if applicable;
 - g. North arrow;
 - h. The scale to which the site plan is drawn;
 - i. Preparer's name and date; and
 - j. Field verification must include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.
8. A site plan, prepared by a qualified independent civil engineer licensed and active in the State of Alaska to include the following:
 - a. Surface water protection measures, if any, for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
 - b. Location and elevation of test holes, and depth of groundwater, based on the seasonal high-water table. At least one test hole per ten acres of excavated area is required to be dug. The test holes must be at least four feet below the proposed lowest elevation of excavation depth;
 - c. Location of all private wells of adjacent property owners within 300 feet of the proposed parcel boundary; and
 - d. Location of any water body on the parcel, including the location of any riparian wetland as determined by best available data.

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

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

21.29.040. Standards for sand, gravel or material sites.

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

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

21.29.045. Required compliance with State and Federal laws

A. All applicants for permits for earth materials extraction are required to demonstrate compliance with state and federal law. Prior to final approval of the permit, the applicant or agent must provide written documentation from the permitting agency of compliance with the following:

1. Mining license as required by the Alaska State Department of Revenue, pursuant to A.S. 43.65;
2. Mining permit as required by the Alaska State Department of Natural Resources (ADNR) if extraction activities are to take place on state land;
3. Reclamation plan as required by ADNR, pursuant to A.S. 27.19;

4. Notice of intent for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Department of Environmental Conservation (DEC) pursuant to the Alaska Pollutant Discharge Elimination System (APDES) requirements;
 5. United States Army Corps of Engineers (USACE) permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344, if material extraction activity requires USACE approval; and
 6. Any other applicable state or federal agency with regulatory authority of mining activities or earth materials extraction.
- B. In addition to the requirements in subsection (A) of this section, all activity must be conducted in compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement, this includes but is not limited to:
1. *Air quality.*
 - a. EPA air quality control permit is required for asphalt plants and crushers;
 - b. ADNR burn permit is required for brush or stump burning. Combustibles must be stockpiled separate from noncombustibles, and burn permit requirements must be followed; and
 - c. ADEC dust control and air quality regulations pertaining to burning activities must be followed.
 2. *Water quality.* EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.
 3. *Hazardous Materials.* Use and storage of hazardous materials, waste and explosives.
 - a. EPA regulations controlling use of hazardous materials must be followed; and
 - b. U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives regulations must be followed when storing or using explosives.
- C. Failure to comply with any of the requirements in subsections (A) and (B) of this section is a violation of the permit, and is subject to enforcement pursuant to KPB Chapter 21.50.

21.29.050. Permit conditions applicable to all permits.

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

1. Buffer Zone.

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

2. Water source separation.

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

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

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

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

21.29.055. Earth materials processing.

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

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

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

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

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

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

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

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

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

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

1. Implement a monitoring plan that meets the requirements of this chapter. If existing wells will provide sufficient data, no additional wells are required.
2. Implement the spill prevention, control and countermeasures plan in accordance with Environmental Protection Agency's requirements for above ground storage tank operations regardless of the quantity of petroleum products on site.

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

21.29.060. – Reclamation plan.

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

- D. The five-year reclamation plan must describe the total acreage to be reclaimed relative to the total excavation plan.
- E. Close-out. Reclamation plans and requirements survive expiration, termination, or revocation of a permit granted under this chapter. In order to close-out a permit, the planning director must be provided adequate proof that reclamation has been conducted in accordance with the reclamation plan. If a permit expires, terminates, or is revoked prior to permit close-out, the remedies under KPB 21.50 apply and the planning director may hold applicable fines and remedies in abeyance upon a finding that reclamation is actively ongoing.

21.29.065. Effect of permit denial.

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

21.29.070. Permit renewal, modification and revocation.

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

- C. In the event the renewal application is heard by the planning commission, the planning commission must hold a public hearing on the renewal application. If the applicant is complying with all permit conditions and requirements and is not in violation of borough code, then the renewal must be granted by the planning commission. Notwithstanding the foregoing, if the commission determines, after public hearing, that discretionary conditions are appropriate on renewal then the commission may modify the CLUP by imposing conditions as deemed appropriate under the circumstances. Permit renewal applications will be denied if the permittee is in violation of the original permit requirements and conditions or borough code. A renewal application heard by the planning commission must be processed in accordance with the notice requirements of KPB 21.25.060.
- D. A permittee may request a modification of a CLUP or counter permit, as needed. A modification application will be processed pursuant to KPB 21.29.030 through KPB 21.29.050 with public notice given as provided by KPB 21.25.060. A permit modification is required if the permittee's operations are no longer consistent with the original permit application.
- E. The fee for a permit renewal or modification is the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a permit renewal will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50.

21.29.080. Permit Close-out.

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

21.29.100. Recordation.

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

21.29.110. Violations.

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

21.29.115. Permit transfers.

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

21.29.120. Prior-existing uses.

- A. *Determination.* Prior-existing uses (PEU) in effect on October 1, 2022 are allowed to continue operation subject to the requirements of this section. The burden of proof that the prior-existing use existed before October 1, 2022 is on the applicant. If the planning director denies prior-existing use status, the applicant must comply with the permit requirements of this chapter. Failure to apply for a prior-existing use determination by January 1, 2024 will result in termination of all rights to continued operation as a nonconforming use and require full compliance with all provisions of this chapter.
- B. *Decision.* The planning director will give notice of the application for a prior-existing use determination to property owners within 100 feet of the subject parcel boundaries. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to the planning director issuing a decision. The planning director will issue a decision regarding the prior-existing use status based on the written application, written comments, or evidence regarding the existence of the use. The planning director's decision may be appealed by the applicant or affected property owners to the planning commission within 15 days of distribution of the decision.

- C. *Discontinuance.* Any prior-existing use which has ceased by discontinuance for an uninterrupted period of 365 days must thereafter conform to the permit requirements of this chapter. Lack of intent to cease use or abandon the use does not suspend the 365-day time period. If a prior-existing use is discontinued or abandoned, it may not be recommenced.
- D. *Expansion Prohibited.* A prior-existing use may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after October 1, 2022, nor may the prior-existing use be moved to a parcel which is subject to this chapter. If a parcel is subdivided, the pre-existing use may not be expanded to any lot, tract, or parcel where material extraction or processing had not previously occurred or was not lawfully established in accordance with this section.
- E. *Standards.* In order to qualify as a legal prior-existing use, the use must meet the following standards, on or before October 1, 2022:
1. A use must have been legally established under prior law.
 2. A use must be operational in accordance with the type of use.
- F. In accordance with 21.29.015, on or before January 1, 2026, all legal prior-existing-use extraction operations shall comply with KPB 21.29.060 (reclamation plan) and applicable hours of operation requirements under this chapter.
- G. Materials extraction operations with legal prior-existing use status which extract material below or within four feet of the seasonal highwater table shall conduct operations in accordance with the requirements outlined in KPB 21.29.057, except that KPB 21.29.057(C)(7) will not apply.
- H. For the purposes of this section, “increased, intensified, or expanded” means: (1) enlarging the area of excavation; (2) increasing the depth of excavation to go within four feet of the seasonal high-water table; or (3) adding a use that was not in existence as of the date of the PEU status determination, to include adding earth materials processing to a use that did not previously include processing.

21.29.130. Definitions.

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

1. Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
2. Aggrieved Party means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.
3. Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
4. Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
5. Assisted-living home means a residential facility to which AS 47.33 applies, as described in AS 47.33.010.
6. Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
7. Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.
8. Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.
9. Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
10. Inactive site walls means a wall with a slope steeper than 1.5:1 where there has been no excavation activity for 180 consecutive days.
11. Isolated pond means no surface water inlet or outlet is present at any time of the year.
12. Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
13. Qualified professional means a licensed professional engineer, hydrologist, hydrogeologist, or other similarly-licensed professional.
14. Quarter or Quarterly means January through March, April through June, July through September, or October through December;

15. Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
16. Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.
17. Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.
18. Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.
19. Topsoil means material suitable for vegetative growth.
20. Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.
21. Water source means a well, spring or other similar source that provides water for human consumptive use.

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

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly President BJ
Lane Chesley, Assembly Member (B)

DATE: July 28, 2022

RE: Ordinance 2022-36, Amending KPB Chapter 21.25 and KPB Chapter 21.29 Regarding Conditional Land Use Permits and Material Site Permits, Updating Notice, Applicability, Permit Types, Application Requirements, Standards and Permits Conditions (Johnson, Chesley)

In 2021, the Borough administration brought the issue of land use conflicts related to earth material extraction and processing sites back before the Assembly and requested Assembly consideration and action to address the regulatory process related to conditional land use permits issued under KPB Chapter 21.29, Material sites.

After receiving public comment on Ordinance 2021-41, the Assembly ultimately tabled the ordinance and a related substitute ordinance. The Assembly formed a committee of the whole to review the permitting process with a fresh perspective.

This ordinance will repeal and re-enact KPB Chapter 21.29. This ordinance shifts the conditional land use permit (CLUP) process for earth materials extraction and processing away from a "one size fits all" approach and instead establish a multi-permit structure wherein activities related to materials processing and extraction within the water table require heightened protections for the public good but activities of lesser impact to surrounding properties do not require the same level of protections. This ordinance maintains important mandatory conditions found in current code that are necessary to protect the public health, safety, and general welfare of Borough residents. This ordinance also presents a permitting system that will provide for more flexibility to meet the needs of the particular application through discretionary conditions that may only apply when appropriate under the circumstances.

Your consideration of the ordinance is appreciated.

Introduced by:	Mayor
Date:	08/09/22
Hearing:	08/23/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-31**

**AN ORDINANCE AUTHORIZING THE RELEASE OF A COMMERCIAL DEED
RESTRICTION ON A PARCEL OF LAND LOCATED IN COOPER LANDING
ORIGINALLY CONVEYED BY THE KENAI PENINSULA BOROUGH**

- WHEREAS,** Parcel D, Quartz Creek Subdivision, according to Plat No. 94-1, Seward Recording District, was conveyed by quitclaim deed from the Kenai Peninsula Borough (Borough) to Jon James as part of the 2000 General Land Sale authorized by Ordinance 99-55; and
- WHEREAS,** as required under then-existing KPB code, a “commercial use” deed restriction was placed on the deed at the time of that conveyance provided, “The real property described in this conveyance instrument shall be used primarily for commercial purposes, and any other uses shall be compatible with commercial uses. The use of the land for any other purpose, incompatible with commercial use, is prohibited”; and
- WHEREAS,** the original Parcel D of Quartz Creek Subdivision has been further subdivided into two parcels now known as Tract D-1 and Tract D-2, Quartz Creek Subdivision James Addition; and
- WHEREAS,** Tract D-2 currently is under contract for sale from Shirley Ann Kuznicki as seller to Onie Ray Wilkes as buyer with the intention of obtaining residential financing; and
- WHEREAS,** on the date of the conveyance, KPB Code 17.10.130(D) stated “All lands or interests in lands shall be conveyed by an instrument containing restrictions that restrict the use of the land to that classification and prohibit the use of the land for any other purpose”; and
- WHEREAS,** KPB Code 17.10.130(D) was amended by Ordinance 2003-23 to read “Land shall be conveyed without deed restriction unless otherwise provided by the assembly by ordinance”; and
- WHEREAS,** the Cooper Landing Land Use Plan identifies the intended classification for parcels in the Quartz Creek Subdivision as Commercial; and

WHEREAS, the proposed purchaser, Onie Ray Wilkes, has submitted a written petition to modify the deed restriction and deposited the non-refundable fee per 17.10.130(F); and

WHEREAS, Mr. Wilkes has stated that he is unable to obtain a residential mortgage because the property is restricted to commercial use in an otherwise unrestricted area and the best use for the property is a single-family residence; and

WHEREAS, public notice has been published per KPB 17.10.130(F)(2); and

WHEREAS, the Cooper Landing Advisory Planning Commission at its regularly scheduled meeting of August 3, 2022, recommended _____; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of August 8, 2022, recommended _____;

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

SECTION 1. That pursuant to KPB 17.10.130 (F)(4), the mayor is hereby authorized to release the commercial deed restriction pertaining to Tract D-2, Quartz Creek Subdivision James Addition, according to the official plat thereof, filed under Plat Number 2005-14, Records of the Seward Recording District, Third Judicial District, State of Alaska, as created in that Quitclaim Deed Recorded August 21, 2000 as Book 102, Page 68, Seward Recording District based on the following findings of fact:

- a. The original parcel (Parcel D) was conveyed with a commercial deed restriction to satisfy then KPB 17.10.130(D). KPB Code 17.10.130(D) was later amended by Ordinance 2003-23 to remove deed restrictions from conveyances.
- b. The subject parcel is otherwise unrestricted.
- c. The applicant is unable to proceed with closing of the purchase of the property because the commercial deed restriction impacts his ability to obtain a residential mortgage.
- d. Public notice of the proposed actions was delivered and published in accordance with KPB 17.10.130(F)(2).

SECTION 2. The mayor is authorized to sign a *Release of Deed Restriction*, respective to Tract D-2, Quartz Creek Subdivision James Addition, and any other documents necessary to effectuate the intent and purpose of this ordinance.

SECTION 3. That this ordinance is effective immediately upon enactment.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

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

THRU: Charlie Pierce, Borough Mayor *CP*
Robert Ruffner, Planning Director *RR*
Marcus A Mueller, Land Management Officer *RR*

FROM: Aaron Hughes, Land Management Agent *AH*

DATE: July 28, 2022

RE: Ordinance 2022-31, Authorizing the Release of a Commercial Deed Restriction on a Parcel of Land Located in Cooper Landing Originally Conveyed by the Kenai Peninsula Borough (Mayor)

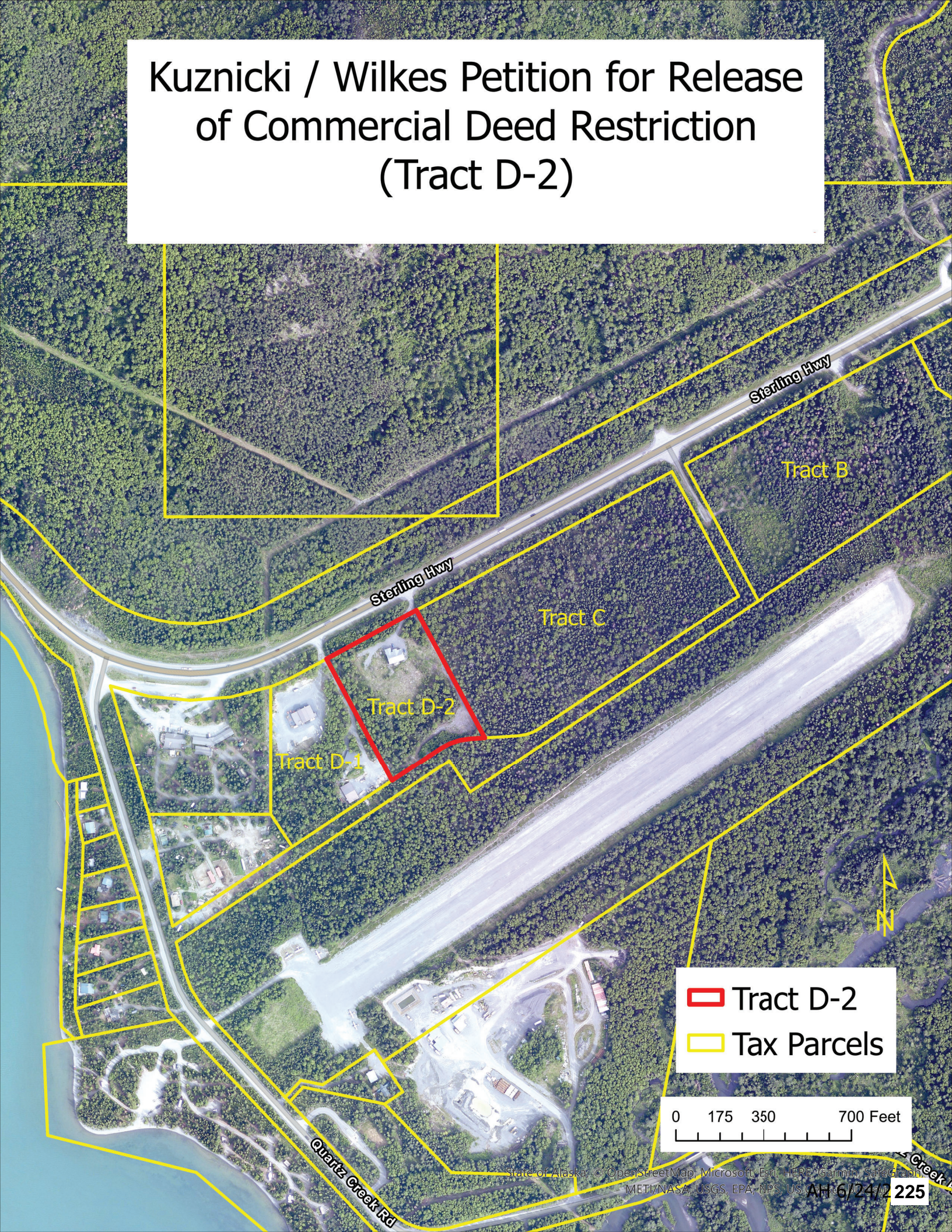
Parcel D, Quartz Creek Subdivision, according to Plat No. 94-11, was conveyed by KPB as part of the 2000 KPB General Land Sale pursuant to Ordinance 99-55. The conveyance deed contained the following language required at the time under KPB 17.10.130(D) creating a deed restriction on the subject parcel: "FURTHER SUBJECT TO restrictive covenant pursuant to KPB 17.10.130(D). The real property described in this conveyance instrument shall be used primarily for commercial purposes, and any other uses shall be compatible with commercial uses. The use of the land for any other purpose, incompatible with commercial use, is prohibited".

KPB 17.10.130(D) was later amended by Ordinance 2003-23 to read: "Land shall be conveyed without deed restrictions unless otherwise provided by the assembly by ordinance", removing the requirement for deed restrictions to be included in conveyances from the borough.

The applicants, Shirley Ann Kuznicki (property owner) and Onie Ray Wilkes (interested party), have submitted a Petition for Modification of Conveyance Instrument Restrictions and related fees to remove the commercial deed restriction of public record. Mr. Wilkes has entered into an agreement to purchase that portion of the original Parcel D currently described as Tract D-2 from Ms. Kuznicki. As a result of the commercial deed restriction, Mr. Wilkes is not able to close on the purchase due to lender requirements to obtain a residential mortgage.

Your consideration of the ordinance is appreciated.

Kuznicki / Wilkes Petition for Release of Commercial Deed Restriction (Tract D-2)



 Tract D-2
 Tax Parcels

0 175 350 700 Feet

RELEASE OF DEED RESTRICTION

WHEREAS, the Kenai Peninsula Borough conveyed real property to Jon James by quitclaim deed recorded on August 21, 2000 as **Book 102, Page 68 in the Seward Recording District**, pursuant to KPB Ordinance 99-55 which contained a deed restriction.

WHEREAS, the real property described in that initial conveyance has been further subdivided into two Tracts described as Tract D-1 and D-2, Quartz Creek James Addition.

WHEREAS, Shirley Ann Kuznicki, the current owner of Tract D-2, has petitioned the Kenai Peninsula Borough to release the above commercial deed restriction on the real property.

WHEREAS, on _____, 2022 the Kenai Peninsula Borough Assembly enacted Ordinance 2022-XX authorizing the release of said deed restriction specific to Tract D-2.

NOW, THEREFORE, the **GRANTOR, THE KENAI PENINSULA BOROUGH**, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669, for the sum of one dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to Assembly Ordinance 2022-XX, enacted _____, 2022, releases forever unto the successor in interest and **GRANTEE, Shirley Ann Kuznicki**, whose address is 3160 Admiralty Bay Dr., Anchorage, AK 99515, her successors and assigns, the following restriction created in that quitclaim deed recorded as Book 102, Page 68 in the Seward Recording District:

“FURTHER SUBJECT TO The real property described in this conveyance instrument shall be used primarily for commercial purposes, and any other uses shall be compatible with commercial uses. The use of the land for any other purpose, incompatible with commercial use, is prohibited”.

As to the real property legally described as:

Tract D-2, Quartz Creek Subdivision James Addition, according to the official plat thereof, filed under Plat Number 2005-14, Records of the Seward Recording District, Third Judicial District, State of Alaska.

Dated this ____ day of _____, 2022.

KENAI PENINSULA BOROUGH:

Charlie Pierce, Mayor

ATTEST:

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Johni Blankenship
Borough Clerk

A. Walker Steinhage
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

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

Notary Public in and for Alaska
My commission expires: _____

Record in the Seward Recording District

Please return to: Kenai Peninsula Borough
Planning Department
144 North Binkley Street
Soldotna, Alaska 99669

DRAFT

Public Notice of Proposed Release of a Deed Restriction

Pursuant to Kenai Peninsula Borough (KPB) Code of Ordinances, Chapter 17.10.130(f), the Kenai Peninsula Borough is considering release of a deed restriction on the use of a parcel of land owned by the Shirley Ann Kuznicki described as Tract D-2, Quartz Creek Subdivision James Addition.

The Borough encourages you to review the proposed ordinance and submit written comments. Written comments must be received no later than close of business August 3, 2022, to be included in the Planning Commission packet for its public hearing. Written comments may be sent to the following address: Kenai Peninsula Borough, Land Management Division 144 N. Binkley Street, Soldotna, AK 99669-7599

Description of Property: 21899 Sterling Highway, Cooper Landing, AK 99572 and being legally described as:

Tract D-2, Quartz Creek Subdivision James Addition, according to the official plat thereof, filed under Plat Number 2005-14, Records of the Seward Recording District, Third Judicial District, State of Alaska. (KPB Parcel ID: 119-124-21)

Basis For Proposed Action: Parcel No. 119-124-21 was deeded from the Kenai Peninsula Borough on August 21, 2000 as Book 102, Page 68 in the Seward Recording District, pursuant to KPB Ordinance 99-55, subject to the following Commercial Deed Restriction:

“FURTHER SUBJECT TO The real property described in this conveyance instrument shall be used primarily for commercial purposes, and any other uses shall be compatible with commercial uses. The use of the land for any other purpose, incompatible with commercial use, is prohibited.”

Shirley Ann Kuznicki, the current owner of Tract D-2, and Onie Ray Wilkes, an interested party, have petitioned the Kenai Peninsula Borough to release the above commercial deed restriction in order to provide for residential use and lending.

The proposed action by would remove the commercial use deed restriction on Tract D-2, allowing the petitioner unrestricted use.

The public is invited to give testimony at the following meetings. Public meetings will be held as shown unless otherwise advertised.

Cooper Landing Advisory Planning Commission Public Hearing: August 3, 2022, 6:00 p.m. at the Cooper Landing Community Hall or Via Zoom <https://us06web.zoom.us/j/2045581076>

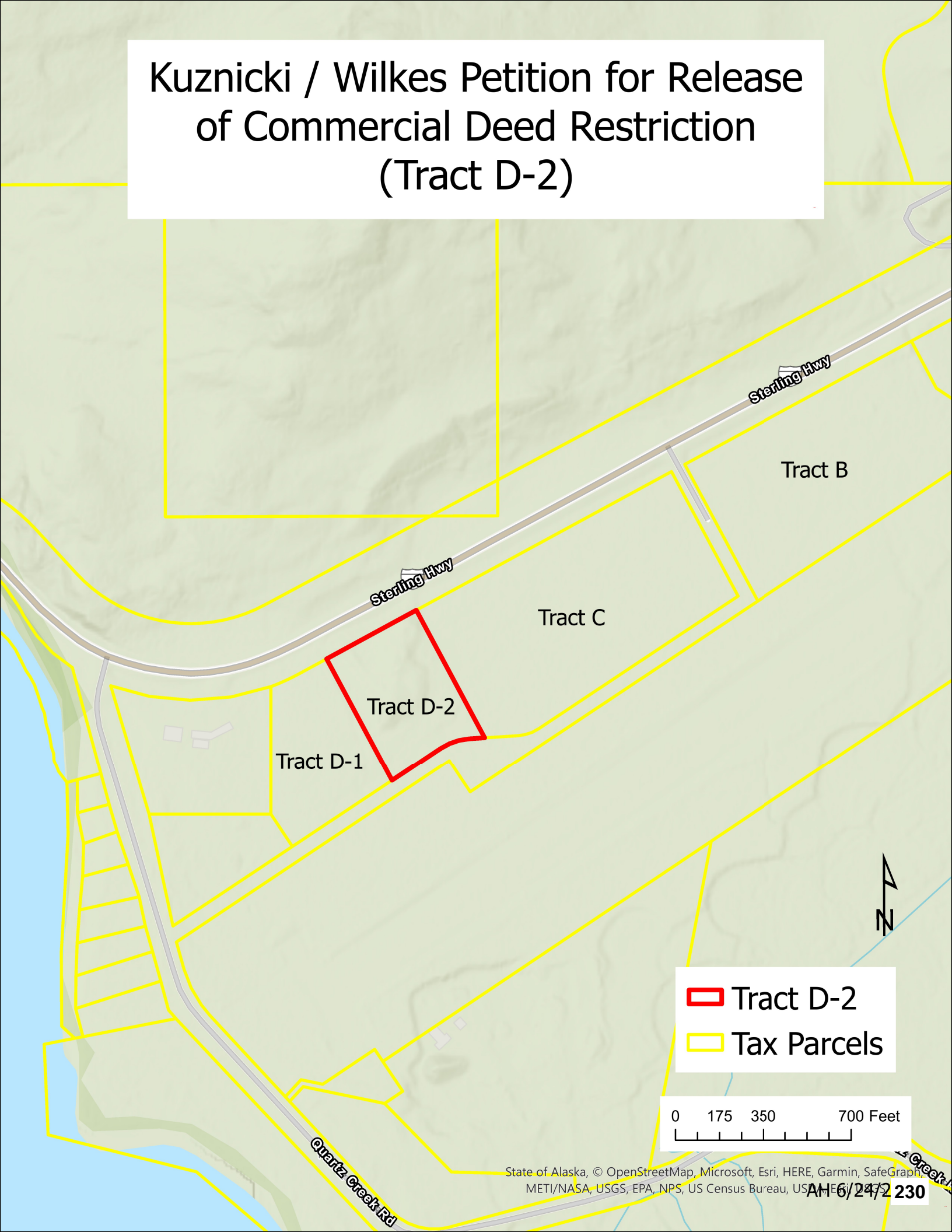
KPB Planning Commission Public Hearing: August 8, 2022, 7:30 p.m. at the KPB Administration Building, 144 N. Binkley Street, Soldotna, AK 99669 or via Zoom <https://kpb.legistar.com/Calendar.aspx>

KPB Assembly Meeting: August 23, 2022, 6:00 p.m. at the KPB Administration Building, 144 N. Binkley Street, Soldotna, AK 99669. <https://kpb.legistar.com/Calendar.aspx>

Additional Information: For further information contact Aaron Hughes, Land Management Division at 907-714-2205, or toll free within the Borough 1-800-478-4441, ext. 2205.

The Kenai Peninsula Borough reserves the right to waive technical defects in this publication.

Kuznicki / Wilkes Petition for Release of Commercial Deed Restriction (Tract D-2)



**PETITION FOR MODIFICATION OF CONVEYANCE INSTRUMENT
RESTRICTIONS
KENAI PENINSULA BOROUGH
LAND MANAGEMENT DIVISION
KPB 17.10.130(F)**

144 N. Binkley Street
Soldotna, AK 99669-7599
lmweb@kpb.us

Phone: 907-714-2205
Fax: 907-714-2378

(Must be accompanied with a \$500.00 non-refundable fee)

Parcel Identification Number (PIN – 8 digits): 119-124-21

Legal Description: Tract D-2 Quartz Creek James Addition

Conveying document recording number & recording district:
102-69 Seward District
(i.e. 2018-000000-0 Kenai or Book 398, Page 204 Seward)

The restriction(s) petitioned for modification is/are (please list below):
See Wilkes petition

The justification(s) for the modification of the restriction is/are *(please list below)*:
~~My request is made on behalf of Mr Ray wilkes intention of occupying the home as soon as possible as his family residence. The home has been my residence and bed and breakfast or vacation rental home since 2006. Currently KPB has already begun future intentions and preliminary planning stages of the adjoining parcels, to include the development of Tract B and C designed to be subdivided into one acre lots each of residential or commercial lots. Thank you, Shirley Kuznicki~~

Name of Petitioner: Shirley Ann Kuznicki

Mailing Address: 3160 Admiralty Bay Dr., Anchorage, AK 99515

Phone: 907-440-1923 Email: shirleyannkuznicki@yahoo.com

Petitioner's Representative/Agent: _____

Mailing Address: _____

Phone: _____ Email: _____



Signature

6/25/2022

Date

***IF YOU HAVE ANY QUESTIONS REGARDING THIS APPLICATION
PLEASE CONTACT THE LAND MANAGEMENT DIVISION***

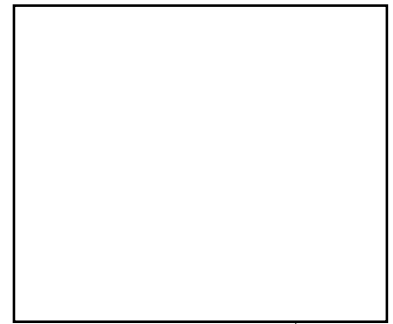
Tax Compliance Certification

Kenai Peninsula Borough

Finance Department

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

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



Fill in all information requested. Sign and date, and submit with bid or proposal.

For Official Use Only

Reason for Certificate:		For Department:	
Business Name:			
Business Type:	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other:		
Owner Name(s):	Shirley Ann Kuznicki		
Business Mailing Address:	3160 Admiralty Bay Dr., Anchorage AK 99515		
Business Telephone:	907-440-1923	Business Fax:	
Email:	shirleyannkuznicki@yahoo.com		

As a business or individual, have you ever conducted business or owned real or personal property within the Kenai Peninsula Borough? (If yes, please supply the following account numbers and sign below. If no, please sign below.)

☐ Yes ☐ No Kenai Peninsula Borough Code of Ordinances, Chapter 5.28.140, requires that businesses/individuals contracting to do business with the Kenai Peninsula Borough be in compliance with Borough tax provisions. No contract will be awarded to any individual or business who is found to be in violation of the Borough Code of Ordinances in the several areas of taxation.

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

KPB Finance Department (signature required)

SALES TAX ACCOUNTS	
ACCT. NO.	ACCT. NAME

KPB Sales Tax Division (signature required)

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

Date ☐ In Compliance ☐ Not in Compliance

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

Date ☐ In Compliance ☐ Not in Compliance

CERTIFICATION: I, Shirley Ann Kuznicki the Owner, hereby certify that, to the best of my knowledge, the above information is correct as of 6/25/2022.

(Name of Applicant)

(Title)

(Date)

Signature of Applicant (Required)

**PETITION FOR MODIFICATION OF CONVEYANCE INSTRUMENT
RESTRICTIONS
KENAI PENINSULA BOROUGH
LAND MANAGEMENT DIVISION
KPB 17.10.130(F)**

144 N. Binkley Street
Soldotna, AK 99669-7599
lmweb@kpb.us

Phone: 907-714-2205
Fax: 907-714-2378

(Must be accompanied with a \$500.00 non-refundable fee)

Parcel Identification Number (PIN – 8 digits): 119-124-21

Legal Description: TRACT D-2 Quartz Creek Sub
JAMES ADDN.

Conveying document recording number & recording district: 102 PAGE 68 SEWARD.
(i.e. 2018-000000-0 Kenai or Book 398, Page 204 Seward)

The restriction(s) petitioned for modification is/are (please list below):

Deed Restriction AS SHOWN ON DEED.

The justification(s) for the modification of the restriction is/are (please list below):

THIS property was restricted to commercial use in Cooper Landing,
which is a non-zoning area. This Deed restriction has halted the
progress of my mortgage financing, which is time sensitive. The property's
highest and best use is determined to be it current use. single family residence.

Name of Petitioner: ONIE RAY WILKES

Mailing Address: P.O. Box 871 Cooper Landing AK 99572

Phone: 907-302-1220 Email: beancreeker@yahoo.com

Petitioner's Representative/Agent: Donnie Ray Wilkes
Mailing Address: P.O. Box 871 Cooper Landing AK 99572
Phone: 907-302-1220 Email: beancreeker@yahoo.com

Donnie Ray Wilkes
Signature

6/10/22
Date

**IF YOU HAVE ANY QUESTIONS REGARDING THIS APPLICATION
PLEASE CONTACT THE LAND MANAGEMENT DIVISION**

Tax Compliance Certification Kenai Peninsula Borough Finance Department

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

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

Fill in all information requested. Sign and date, and submit with bid or proposal.

For Official Use Only

Reason for Certificate:	Petition for Modification		For Department:	LAND MANAGEMENT.
Business Name:	N/A			
Business Type:	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other:			
Owner Name(s):				
Business Mailing Address:				
Business Telephone:		Business Fax:		
Email:				

As a business or individual, have you ever conducted business or owned real or personal property within the Kenai Peninsula Borough? (If yes, please supply the following account numbers and sign below. If no, please sign below.)

☒ Yes ☐ No Kenai Peninsula Borough Code of Ordinances, Chapter 5.28.140, requires that businesses/individuals contracting to do business with the Kenai Peninsula Borough be in compliance with Borough tax provisions. No contract will be awarded to any individual or business who is found to be in violation of the Borough Code of Ordinances in the several areas of taxation.

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

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

KPB Finance Department (signature required)

_____ ☐ In Compliance ☐ Not in Compliance
Date

SALES TAX ACCOUNTS	
ACCT. NO.	ACCT. NAME

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

KPB Sales Tax Division (signature required)

_____ ☐ In Compliance ☐ Not in Compliance
Date

CERTIFICATION: I, Onie RAY Wilkes the _____, hereby certify that, to the
(Name of Applicant) (Title)

best of my knowledge, the above information is correct as of 6/10/22
(Date)


Signature of Applicant (Required)

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



APPRAISAL OF REAL PROPERTY

LOCATED AT:

21899 Sterling Hwy
Tract D-2 Quartz Creek Sub James Addn
Cooper Landing, AK 99572

FOR:

First National Bank Alaska
11408 Kenai Spur Hwy
Kenai, AK 99611

AS OF:

05/20/2022

BY:

Russell Farrington
Farrington's Appraisal Services, LLC
PO Box 220865
Anchorage, AK 99522

Uniform Residential Appraisal Report

File # Loan# 0102093043

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property

Property Address **21899 Sterling Hwy** City **Cooper Landing** State **AK** Zip Code **99572**
 Borrower **Onie Ray Wilkes** Owner of Public Record **Shirley Ann Kuznicki** County **Kenai Peninsula Borough**
 Legal Description **Tract D-2 Quartz Creek Sub James Addn**
 Assessor's Parcel # **119-124-21** Tax Year **2021** R.E. Taxes \$ **4,789**
 Neighborhood Name **Cooper Landing** Map Reference **See Attached** Census Tract **0003 00**
 Occupant ☒ Owner ☐ Tenant ☐ Vacant Special Assessments \$ **0** ☐ PUD HOA \$ **0** ☐ per year ☐ per month
 Property Rights Appraised ☒ Fee Simple ☐ Leasehold ☐ Other (describe)
 Assignment Type ☒ Purchase Transaction ☐ Refinance Transaction ☐ Other (describe)
 Lender/Client **First National Bank Alaska** Address **11408 Kenai Spur Hwy, Kenai, AK 99611**
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☒ Yes ☐ No
 Report data source(s) used, offering price(s), and date(s) **DOM Q, The current purchase is a FSBO deal. There is a 4 page purchase contract dated, 04/23/2022, for the contract price of \$755K. There is a cancelled MLS Listing #21-5498 listed 04/22/21, cancelled 02/15/22 (OLP\$859K reduced to \$755K. DOM=301)**
 I ☒ did ☐ did not analyze the contract for sale for the subject property transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. **Arms length sale; Basic purchase contract (4 pages total), 4pg contract dated & signed 04/23/22 for \$755K. No adverse conditions/clauses noted. No addendums/counters or home inspection reports have been provided to me along w/this assignment**
 Contract Price \$ **755,000** Date of Contract **04/23/2022** Is the property seller the owner of public record? ☒ Yes ☐ No Data Source(s) **Tax rcrds, contract**
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☒ No
 If yes, report the total dollar amount and describe the items to be paid **\$0**

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics			One-Unit Housing Trends			One-Unit Housing		Present Land Use %	
Location <input type="checkbox"/> Urban <input type="checkbox"/> Suburban <input checked="" type="checkbox"/> Rural	Property Values <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining		PRICE	AGE	One-Unit	50 %			
Built-Up <input type="checkbox"/> Over 75% <input checked="" type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply		\$ (000)	(yrs)	2-4 Unit	2 %			
Growth <input type="checkbox"/> Rapid <input type="checkbox"/> Stable <input checked="" type="checkbox"/> Slow	Marketing Time <input checked="" type="checkbox"/> Under 3 mths <input type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths		550	Low	Multi-Family	1 %			
Neighborhood Boundaries Hope to the north, Moose Pass to the east, Harding Icefield/Chugach Mtns to the south, Sterling to the west.			795	High	Commercial	5 %			
			680	Pred.	Other	42 %			

Neighborhood Description **Cooper Landing is located on the eastern Kenai Peninsula, approximately 130 miles south of Anchorage. Cooper Landing is a small community w/approximately 360 residents located at the headwaters of the world famous Kenai River. The population nearly doubles in the summer to support tourist businesses & activities. The area is known for it's world class trout fishing & sockeye salmon runs. The Kenai Princess Lodge is the largest single employer in the area. Cooper Landing has a K-8 school & high school students require busing to Soldotna, which is approximately 40 miles southwest. The Cooper Landing general area has somewhat of a vacation home/resort feel. Market Conditions (including support for the above conclusions) **The Cooper Landing market is considered stable w/good overall demand. Market activity is limited due to the small size of the community & comps are diverse (market as a whole ranges from small cabin type properties to upper end water front properties). Financing options are available from a variety of sources. Interest rates remain at favorable levels (5%-5.5%+) which has been keeping demand strong. Marketing times are typically 0-90 days +/- for reasonably priced properties.****

Dimensions **Irregular/No As-built provided** Area **5.0 ac** Shape **Rectangular** View **B Mtn, Woods**
 Specific Zoning Classification **No Zoning** Zoning Description **No Zoning**
 Zoning Compliance ☐ Legal ☐ Legal Nonconforming (Grandfathered Use) ☒ No Zoning ☐ Illegal (describe)
 Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe **Highest and best use analysis was performed and the highest and best use is determined to be its' current use (SFR).**
 Utilities **Public** Other (describe) **Public** Other (describe) **Off-site Improvements - Type** **Public** **Private**
 Electricity ☒ ☐ Water ☐ ☒ Private Well **Street** **Paved** ☒ ☐
 Gas ☐ ☒ Oil, Propane ☐ ☒ Private Sewer **Alley** **None** ☐ ☐
 FEMA Special Flood Hazard Area ☐ Yes ☒ No FEMA Flood Zone **D** FEMA Map # **0200122150B** FEMA Map Date **10/20/2016**
 Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe
 Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe
No as-built survey provided. Heating oil, propane, electric & wood are the primary heat sources for this market. Above grade oil/propane tanks are common. Natural gas is not in area. Well/septic systems are common in this market. Public water/sewer are unavailable. 42% in present land use above is for vacant lands (mostly refuge & parklands). At time of my inspection, all utilities were turned on & observed to be operational. No zoning is common for this market area.

General Description		Foundation		Exterior Description		materials/condition	
Units <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Accessory Unit	<input type="checkbox"/> Concrete Slab <input checked="" type="checkbox"/> Crawl Space	Foundation Walls	Poured C/C/Avg	Floors	Wimnt crpt tile/Good		
# of Stories 1	<input type="checkbox"/> Full Basement <input type="checkbox"/> Partial Basement	Exterior Walls	HardiPlank/Avg+	Walls	DW, Txt, Pnt/Good		
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> S-Det./End Unit	Basement Area 0 sq ft	Roof Surface	Metal/Avg	Trim/Finish	Wood/Good		
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const.	Basement Finish 0 %	Gutters & Downspouts	Aluminum/Avg+	Bath Floor	Tile, Vinyl/Good		
Design (Style) Ranch	<input type="checkbox"/> Outside Entry/Exit <input type="checkbox"/> Sump Pump	Window Type	Vinyl Csmnt/Avg+	Bath Wainscot	Tile, Vinyl/Good		
Year Built 2006	Evidence of <input type="checkbox"/> Infestation	Storm Sash/Insulated	TriplePane/Avg+	Car Storage	None		
Effective Age (Yrs) 8	<input type="checkbox"/> Dampness <input type="checkbox"/> Settlement	Screens	Screens/Avg+	<input checked="" type="checkbox"/> Driveway # of Cars 6			
Attic <input type="checkbox"/> None	Heating <input type="checkbox"/> FWA <input type="checkbox"/> HWB <input checked="" type="checkbox"/> Radiant	Amenities	<input checked="" type="checkbox"/> Woodstove(s) # 1	Driveway Surface	Gravel		
<input type="checkbox"/> Drop Stair <input type="checkbox"/> Stairs	<input type="checkbox"/> Other <input type="checkbox"/> Fuel Oil	<input type="checkbox"/> Fireplace(s) # 0	<input type="checkbox"/> Fence None	<input checked="" type="checkbox"/> Garage # of Cars 2			
<input type="checkbox"/> Floor <input checked="" type="checkbox"/> Scuttle	Cooling <input type="checkbox"/> Central Air Conditioning	<input checked="" type="checkbox"/> Patio/Deck C/Dk	<input checked="" type="checkbox"/> Porch C/E	<input type="checkbox"/> Carport # of Cars 0			
<input type="checkbox"/> Finished <input type="checkbox"/> Heated	<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Other HRV	<input type="checkbox"/> Pool None	<input type="checkbox"/> Other None	<input type="checkbox"/> Att. <input type="checkbox"/> Det. <input checked="" type="checkbox"/> Built-in			

Appliances ☐ Refrigerator ☒ Range/Oven ☐ Dishwasher ☐ Disposal ☒ Microwave ☐ Washer/Dryer ☒ Other (describe) **Fridge, W/D=Personal Property**
 Finished area above grade contains: **7 Rooms 4 Bedrooms 2.1 Bath(s) 2,103 Square Feet of Gross Living Area Above Grade**
 Additional features (special energy efficient items, etc.): **Energy efficiency appears to be good (no rating provided). Subject has oil fired, in-floor radiant heat+HRV system & triple pane windows. Addn't quartz counters, soft-close cabinets, kitchen bar, vaulted ceilings, T&G, cast iron stove, mirrored closet doors, jetted tub, trex decks, generator switch**
 Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.): **C3, Kitchen-updated-eleven to fifteen years ago; Bathrooms-updated-eleven to fifteen years ago; The subject improvements are considered to be in good, marketable condition which corresponds w/ the estimate of effective age. Kitchen features quartz counters, soft close cabinets, custom "retro" appliances, kitchen bar & breakfast nook. Primary bedroom suite has sliding glass door access to the rear covered trex deck, the primary suite bath features travertine tile floors & jetted tub+extra shower stall. The other 3 BR's all feature private vessel style sinks built-in. This home was observed to have good quality finishes throughout w/good overall appeal**
 Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☒ No If Yes, describe
 The scope of work for this appraisal included an interior & exterior inspection of the subject property. The scope of the inspection included observation of readily observable conditions, the scope of the inspection was not equivalent to an inspection performed by a professional home inspector. The appraiser does not guarantee the Property is free from defects. The appraisal establishes the value of the Property for mortgage purposes only.
 Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☒ Yes ☐ No If No, describe

Introduced by:	Mayor
Date:	08/09/22
Hearing:	09/06/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-32**

**AN ORDINANCE AMENDING BOROUGH CODE TO REMOVE REQUIREMENTS
FOR NEWSPAPER PUBLICATION OF DELINQUENT SALES TAX LISTS AND
PUBLIC POSTING OF CERTIFICATES OF REGISTRATION LISTS AND
PROVIDING INSTEAD FOR PUBLICATION OF SUCH INFORMATION ON THE
BOROUGH WEBSITE**

- WHEREAS,** Kenai Peninsula Borough (“KPB”) 5.18.620 requires the publication of delinquent sales tax lists to be published in a newspaper; and
- WHEREAS,** the costs of such publication have risen significantly in recent years even with the KPB Finance Department doing more and more of the formatting and pre-publication work for the newspaper; and
- WHEREAS,** printed newspaper circulation has been in decline for many years and area newspapers are relying more and more on digital distribution of their newspapers; and
- WHEREAS,** KPB 5.18. 900 defines “newspaper” in part, as “printed paper sheets” thus mandating the use of non-digital printed newspaper distribution; and
- WHEREAS,** delinquent sales tax accounts are also provided specific notice through communications sent through the U.S. mail and e-mail, when known, that provides them notice of the account delinquency; and
- WHEREAS,** other KPB departments and service areas are moving towards using, or actively using, the KPB website for required public notices;

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

SECTION 1. That KPB 5.18.330 is hereby amended as follows:

5.18.330. - Registration—Certificate index.

[THE MAYOR OR HIS DESIGNEE] The finance director shall maintain [IN A PUBLIC PLACE WITHIN THE BOROUGH ADMINISTRATION BUILDING] on the borough website a current

list alphabetized by name of business and name of owner, updated not less than quarterly, of all current certificates of registration for public inspection.

SECTION 2. That KPB 5.18.620(F) is hereby amended as follows:

5.18.620. - Enforcement—Failure to file returns or remit taxes—Criminal penalty—Civil penalties and interest—Injunction—Publication.

...

F. As soon as practicable after the expiration of thirty days following the end of each calendar quarter, the borough shall publish [IN A NEWSPAPER OF GENERAL OR CUSTOMARY CIRCULATION IN THE APPROPRIATE AREA OF THE BOROUGH,] on its website a list of every seller who:

1. Was conducting business in the borough and was required to file a return during that quarter, but who has not filed the required return, unless the seller has paid any balance due for that period in full;
2. Did not pay all balances due, as long as the balance due is greater than \$100; or
3. Owes taxes, penalty or interest pursuant to a payment agreement unless the payment agreement required payment in full within 30 days of the date of execution of the agreement.

...

SECTION 3. That this ordinance is effective immediately upon enactment.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:


Absent:


Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor 

FROM: Brandi Harbaugh, Finance Director 

DATE: July 28, 2022

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

Borough code, at KPB 5.18.330, requires posting in a public place in the Borough administration building (presumably on a bulletin board) a quarterly list of holders of sales tax certificates of registration. During the COVID-19 pandemic, citizen visits to the Borough Administration Building in Soldotna dropped significantly, underscoring the need to change this requirement to posting on an "electronic bulletin board" instead; i.e. the borough website. Additionally, this will make the information readily available to the many citizens of the borough who do not regularly visit the borough administration building.

KPB 5.18.620 requires the posting in a newspaper of general circulation of a list of all sellers who have not filed sales tax returns, have not paid all balances due, or owe taxes, penalties and interest pursuant to a payment agreement. This requirement has become increasingly expensive for the Borough, even as Borough personnel are required to do more and more of the setup work on the list before it is delivered to the newspaper for printing. Additionally, it has been observed that actual printing of the lists on the newspaper inserts is not always legible. Local newspapers, more and more, are moving to digital distribution themselves, even as the current definition in KPB code, requires the use of a newspaper printed on paper.

Repealing the provision requiring printing in a newspaper and requiring posting on the Borough website will save approximately \$2,480 per year, and still ensure continued public notice.

Your consideration of the ordinance is appreciated.

Introduced by:	Mayor
Date:	08/09/22
Hearing:	09/06/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-35**

**AN ORDINANCE AMENDING KPB 14.31, SPECIAL ASSESSMENTS – ROAD
IMPROVEMENTS, TO ADJUST APPLICABLE DEADLINES REGARDING
APPLICATION AND REVIEW OF A ROAD IMPROVEMENT ASSESSMENT
DISTRICT**

WHEREAS, in accordance with state law, KPB 14.31 sets forth the Kenai Peninsula Borough’s (Borough) process for initiating and assessing a Road Improvement Assessment District (RIAD); and

WHEREAS, currently, RIAD applications must be submitted by July 1 of each year, for construction in the following year; and

WHEREAS, RIAD projects have been managed by the special assessment coordinator, who is employed in the Borough’s Assessing Department; and

WHEREAS, in 2019, departmental duties for RIAD projects, including the public bidding process and awarding of contracts transferred from the Borough’s Roads Service Area to the Purchasing and Contracting Department; and

WHEREAS, the Borough’s Assessing Department, Road Service Area, and Purchasing and Contracting Department, have determined that additional time is necessary to complete an approved RIAD and to ensure construction is completed the year following application; and

WHEREAS, the Borough’s best interest would be served by amending these sections of code to change the RIAD application deadline to May 1, and the deadline for the Road Service Area Board to review all RIAD applications by July 1;

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

SECTION 1. That KPB 14.31.040 is hereby amended as follows:

14.31.040. - Initiation of special assessment district.

To initiate a petition for the formation of a special assessment district, the sponsor of the proposed district submits an application and a map or detailed description of the proposed geographic area subject to inclusion in the special assessment district to the borough assessor or assessor's designee. Applications to form a road improvement assessment district (RIAD) and participate in the RIAD match program shall be received no later than [JULY] May 1 of each year.

SECTION 2. That KPB 14.31.050(E) is hereby amended as follows:

14.31.050. – Review of petition application.

...

E. *RSA Board—Approval to proceed with engineer's estimate.* The RSA board shall review the staff reports for all RIAD applications timely submitted under KPB 14.31.040 no later than [SEPTEMBER] July 1 of each year, for construction in the following year. The road service area board shall consider the following factors in evaluating petition applications and determining whether to approve an order for an engineer's estimate:

1. Whether the road is currently on the maintenance system;
2. The number of petitions for projects received that year;
3. The funds available in the RIAD engineer's estimate fund established under KPB 5.20.160; and
4. Whether an application for district formation has been previously filed and whether conditions have changed that make the project more feasible than in past application years.

...

SECTION 3. That KPB 14.31.055(C) is hereby amended as follows:

14.31.055. Road service area match program.

...

- C. The annual deadline application for the match program is [JULY] May 1 of each year, and must be submitted with the application to form a proposed district.

...

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

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:


Absent:

Kenai Peninsula Borough

Assessing Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor 

FROM: Adeena Wilcox, Director of Assessing *aw*

DATE: July 28, 2022

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

This ordinance amends the road improvement assessment district (RIAD) code, KPB Chapter 14.31, sections 14.31.040, 14.31.050(E), and 14.31.055(C). The amendments will change the RIAD application deadline to May 1 of each year, and change the deadline in which the Roads Service Area Board must review the applications to July 1.

Since 2015, RIAD applications must be submitted by July 1 of each year, for construction in the following year. RIAD projects are managed by the special assessment coordinator, who is employed in the Assessing Department. In 2019, departmental duties for RIAD projects, including the public bidding process and awarding of contracts, transferred from the Road Service Area to the Purchasing and Contracting Department. The Borough's Assessing Department, Road Service Area, and Purchasing and Contracting Department have determined that additional time is necessary to complete an approved RIAD and to ensure construction is completed the year following application.

The Borough's best interest would be served by amending code to change the RIAD application deadline to May 1, and the deadline for the Roads Service Area Board to review all RIAD applications by July 1.

Your consideration of the ordinance is appreciated.

KENAI PENINSULA BOROUGH PROPOSITION SUMMARY

PROPOSITION NO. 1

APPORTIONMENT OF THE ASSEMBLY AND BOARD OF EDUCATION

(To be voted on by all borough voters)

Every ten years, the federal government conducts a census and remits population figures to each state and county in the nation. Both state law and the Borough code require the Borough to review these figures and determine whether the current apportionment of the Assembly meets the constitutional mandate of equal representation and “one person - one vote.” The Borough is further mandated to place one or more plans of apportionment before the voters at its next regular election following final approval of a state redistricting plan.

On January 4, 2022, the Kenai Peninsula Borough Assembly declared itself and the Board of Education to be malapportioned through the adoption of Resolution 2022-003 and authorized the Assembly President to appoint a committee to review the distribution of population within the Borough, to conduct public hearings and solicit public comment with respect to Assembly and Board of Education apportionment, and to develop one or more plans for Assembly and Board of Education apportionment for consideration by the Borough Assembly. This committee met throughout the months of January, February and March. In April, the Committee submitted two different plans to the Assembly and recommended that the Assembly place both plans before the voters in October.

On May 3, 2022, the Assembly adopted Ordinance 2022-07 approving two plans for presentation to the voters. Conceptual maps of the two plans are provided on the following pages.

Plan 1: Nine (9) single member districts. If adopted by the voters, this plan would realign existing Assembly and Board of Education District boundaries to provide districts of approximately 6,533 residents. If the actual qualified voters of an existing Assembly/Board of Education District change by ten percent or more, the Assembly/Board of Education Member representing that District would be required to stand for reelection in October 2023. Additionally, the Assembly would decide whether or not Assembly/Board of Education members representing districts with changes affecting less than 10% of the district’s qualified voters will need to stand for reelection in 2023.

Plan 2: Eleven (11) single member districts. If adopted by the voters, this plan will create eleven (11) new Assembly and Board of Education Districts. Each of these districts will contain approximately 5,345 residents. The eleven (11) Assembly/Board of Education Seats would all be filled at the October 2023 election. The terms of office would be staggered so that three members would be elected for 1-year terms, four members would be elected for 2-year terms and four members would be elected for 3-year terms.

Following certification of the election, the Borough Assembly will adopt an ordinance putting into place the plan that receives a majority of the votes cast in October. Since it is the intent of the Borough to align Assembly Districts to follow state voter precinct lines as nearly as possible, the district lines on the conceptual maps presented prior to the election may be adjusted to follow the new precinct lines which were adopted by the State of Alaska in 2022.

FISCAL NOTE: Plan 2 would add two elected members to borough assembly and two elected members to the board of education. The cost to add two elected members to the borough assembly will add an approximate range of \$13,000 to \$72,000, depending on whether health care and all other benefits are exercised, in total costs to the Borough's annual budget. The cost to add two elected members to the board of education will add an approximate range of \$7,750 to \$59,960, depending on whether health care benefits are exercised, in total costs to the School District's annual budget.

BALLOT LANGUAGE
As approved by Ordinance 2022-07

PROPOSITION NO. 1 APPORTIONMENT OF THE ASSEMBLY AND BOARD OF EDUCATION

Choose one of the following plans for Kenai Peninsula Borough Assembly and Board of Education Representation:

_____ Plan 1: 9 single member districts

_____ Plan 2: 11 single member districts

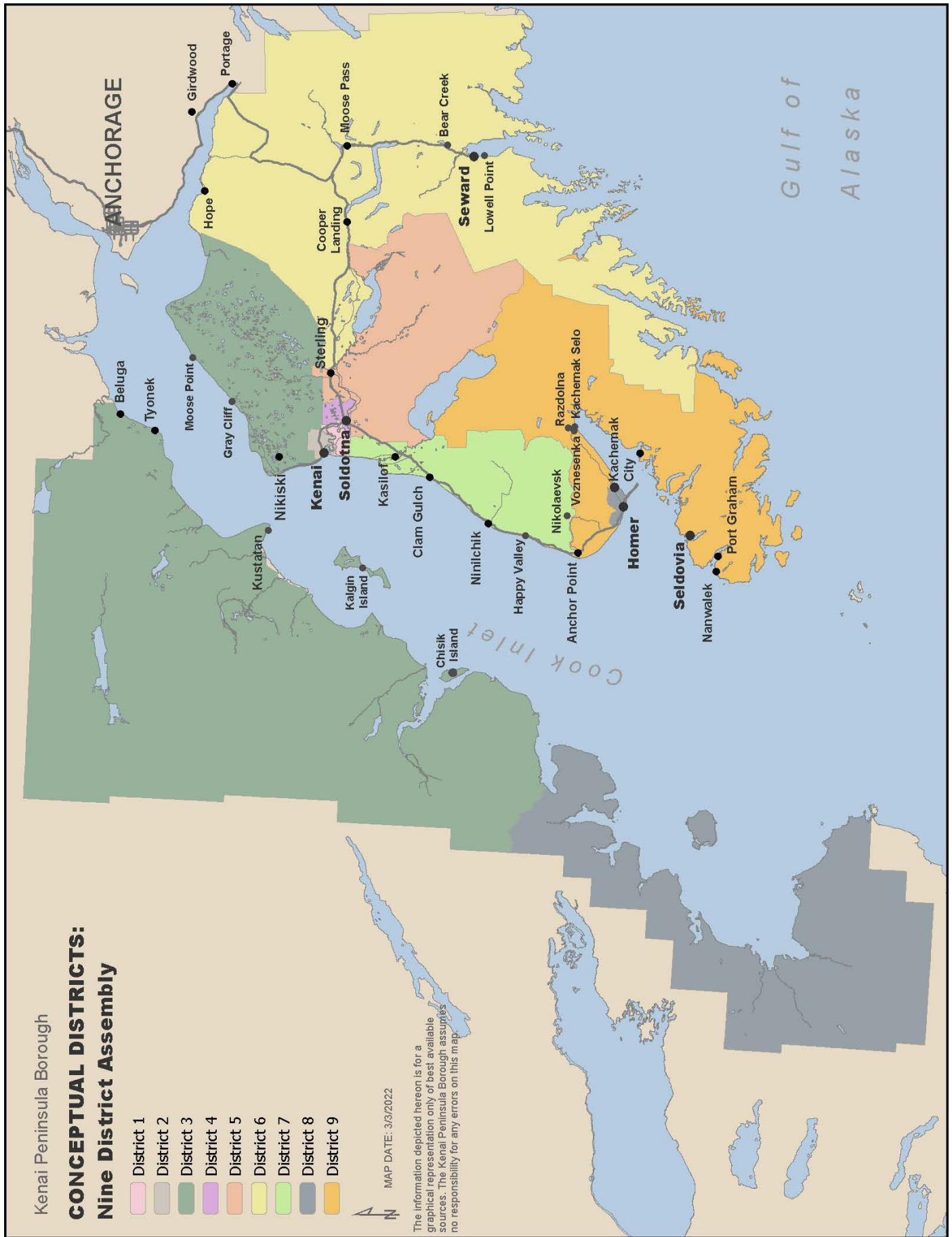
DESCRIPTION OF APPORTIONMENT PLAN: State law requires that the Kenai Peninsula Borough Assembly adopt an apportionment plan for Borough Assembly representation, following the 2020 federal census.

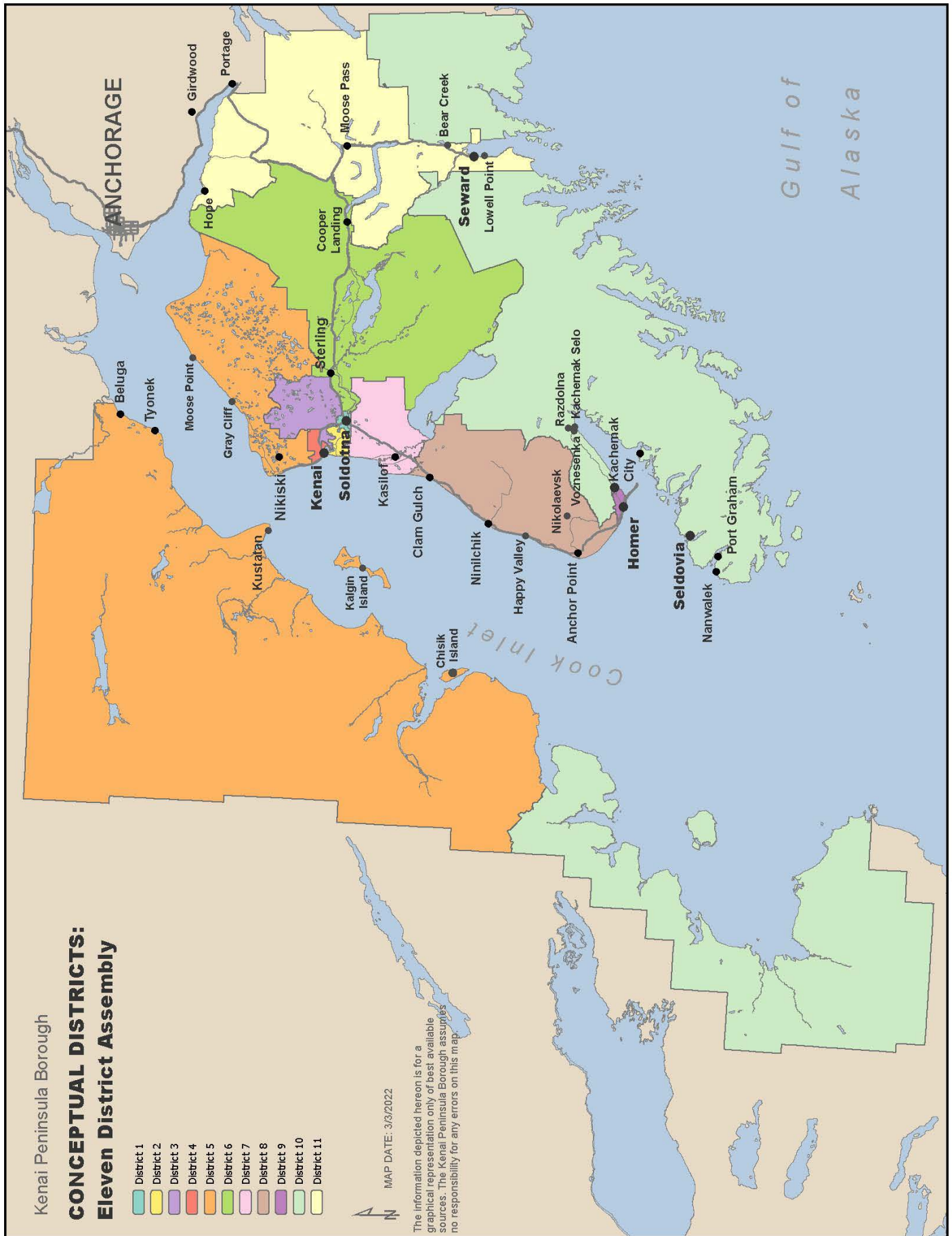
Kenai Peninsula Borough Ordinance 2022-07 meets this requirement by adopting and presenting to the voters for selection two representation and apportionment options, one of which is different from the current plan. The plan receiving the most votes will be put into place after the election.

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

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

Plan 2 would add two elected members to borough assembly and two elected members to the board of education. The cost to add two elected members to the borough assembly will add an approximate range of \$13,000 to \$72,000, depending on whether health care and all other benefits are exercised, in total costs to the Borough's annual budget. The cost to add two elected members to the board of education will add an approximate range of \$7,750 to \$59,960, depending on whether health care benefits are exercised, in total costs to the School District's annual budget.





KENAI PENINSULA BOROUGH PROPOSITION SUMMARY

PROPOSITION NO. 2

EDUCATIONAL CAPITAL IMPROVEMENT GENERAL OBLIGATION BONDS

(To be voted on by all borough voters)

BACKGROUND: Kenai Peninsula Borough School District (KPBSD) staff and administration met with Kenai Peninsula Borough (KPB) staff and administration to develop the list of School Capital Projects for the purpose of requesting voter approval in the October 4, 2022 election.

The operational and organization assessment study identifies and recommends that major maintenance, capital improvements, and facility replacement are a critical part of value-added facilities management. An in-depth facility asset inspection and review has been completed. A capital improvement list was developed with an estimated \$225 million worth of major maintenance and capital improvement projects. In collaboration, the KPBSD and the KPB identified twelve school projects as priority and critical to maintaining key infrastructure for both community and educational needs. The estimated costs of the projects submitted to the State of Alaska Department of Education are as follows:

Soldotna Elementary Reconstruction	\$21,500,000
Soldotna Preparatory Renovation (School District Administration)	\$18,500,000
School Student Drop-off improvements (Area Wide)	\$5,500,000
Seward and Nikiski High School Track and Field	\$4,500,000
KPB/KPBSD Maintenance Shop.....	\$5,000,000
Various School Roof Replacements	\$4,800,000
Kenai Middle School safety/Security renovation.....	\$2,500,000
Kenai High School Field Restroom and Concession	\$500,000
Homer High School Front Entrance Improvements.....	\$750,000
Soldotna High School Siding repair.....	\$2,000,000

Site improvements are needed at Homer High School to maintain building integrity. The Nikiski and Seward High School tracks surface and base asphalt have exceeded their useful life and are now deteriorating, and artificial turf will enable the school district and community greater utilization than natural turf without risking damage.

The roofs at the following schools in the Kenai Peninsula Borough are at the end of their useful life: Hope School, Mountain View Elementary and Nikiski North Star Elementary.

A feasibility study was completed for Soldotna area schools that indicated the need for replacement of the 62-year-old Soldotna Elementary school and relocation of the District office, River City Academy, Soldotna Montessori, Connections Home School to the former Soldotna Prep facility and necessary improvements required to meet educational requirements, alleviate overcrowding in the Borough Administration Building and extend the life of the facilities. The exterior building envelope is failing at Soldotna High School and repair of the building envelope will extend the life of the facilities and reduce energy consumption. Educational improvement projects are needed at Kenai Middle School and Kenai High School to more adequately serve the student population.

The expansion of the KPB/KPBSD maintenance shop will improve maintenance efficiency and allow for additional maintenance of our schools and equipment.

School traffic patterns have changed with an increase of student drop off by parents rather than buses, resulting in the backup of traffic onto adjacent roads and highways, the district has prioritized a number of these sites Chapman School, Homer Middle School, Kenai Middle School and Mountain View

Elementary.

It is expected the estimated cost of these capital improvements will not exceed sixty-five million five hundred fifty thousand dollars (\$65,550,000).

FISCAL NOTE: Voter approval for this proposition authorizes for each \$100,000 of assessed real and personal property value in the Borough (based on the estimated FY2023 areawide assessed valuation) an annual tax increase of approximately \$45 to retire the debt or \$25 if the State of Alaska lifts the debt service reimbursement moratorium. Debt service reimbursement is subject to annual legislative appropriation by the State of Alaska.

BALLOT LANGUAGE

As approved by Ordinance 2022-20

PROPOSITION NO. 2 EDUCATIONAL CAPITAL IMPROVEMENT GENERAL OBLIGATION BONDS

Shall the Kenai Peninsula Borough incur indebtedness and issue up to \$65,550,000 of general obligation bonds?

The general obligation bond proceeds will be used to pay costs of planning, designing, site preparations, construction, acquiring, renovating, installing, and equipping educational capital improvement projects including Soldotna Elementary replacement, Soldotna Preparatory renovation, School Student Drop-off, Seward & Nikiski High School Track and Field, KPB/KPBSD Maintenance Shop, Various School Roofs, Kenai Middle School Safety and Security Renovation, Kenai High School Field Restroom and Concession, Homer High School front Entrance improvements, Soldotna High School Siding and similar educational capital improvements in the Borough.

The indebtedness will be repaid from ad valorem taxes levied on all taxable property located within the Borough. The Borough will pledge its full faith and credit for repayment of the indebtedness.

Voter approval for this proposition authorizes for each \$100,000 of assessed real and personal property value in the Borough (based on the estimated FY2023 areawide assessed valuation) an annual tax increase of approximately \$45 to retire the debt or \$25 if the State of Alaska lifts the debt service reimbursement moratorium. Debt service reimbursement is subject to annual legislative appropriation by the State of Alaska

YES A "Yes" vote approves the issuance of bonds.

NO A "No" vote opposes the issuance of bonds.

KENAI PENINSULA BOROUGH PROPOSITION SUMMARY

PROPOSITION NO. 3 CENTRAL EMERGENCY SERVICE AREA GENERAL OBLIGATION BONDS AND APPROVAL OF PROJECT

(To be voted on by all Central Emergency Service Area voters)

BACKGROUND: Central Emergency Services Soldotna Fire Station #1 (CES Station 1) was constructed in 1956 as a community hall. Subsequent additions in 1964-1967, 1973 and 1984, converted this building to the current fire station it is today. Even with these additions, the station has failed to keep up with today's operations and demands, and all reasonable measures for station expansion to meet safety services have been exhausted. CES Station 1 is the busiest fire station on the Kenai Peninsula, responding to over 2,500 calls for emergency response throughout the Central Emergency Service Area (CES). CES Station 1 is the primary fire response station, centrally located, and staffed to provide initial and supplemental support to the four other CES fire stations serving the approximately 25,000 service area residents. The Kenai Peninsula Borough (Borough) has completed a preliminary engineering report and study that documented many issues indicating that the current CES station 1 is undersized, has structural and building code deficiencies, and lacks storage, living, office, fire truck and ambulance space. Through the study, it was determined that CES Station 1 is inadequate for the daily operations, emergency response, workload, and staffing to meet the demands of the CES fire service area. The Central Emergency Service Area Board has determined that replacing the current CES Station 1 is its top priority to improve response capabilities. Increasing safety services to the residents with a new fire station is in the public's best interest. A replacement fire station will also provide space for emergency responder staffing and adequate storage for fire, ambulance, and rescue equipment, all necessary to meet today's and future emergency response demands. The completion of the replacement fire station is also expected to result in lower operating and maintenance costs for the service area in addition to reducing energy consumption. The replacement fire station will allow administration, training and emergency responders to be under one headquarters fire station, which will improve operational cohesion and communication while also reducing current overhead costs incurred by the service area due to staff located at multiple Borough facilities. The Central Emergency Service Area has purchased land for the replacement fire station.

FISCAL NOTE: The estimated cost to build and equip the replacement fire station does not exceed sixteen million five hundred thousand dollars (\$16,500,000). An estimated .36 mill rate increase throughout the Central Emergency Service Area will be required to pay debt service on the \$16,500,000 bond indebtedness. Voter approval for this proposition authorizes for each \$100,000 of assessed real and personal property value in the Central Emergency Service Area (based on the estimated FY2023 service area assessed valuation) an annual tax increase of approximately \$36 to retire the debt. No additional staff will be required to operate the replacement fire station.

BALLOT LANGUAGE

As approved by Ordinance 2022-24

PROPOSITION NO. 3 CENTRAL EMERGENCY SERVICE AREA STATION BONDS AND APPROVAL OF PROJECT

Shall the Kenai Peninsula Borough incur indebtedness and issue up to \$16,500,000 of general obligation bonds of the Central Emergency Service Area?

The bond proceeds will be used to pay the costs of planning, designing, acquiring property for, site preparation, constructing, installing and equipping new Central Emergency Services Fire Station located within the Central Emergency Service Area and pay costs of issuing the bond.

The indebtedness will be repaid from ad valorem taxes levied on all taxable property located within the Central Emergency Service Area. The Central Emergency Service Area will pledge its full faith and credit for repayment of the indebtedness.

Voter approval for this proposition authorizes for each \$100,000 of assessed real and personal property value in the Central Emergency Service Area (based on the estimated FY2023 service area assessed valuation) an annual tax increase of approximately \$36 to retire the debt.

YES A “Yes” vote approves the issuance of bonds.

NO A “No” vote opposes the issuance of bonds.

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

FROM: Robert Ruffner, Planning Director *RR*

DATE: July 19, 2022

RE: Public Access Easement Vacation: Vacating portions of Seismograph Trail and associated utility easements within Lot 110 of Plat 84-115

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of July 18, 2022 the Kenai Peninsula Borough Planning Commission granted approval of the above proposed vacation by unanimous vote based on the means of evaluating public necessity established by KPB 20.65 (10-Yes, 2-Absent, 2-Vacant). This petition is being sent to you for your consideration and action.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

July 18, 2022 Draft PC Minutes
July 18, 2022 Meeting Packet Materials
July 18, 2022 Desk Packet Materials

Staff report given by Platting Specialist Julie Hindman.

Chair Martin opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

Commissioner Venuti requested to abstain from voting on this item as he had voted on this item in his role as a planning commissioner for the City of Homer.

MOTION: Commissioner Horton moved, seconded by Commissioner Gillham to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 9	Bentz, Brantley, Gillham, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest
Abstain	Venuti
Absent – 2	Fikes, Hooper

**ITEM E5 - RIGHT OF WAY VACATION
PORTIONS OF SEISMOGRAPH TRAIL AND ASSOCIATED UTILITY EASEMENTS
WITHIN LOT 110 OF PLAT HM 84-115**

KPB File No.	2022-091V
Planning Commission Meeting:	July 18, 2022
Applicant / Owner:	Brian and Jessica Ranguette of Nikiski, Alaska
Surveyor:	Jason Young, Mark Aimonetti / Edge Survey and Design, LLC
General Location:	Gravel Pit Trail, Throop Avenue, Reid Street, Steik Avenue, Reno Street, Ninilchik Area
Legal Description:	Seismograph Trails within Lot 110 of Right of Way Map (also known as the Ninilchik Right of Way Map), HM 84-115

Staff report given by Platting Specialist Julie Hindman.

Chair Martin opened the item for public comment.

Jason Young, Edge Surveying & Design; P.O. Box 208, Kasilof, AK 99610: Mr. Young was the surveyor on this project and made himself available for questions.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Brantley moved, seconded by Commissioner Bentz to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

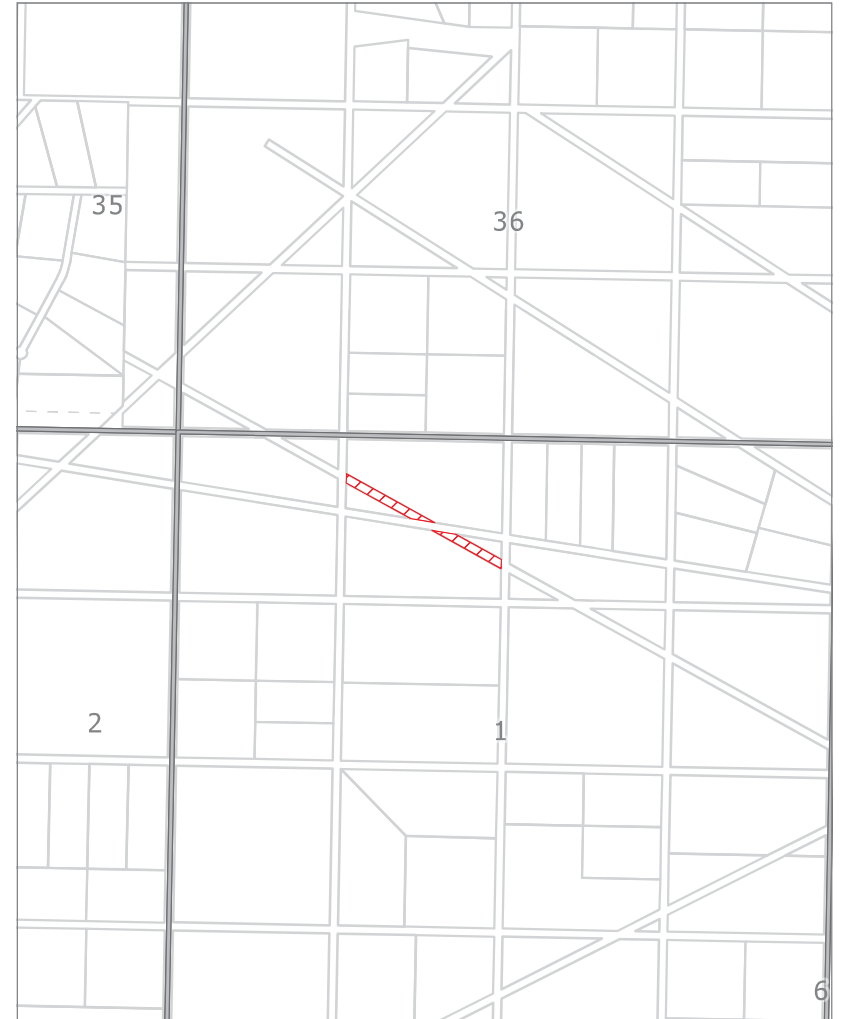
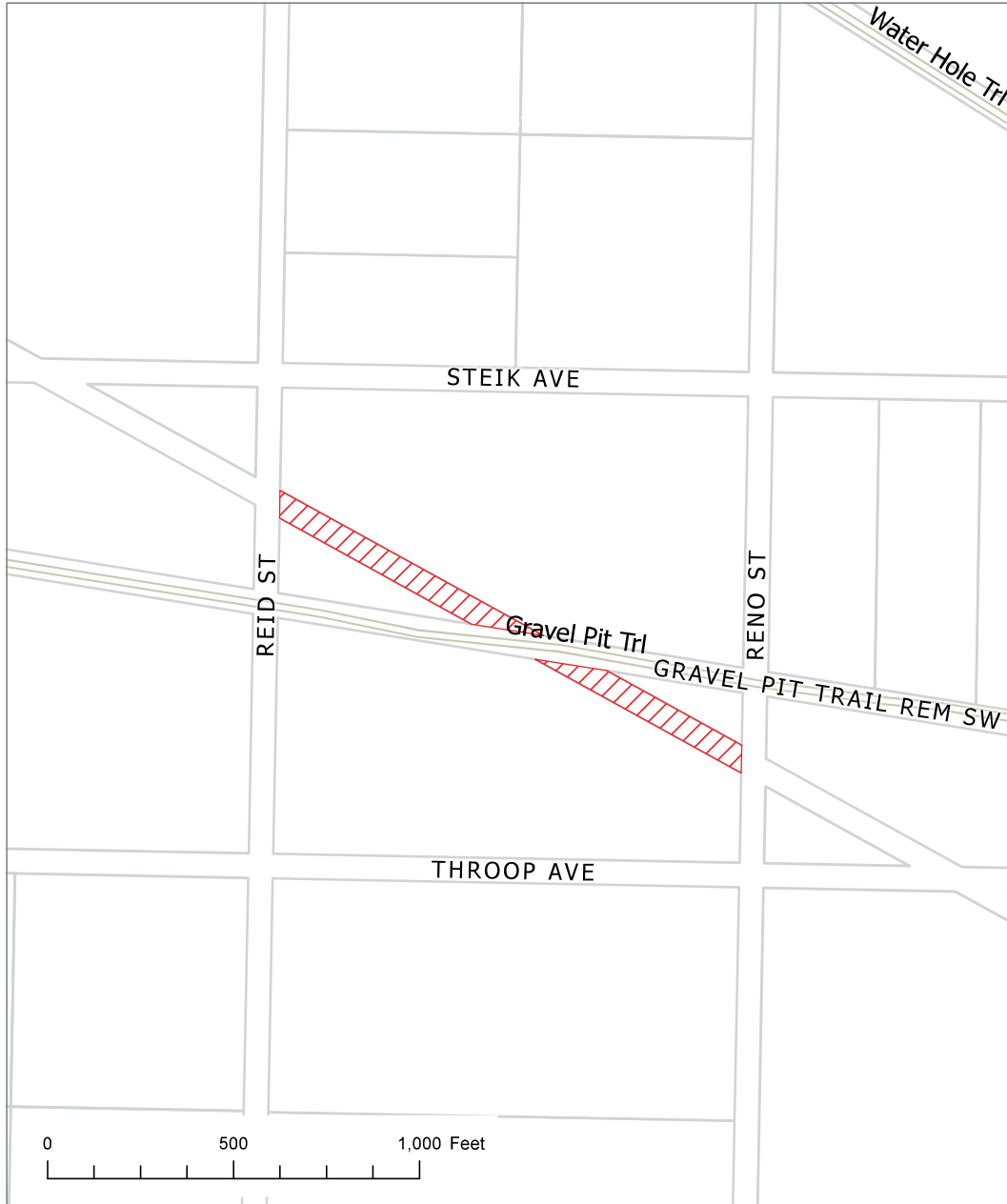
Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 10	Bentz, Brantley, Gillham, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent – 2	Fikes, Hooper

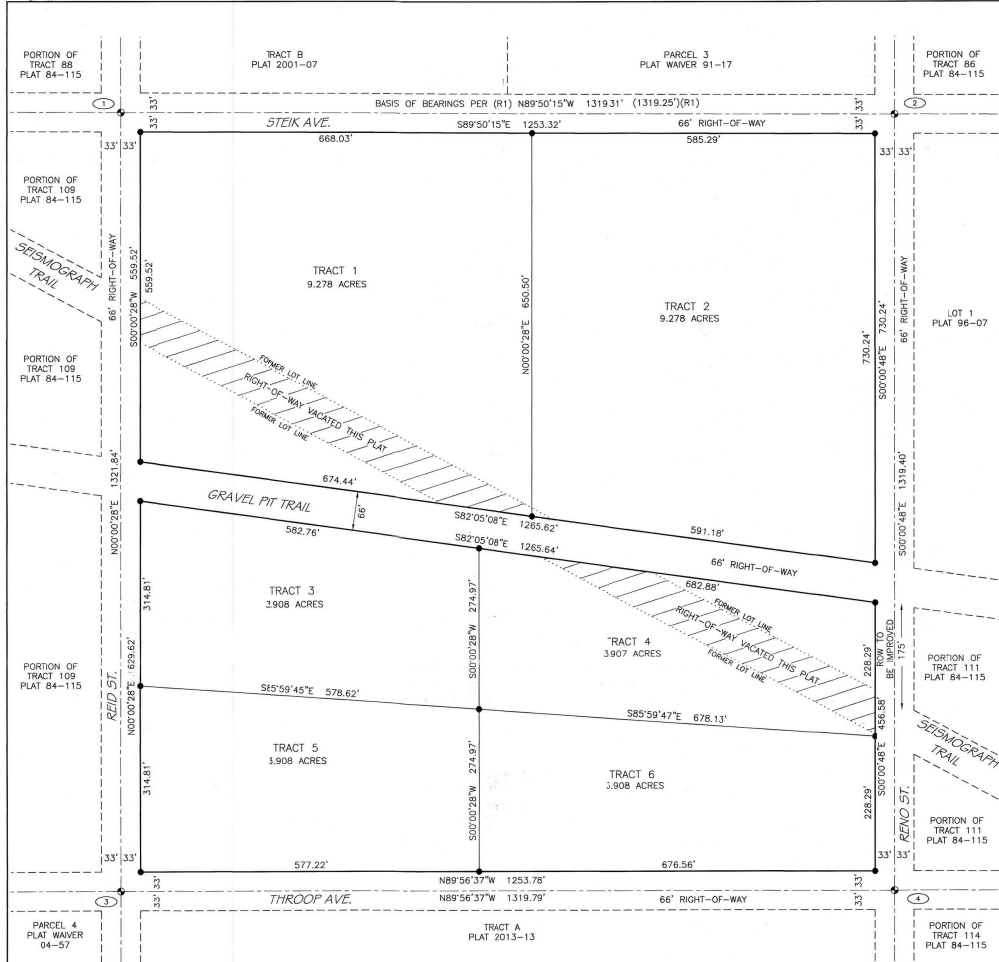
E. NEW BUSINESS

- 5. Seismograph Trail Vacation; KPB File 2022-091V
Ranquette / Edge Survey & Design, LLC
PINs: 18550924 & 18550926
Ninilchik Area**



KPB File # 2022-091V
S01 T02S R12W
Ninilchik

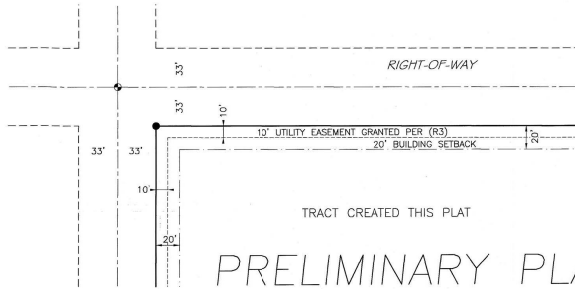




MONUMENT SUMMARY

- | | |
|---|---|
| <p>1
7328-S
W 1/4
+ S36
S1
2001</p> <p>FOUND
2-1/2" ALUMINUM
MONUMENT
0.3' ABOVE GRADE
GOOD CONDITION</p> | <p>2
7328-S
1/4
+ S36
S1
2001</p> <p>FOUND
2-1/2" ALUMINUM
MONUMENT
0.1' ABOVE GRADE
GOOD CONDITION</p> |
| <p>3
7328-S
NW 1/4
+
S1
2012</p> <p>FOUND
2-1/2" ALUMINUM
MONUMENT
0.1' ABOVE GRADE
GOOD CONDITION</p> | <p>4
7328-S
ON 1/4
+
S1
2012</p> <p>FOUND
2-1/2" ALUMINUM
MONUMENT
FLUSH WITH GRADE
GOOD CONDITION</p> |

BUILDING SETBACK AND UTILITY EASEMENT TYPICAL - SCALE 1" = 50'



NOTES

1. THERE MAY BE FEDERAL, STATE, OR LOCAL REQUIREMENTS GOVERNING LAND USE. ANY PERSONS DEVELOPING THIS PROPERTY IS RESPONSIBLE FOR OBTAINING ALL REQUIRED FEDERAL, STATE, OR LOCAL PERMITS, INCLUDING THE U.S. ARMY CORPS OF ENGINEERS WETLAND DETERMINATION IF APPLICABLE.
2. BUILDING SETBACK - A SETBACK OF 20 FEET IS REQUIRED FROM ALL STREET RIGHTS-OF-WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION.
3. THE FRONT 10 FEET OF THE BUILDING SETBACK ADJACENT TO THE RIGHTS-OF-WAY IS ALSO A UTILITY EASEMENT, PER (R3), NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
4. THIS SUBDIVISION IS SUBJECT TO TERMS, COVENANTS, CONDITIONS AND PROVISIONS, INCLUDING RIGHT OF WAYS AND EASEMENTS AS CONTAINED IN THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, DATED DECEMBER 18, 1971, U.S. PUBLIC LAW 92-203, 85 STAT. 688, U.S.C. 1601 ET SEQ.
5. THIS SUBDIVISION SUBJECT TO RESERVATIONS OF THE SUBSURFACE ESTATE IN SAID LAND INCLUDING, BUT NOT LIMITED TO, RIGHTS OF ENTRY TO EXPLORE, DEVELOP OR REMOVE MINERALS FROM SAID SUBSURFACE ESTATE, AS SET FORTH IN SECTION 14(F) AND 14(G) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.
6. THIS SUBDIVISION SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED JUNE 7, 1985, VOLUME 153 PAGE 252.
7. THIS SUBDIVISION IS SUBJECT TO RESERVATIONS, RESTRICTIONS, CONDITIONS AND EASEMENTS AS CONTAINED IN INTERIM CONVEYANCE, RECORDED JUNE 19, 1978, VOLUME 100 PAGE 226, AND AS CONTAINED IN DEED RECORDED APRIL 12, 1983 AND OCTOBER 4, 1983, VOLUME 134 PAGE 950 HOMER RECORDING DISTRICT.
8. THE KENAI PENINSULA BOROUGH WILL NOT ENFORCE PRIVATE COVENANTS, EASEMENTS, OR DEED RESTRICTIONS PER KPB 20.50.170.
9. THIS SUBDIVISION IS SUBJECT TO EASEMENT OVER EXISTING RIGHT-OF-WAY, RECORDED MAY 31, 1991, VOLUME 206 PAGE 609. HOMER RECORDING DISTRICT
10. EXCEPTION TO KPB CODE 20.40 WAS GRANTED BY THE KPB PLAT COMMITTEE AT THE MEETING OF JULY 18, 2022.
11. THE KENAI PENINSULA BOROUGH PLANNING COMMISSION APPROVED THE VACATION OF A PORTION OF SEISMOGRAPH TRAIL AND THE ASSOCIATED UTILITY EASEMENTS AT THE MEETING OF JULY 18, 2022.
12. WASTEWATER DISPOSAL: ANY WASTEWATER TREATMENT AND DISPOSAL SYSTEM MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

NOTARY ACKNOWLEDGEMENT

FOR: JESSICA RANGUETTE
ACKNOWLEDGED BEFORE ME
THIS _____ DAY OF _____, 2022

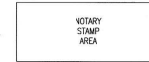
PUBLIC NOTARY SIGNATURE



NOTARY ACKNOWLEDGEMENT

FOR: BRIAN RANGUETTE
ACKNOWLEDGED BEFORE ME
THIS _____ DAY OF _____, 2022

PUBLIC NOTARY SIGNATURE



LEGEND

- | | |
|--|--|
| <p>• FOUND PRIMARY MONUMENT AS REFERENCED</p> <p>• SET PROPERTY CORNER
5/8" X 30" REBAR
WITH 2" ALUMINUM CAP
STAMPED EDGE SURVEY LS-13021 2022</p> <p>① MONUMENT REFERENCE NUMBER</p> <p>(R1) RECORD DATA, SEE REFERENCE</p> | <p>— SUBDIVISION BOUNDARY</p> <p>— INTERIOR LOT LINE</p> <p>--- ADJACENT PROPERTY LINE</p> <p>--- CENTERLINE</p> <p>--- 20 FOOT BUILDING SETBACK</p> <p>--- 10 FOOT UTILITY EASEMENT</p> <p>▨ RIGHT-OF-WAY VACATED</p> |
|--|--|

REFERENCES

- (R1) LAS VEGAS SUBDIVISION, PLAT 2001-07, HOMER RECORDING DISTRICT
- (R2) PORTER-SYVERSON SUBDIVISION, PLAT 2013-13, HOMER RECORDING DISTRICT
- (R3) RIGHT OF WAY MAP, PLAT 84-115, HOMER RECORDING DISTRICT

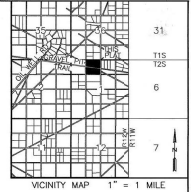
PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF JULY 18, 2022.
KENAI PENINSULA BOROUGH

AUTHORIZED OFFICIAL

CERTIFICATE OF SURVEYOR

I, MARK AMONETTI 13022-S, HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF ALASKA AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT THE MONUMENTS SHOWN ON THIS SURVEY ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONAL AND OTHER DETAILS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION AND OUR FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

JESSICA RANGUETTE
PO BOX 7181
NIKISKI, ALASKA 99635

BRIAN RANGUETTE
PO BOX 7181
NIKISKI, ALASKA 99635

KPB FILE No. 2022-XXX

R SUBDIVISION

A SUBDIVISION OF
TRACT 110
RIGHT OF WAY MAP
PLAT 84-115
HOMER RECORDING DISTRICT

OWNERS:

JESSICA RANGUETTE
AND
BRIAN RANGUETTE
PO BOX 7181
NIKISKI, ALASKA 99635

LOCATED WITHIN NW 1/4 SECTION 1,
T.25., R.12W. S.M.
STATE OF ALASKA
KENAI PENINSULA BOROUGH
HOMER RECORDING DISTRICT

CONTAINING 34.187 ACRES



12501 OLD SEWARD, D ANCHORAGE, AK 99515
Phone (907) 344-5990 Fax (907) 344-7754
REC# 1392

DRAWN BY:	DATE:	PROJECT:
JY	6/22/2022	22-542
CHECKED BY:	SCALE:	SHEET:
MA	1" = 100'	1 OF 1

KPB 2022-091V

**ITEM 5 - RIGHT OF WAY VACATION
PORTIONS OF SEISMOGRAPH TRAIL AND ASSOCIATED UTILITY EASEMENTS
WITHIN LOT 110 OF PLAT 84-115**

KPB File No.	2022-091V
Planning Commission Meeting:	July 18, 2022
Applicant / Owner:	Brian and Jessica Ranguette of Nikiski, Alaska
Surveyor:	Jason Young, Mark Aimonetti / Edge Survey and Design, LLC
General Location:	Gravel Pit Trail, Throop Avenue, Reid Street, Steik Avenue, Reno Street, Ninilchik Area
Legal Description:	Seismograph Trails within Lot 110 of Right of Way Map (also known as the Ninilchik Right of Way Map), HM 84-115

STAFF REPORT

Specific Request / Purpose as stated in the petition: Vacate portions of a 66 foot wide seismograph trail within Lot 110. Right-of-way vacation justification.

1. Right of way granted per plat 84-115, in which trails were located via air photos depicting old seismograph trails.
2. Dedication of seismograph trails divided Tract 110 into 4 separate parcels, two of which are small, the smallest being .06 acres.
3. Vacating the trails will provide more space for the new parcels.
4. Trails to be vacated have not had the surface improved, trails are organic soils.
5. Trail to the North West is grown shut with vegetation and not practical for use.
6. Trail to the South East is passable but narrow with vegetation.
7. Right of way granted per plat 84-115 provides sufficient access to adjacent parcels and adjoining right of ways.
8. A 175' section of right of way from Gravel Pit Trail south along Reno Avenue, will be improved to provide access to remaining seismograph trail heading South East and the new southern parcels created this plat. Area to be improved is flat terrain with minimal vegetation. Landowner has the equipment and skill level to make improvements, with the proper permitting process. Improvements will be made August 2022.

Notification: Public notice appeared in the July 7, 2022 issue of the Homer News as a separate ad. The public hearing notice was published in the July 14, 2022 issue of the Homer News as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Ninilchik

Post Office of Ninilchik

Fifteen certified mailings were sent to owners of property within 600 feet of the proposed vacation. Two receipts had been returned when the staff report was prepared.

Nineteen public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game
State of Alaska DNR
State of Alaska DOT
State of Alaska DNR Forestry

Emergency Services of Ninilchik
Kenai Peninsula Borough Office
Ninilchik Traditional Council
Alaska Communication Systems (ACS)

Legal Access (existing and proposed): The proposed vacation is within the area known as Caribou Hills. The Ninilchik Right-of-Way map, Plat HM 84-115, dedicated 66 foot wide rights-of-way on the depicted seismograph trails in additions to dedicating 66 foot wide rights-of-way centered on all 1/16th and 1/4 aliquot lines and section lines except for some lands that were not subject to the plat.

The area with the proposed vacation has 66 foot wide dedications along all four sides. They are named Steik Avenue, Reid Street, Throop Avenue, and Reno Street. An additional seismograph trail is dedicated through the property and is known as Gravel Pit Trail. The trail proposed for vacation does not have a name assigned.

Gravel Pit Trail is located north of mile 18 of Oil Well Road, the main access to the Caribou Hills area. Gravel Pit Trail appears to be in use and provides access to other trails and dedications for lots in the area. Gravel Pit Trail is proposed to remain in place with no changes to the dedication. A small portion of Reno Street appears to be in use south of a section of the vacation. The portion of the trail proposed for vacation does appear to be in use. This is the southern portion that connects Gravel Pit Trail to Reno Street and then continues further to the southeast.

Access will still be available from Gravel Pit Trail and the dedications surrounding the property. The owner is proposing to construct a new access from Gravel Pit Trail to the south within the Reno Street dedication to allow a connection to the existing trail that continues to the southeast.

The block is closed. Some portions are currently smaller than allowed by code but the proposed vacation will bring the block into compliance.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	No comment

Site Investigation: The Caribou Hills area is a remote area with various types terrain. The creation of the rights-of-way and dedications on the seismograph trails did not take slopes or wetlands into consideration. The existing rights-of-way in this area as well as the lots appear to be free of wetlands per the KPB GIS data. Some steep slopes are present within the Steik Avenue and Reid Street dedications. The portion of Gravel Pit Trail within this area appears to be relatively flat and the proposed area within Reno Street that the owner intends to construct new access is relatively flat.

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments C. State Parks Reviewer: Russell, Pam Comments: No Comments
Alaska Fish and Game	No objections

Staff Analysis: The proposed is within the Caribou Hills recreational area. The plat that dedicated the rights-of-way created various lots that were not surveyed but were aliquot descriptions that excluded dedications. The map did however indicate numbers to help tell the lots apart on the plat due to the scale. The property that is associated with this vacation is split into four parcels that are aliquot descriptions that exclude the dedications. The title block is simply referring to the lot number shown on the right-of-way map.

The dedications split the NE1/4 NW1/4 of Section 1, Township 2 South, Range 12 West into four parcels. The existing four parcels are 16.19, 14.33, 1.21, and .6 acres. The smallest parcel is approximately 26,000 square feet and is not compliant in size. Additional 10 feet along the three sides will further limit development on the lot. Per KPB Code 20.30.200, the minimum lot size should be 40,000 square feet if onsite water and wastewater disposal are required. The new configuration will bring all proposed lots into compliance.

The right-of-way map did not put into place building setbacks but did grant 10 foot utility easements adjacent to the rights-of-way. The proposal will vacate those adjacent easements if the right-of-way vacation is approved. Utility easements will remain adjacent to the remaining rights-of-way.

The southern portion of the proposed vacation does appear to be in use and provides a connection to other portions of trails that are used for access. While many of the lots in this area have additional access routes, the existing trails have been used for years as some of the dedications go through steep terrain or wetland areas.

The owner is proposing to construct a new connection within existing dedications to not deprive land owners access to their property. The construction of this new travelway should be done in accordance with KPB Code and the proper permitting will be required. As the existing right-of-way is currently in use, staff will be suggesting that one of the conditions will be the proper permit must be received from the KPB Roads Department and that the finalization of the vacation may not be done until the roads department notifies staff that the terms of the permit have been met and a new travelway is in place that is considered equal or better to the existing travelway.

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
Staff comments: A portion is currently being used for access.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: Additional access is available but not currently constructed, the owner intends to provide alternative access through existing dedications.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: This is a remote area with minimal development or utilities in place. Utility easements will still be in place along all other dedications within the proposed area and comments have been solicited from the utility providers for the area.
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: It provides access to private recreational lands that do connect to state lands that surround the area. Dedications and other trails are present for access and the owner is planning to construct some access connections.

5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;

Staff comments: The owner intends to replat the lots adjacent and all lots will be provided with required access to dedicated rights-of-way. The area is surrounded by multiple dedications that provide additional undeveloped access and the owner will be providing some newly constructed access.

6. Other public access, other than general road use, exist or are feasible for the right-of-way;

Staff comments: This is a recreational area with heavy snowmachine and ATV usage. Pedestrian use is feasible also.

7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

Staff comments: No utilities appear to be present in the area. Existing easements in the area will remain in place and only vacate those along the requested vacated portion of the right-of-way.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

Staff comments: The layout of the current dedications limit the use of the parcels and the vacation will provide additional options that will bring lots into compliance with KPB Code and the owner intends to construct access to accommodate adjacent parcels.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

KPB department / agency review:

Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.
Code Compliance	Reviewer: Ogren, Eric Comments: Vacation will create access to other properties unless ROW are developed.
Addressing	Reviewer: Haws, Derek Affected Addresses: None Existing Street Names are Correct: Yes List of Correct Street Names: THROOP AVE REID ST STEIK AVE RENO ST SEISMOGRAPH TRAIL

	<p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: No addresses affected by this subdivision.</p>
Assessing	<p>Reviewer: Windsor, Heather</p> <p>Comments: Public appears to use this portion of the trail across Tract 1 and Tract 4</p>

Utility provider review:

HEA	No comments
ENSTAR	No comments or recommendations
ACS	No objections
GCI	Approved as shown

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(D) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. A permit must be received from the Kenai Peninsula Borough Roads Department and it is demonstrated that all requirements have been met of said permit.
5. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.**
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action**

except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT



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

7/18/22 DESK PACKET

E. NEW BUSINESS

- 5. Seismograph Trail Vacation; KPB File 2022-091V
Ranquette / Edge Survey & Design, LLC
PINs: 18550924 & 18550926
Ninilchik Area**

Quinton, Madeleine

From: Planning Dept,
Sent: Thursday, July 14, 2022 3:38 PM
To: Quinton, Madeleine
Subject: FW: <EXTERNAL-SENDER>Caribou Hills Seismograph Trail Off Gravel Pit Trail - 2022-091V

Madeleine

From: Todd Syverson <starjumper.ts@gmail.com>
Sent: Thursday, July 14, 2022 3:20 PM
To: Planning Dept, <planning@kpb.us>
Subject: <EXTERNAL-SENDER>Caribou Hills Seismograph Trail Off Gravel Pit Trail - 2022-091V

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

My name is Todd Syverson (254 W Katmai Ave Soldotna AK). Back in 2013 my wife and I purchased 18 acres in Caribou Hills (Tract B, Porter-Syverson Subdivision Plat No. 2013-13). In 2015 we started to develop the property. For the past 9 years we have parked at Gravel Pit Pad and driven down Gravel Pit trail to a Seismograph trail that connects us with Reno St (we are about 1 1/2 miles off Gravel Pit Pad). We are primarily a 4-wheeler family and use the property May, June, July, August, September and October with August and September being our most used months. During June, July, August and September the current trail has allowed us to pull trailers with supplies, lumber, equipment, etc. in and out of the property. Even Home Depot (Kenai) delivered a 12 by 20 ft shed kit to the property using this trail. We have taken good care of the Seismograph trail and Reno St keeping it in grass and staying off the trails during the wet months. It is our understanding that a connection (good or better trail) between Gravel Pit Trail and Reno St will be developed in the future eliminating the current seismograph trail access. We would request that we continue to have access to our property during this development, if approved. I will send supporting pictures in another email for your review.

Thank you for your consideration.

Todd & Lana Syverson
254 W. Katmai Ave
Soldotna, AK 99669
907-398-6312





Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Kenai Peninsula Borough Assembly Members

FROM: Brent Johnson, Assembly President *(B)* for Brent Johnson

DATE: August 9, 2022

RE: 2022 Meeting Schedule – AML scheduling conflict

Per KPB 22.40.010 (A), the 2022 meeting schedule was approved as presented at the November 9, 2021 Assembly meeting.

The Alaska Municipal League (AML) set its conference schedule after the 2022 Assembly meeting schedule was approved. AML typically holds its annual conference in November; however, for 2022 the conference has been scheduled for December 5-9. Therefore, I am requesting to amend the schedule to reschedule the December meeting from the 6th to the 13th. This change will allow KPB staff to attend affiliate conferences, Assembly members to attend the annual conference and for any newly elected assembly members to also attend Newly Elected Officials training.


MONTH	1ST MEETING	2ND MEETING	COMMENTS
August	9	23	2 nd and 4 th Tuesday Due to Primary Election on the 16 th
September	6	20	
October	11	25	2 nd and 4 th Tuesday Due to Election October 4, 2022 - Regular Municipal Election
November	15		3 rd Tuesday Due to October schedule and General Election on the 8 th Only one regular meeting scheduled – Winter Break
December	[6]13		Only one meeting scheduled – Holiday Break <u>AML annual conference December 5-9, 2022</u>

Your consideration is appreciated.

Kenai Peninsula Borough
Office of the Borough Mayor

MEMORANDUM

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

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor 

DATE: July 20, 2022

RE: Appointments to the Emergency Services Communications Center
Advisory Board


In accordance with KPB2.60.040(B), appointments from the borough to the Emergency Services Communications Center Advisory Board are appointed by the Mayor and confirmed by the Assembly. The following appointments are forwarded to the Assembly for consideration and confirmation:

9-1-1 Dispatch Center	Tammy Goggia-Cockrell
Central Emergency Service Area	Chief Roy Browning
	Deputy Chief Dan Grimes, Alternate
Nikiski Fire Service Area	Vlad Glushkov

Thank you for your consideration.

Kenai Peninsula Borough
Office of the Borough Mayor

MEMORANDUM

TO: Brent Johnson, Assembly President
Members of the Kenai Peninsula Borough Assembly
FROM: Charlie Pierce, Kenai Peninsula Borough Mayor 
DATE: July 22, 2022
RE: Advisory Planning Commission Appointment

In accordance with KPB 21.02.050(B), appointments from the borough to the Advisory Planning Commission are appointed by the Mayor and confirmed by the Assembly. The following appointments are forwarded to the Assembly for consideration and confirmation:

Advisory Planning Commission

Glenda Radvansky

Thank you for your consideration.

Kenai Peninsula Borough

Planning Department

Advisory Planning Commission Application Submitted 2022-05-26 23:05:10


APC/Seat: Funny River – Seat F (Term Expires 09/30/2022)

Name Glenda Radvansky	Mobile Phone 9073179077
Home Phone 9073179077	Work Phone 9073179077
Email alaskaglenda@gmail.com	Date of Birth [REDACTED]
SSN	Voter #
Residence Address 37070 Ansel Drive Soldotna, AK 99669	Mailing Address 37375 Chinook St Soldotna, AK 99669
How long have you lived in the area served by this Advisory Planning Commission? I have owned property since the mid '90s. I officially moved here in November 2021. We are building at the mailing address and staying at the residence address until the new house is ready - both are in Funny River.	What knowledge, experience, or expertise will you bring to this board? I am a registered Professional Civil Engineer with over 30 years of experience with public infrastructure design and construction.

Kenai Peninsula Borough
Office of the Borough Mayor

MEMORANDUM

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

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor 

DATE: July 22, 2022

RE: Road Service Area Board Appointment

In accordance with KPB 16.41.020, appointments from the borough to the Road Service Area Board are appointed by the Mayor and confirmed by the Assembly. The following appointments are forwarded to the Assembly for consideration and confirmation:

Road Service Area Board
– West Region Seat

M. Kathryn Thomas

Thank you for your consideration.

Kenai Peninsula Borough
Office of the Borough Clerk

MEMORANDUM

TO: Charlie Pierce, Mayor
THRU: Johni Blankenship, Borough Clerk (JB)
FROM: Michele Turner, Deputy Borough Clerk (MT)
DATE: July 7, 2022
RE: Road Service Area Board Application

A notice of vacancy for the Road Service Area Board was advertised on the borough's webpage, Facebook page and was posted in the borough administration building. The application period closed on June 3, 2022 and has remained open until filled.

In accordance with to KPB 16.41.020, the applicant listed below has been verified as a qualified voter of the borough and resides in the West Region of the service area.

The application listed below is submitted for your consideration.

ROAD SERVICE AREA BOARD – WEST REGION SEAT

M. Kathryn Thomas

Thank you.


cc: Road Service Area Director

Kenai Peninsula Borough

Office of the Borough Clerk

Service Area Board Application Submitted 2022-07-06 17:06:24

Service Area: Roads, West Region (Kalifornsky/Kasilof/Ninilchik) (Term Expires 09/30/2023)

Applicant Name M. Kathryn Thomas	Daytime Phone 907-394-1663
Email arctech@alaska.net	Date of Birth 
Physical Residence Address 27895 Spruce Park Drive Soldotna, Alaska 99669	Mailing Address Box 3005 Kenai, Alaska 99611
SS #	Voter #
I have been a Resident of the Kenai Peninsula Borough for: 45 years, 4 months	I have been a Resident of the selected Service Area for: 45 years, 4 months
What knowledge, experience, or expertise will you bring to this board? <p>I am a retired civil (excavating) contractor, experienced in sand & gravel pit operations & material provision, gravel road maintenance, trucking, highway & road building, contract bid procedures, standard construction specifications & practices, construction project & contract management.</p> <p>I currently perform part time construction consulting work for national companies which provide construction surety bonds to project owners, on behalf of contractors to ensure payments made, project performance and completion. I exclude projects which include Kenai Peninsula contracts or contractors from the work I accept.</p> <p>I have served on many statewide boards focusing on the construction industry, resource development and business, such as Utility Contractors of Alaska, Associated General Contractors of Alaska, Arctic Power, Commission on Privatization and Delivery of Government Services, The Alaska Industry Alliance, and The Alaska State Chamber of Commerce.</p>	

Kenai Peninsula Borough
Office of the Borough Mayor

MAYOR'S REPORT TO THE ASSEMBLY

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor *chi*

DATE: August 9, 2022

Assembly Request / Response

None

Agreements and Contracts

Authorization to Award a Contract for ITB22-055 Homer High School Roof
Phase 2 Partial Roof Replacement

Authorization to Award a Contract for ITB22-053 CPL Leachae
Infrastructure Improvements Phase 1

Authorization to Award a Contract for ITB22-043 Summer & Winter Road
Maintenance – North Region Unit 1

Authorization to Award a Contract for ITB22-056 Summer & Winter Road
Maintenance – Central Region Unit 5

Other

Transfer Remaining Road Funds to Current Projects

Tax Adjustment Request Approval

Investment Report quarter ended 6/30/22

Litigation Status Report – Quarter Ending 06/30/22

Revenue-Expenditure Report – June 2022

Budget Revisions – June 2022

Page -2-

Date: November 10, 2020

To: Members, Kenai Peninsula Borough Assembly

RE: Mayor's Report

Kenai Peninsula Borough

Purchasing and Contracting Department

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

FROM: Carmen Vick, Project Manager *CV*

DATE: June 29, 2022

RE: Authorization to Award a Contract for ITB22-055 Homer High School Roof Phase 2 Partial Roof Replacement

The Purchasing and Contracting Office formally solicited and received bids for ITB22-055 Homer High School Phase II Partial Roof Replacement. Bid packets were released on May 27, 2022 and the Invitation to Bid was advertised in the Peninsula Clarion and Anchorage Daily News on June 27, 2022 and the Homer News on May 26, 2021

The project consists of providing all labor & materials to replace approx. 98,266 GSF of Architectural Shingle Roofing & Approx. 100 SF of EPDM by Aug 11th 2023. In addition, to include, internal gutter system, drain leaders, sumps, attic ventilation, heat trace components per contract documents. Scope of work to be coordinated with Owner Representative.

On the due date of June 22, 2022 two (2) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$2,450,000 was submitted by Earhart Roofing Co., Inc.

Your approval for this bid award is hereby requested. Funding for this project is in account number 400.72010.HHSRF.43011 and 400.72010.SLF03.43011.

CP ch

Charlie Pierce, Mayor

6/29/2022

Date

NA

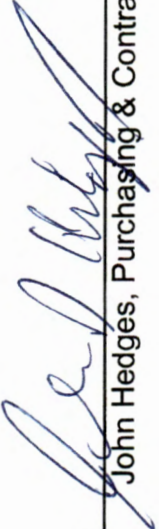
FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>400.72010.HHSRF.43011</u>	- \$264,674.89
Acct. No. <u>400.72010.SLF03.43011</u>	- \$2,185,325.11
By: <i>CV BH</i>	Date: <u>6/29/2022</u>

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING**

BID TAB FOR: ITB22-055 HOMER HIGH SCHOOL PHASE II PARTIAL ROOF REPLACEMENT

CONTRACTOR	LOCATION	BASE BID
Earhart Roofing Co., Inc.	Anchorage, Alaska	\$2,450,000.00
RPR, Inc., dba Rain Proof Roofing	Anchorage, Alaska	\$2,998,500.00

DUE DATE: June 22, 2022

KPB OFFICIAL: 
John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough

Purchasing and Contracting Department

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

THRU: Lee Frey, Solid Waste Director *LF*

FROM: Kevin Kinnie, Project Manager *KK*

DATE: June 29, 2022

RE: Authorization to Award a Contract for ITB22-053 CPL Leachate Infrastructure Improvements Phase I

The Purchasing and Contracting Office formally solicited and received bids for ITB22-053 CPL Leachate Infrastructure Improvements Phase I. Bid packets were released on May 25, 2022 and the Invitation to Bid was advertised in the Peninsula Clarion and Anchorage Daily News on May 25, 2022.

The project consists of providing all labor & materials for the construction of a new 4.1 million gallon leachate pond, relining and expansion of an existing leachate pond to 1 million gallons, relocation of an existing stormwater pond, construction of a new pump house and other piping and operational improvements.

On the due date of June 16, 2022 five (5) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$2,379,190.00 was submitted by Southcentral Construction, Inc.

Your approval for this bid award is hereby requested. Funding for this project is in account number 411.32122.SLF02.43011.

CP *ck*

 Charlie Pierce, Mayor

6/29/2022


 Date

NA

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	411.32122.SLF02.43011
Amount	\$2,379,190.00
By: <i>CK</i> <i>BH</i>	Date: 6/29/2022

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING****BID TAB FOR: ITB22-053 CPL Leachate Infrastructure Improvements Phase I**

CONTRACTOR	LOCATION	BASE BID
Southcentral Construction, Inc.	Anchorage, Alaska	\$2,379,190.00
Drennon Construction	Fairbanks, Alaska	\$2,393,952.00
Foster Construction, LLC	Soldotna, Alaska	\$2,540,700.00
Granite Construction Company	Anchorage, Alaska	\$3,453,650.00
Tutka, LLC	Wasilla, Alaska	\$4,339,950.00

DUE DATE: June 22, 2022**KPB OFFICIAL:**
John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough

Road Service Area

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

FROM: Dil Uhlin, Road Service Area Director *DU*

DATE: June 24, 2022

RE: Authorization to Award a Contract for ITB22-046 Summer & Winter Road Maintenance – North Region Unit 1

The Purchasing and Contracting Office formally solicited and received bids for the ITB22-046 Summer & Winter Road Maintenance, North Region Unit 1. Bid packets were released on April 6, 2022 and the Invitation to Bid was advertised in the Peninsula Clarion on April 6, 2022, and in the Homer News on April 7, 2022.

The project consists of furnishing all labor, materials and equipment to perform summer and winter road maintenance.

On the due date of May 4, 2022, (3) one bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$119,976.00 was submitted by Commercial Automotive Repair and Equipment Services, Inc.

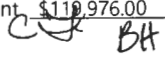
Your approval for this bid award is hereby requested. Funding for this project is in account number 236.33950.00000.43592.



 Charlie Pierce, Mayor

6/27/2022

 Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>236.33950.00000.43592</u>	
Amount <u>\$119,976.00</u>	
By: 	Date: <u>6/24/2022</u>

NA

KENAI PENINSULA BOROUGH PURCHASING & CONTRACTING

BID TAB FOR: ITB22-046 SUMMER & WINTER MAINTENANCE - NORTH REGION, UNIT 1

CONTRACTOR	LOCATION	BASE BID
Commerical Automotive Repair & Equipment Services, Inc.	Kenai, Alaska	\$119,976.00
D & L Constructin Co., Inc.	Cooper Landing, Alaska	\$193,125.00
Chumley's Inc.	Nikiski, Alaska	\$264,000.00

DUE DATE: May 4, 2022

KPB OFFICIAL:

John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough

Road Service Area

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

FROM: Dil Uhlin, Roads Service Area Director *DU*

DATE: June 21, 2022

RE: Authorization to Award a Contract for ITB22-056 Summer & Winter Road Maintenance – Central Region Unit 5

The Purchasing and Contracting Office formally solicited and received bids for the ITB22-056 Summer & Winter Road Maintenance, Central Region Unit 5. Bid packets were released on May 25, 2022 and the Invitation to Bid was advertised in the Peninsula Clarion on May 25, 2022.

The project consists of furnishing all labor, materials and equipment to perform summer and winter road maintenance.

On the due date of June 13 2022, four (4) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$128,400.00 was submitted by Steam on Wheels, LLC.

Your approval for this bid award is hereby requested. Funding for this project is in account number 236.33950.00000.43592.



 Charlie Pierce, Mayor

6/22/2022

 Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>236.33950.00000.43592</u>	
Amount <u>\$128,400.00 – FY23</u>	
By: <u><i>CS</i></u>	Date: <u>6/21/2022</u>


NA

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING**

BID TAB FOR: ITB22-056 Summer & Winter Road Maintenance - Central Region, Unit 5

CONTRACTOR	LOCATION	BASE BID
Steam on Wheels, LLC	Soldotna, Alaska	\$128,400.00
River City Construction, LLC	Soldotna, Alaska	\$137,400.00
Summit Excavation, Inc.	Soldotna, Alaska	\$162,600.00
D & L Construction Co., Inc.	Cooper Landing, Alaska	\$181,125.00

DUE DATE: June 13, 2022

KPB OFFICIAL: 
John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough

Purchasing & Contracting

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

THRU: Dil Uhlin, Road Service Area Director *DU*

FROM: Andrew Walsh, Project Manager *AW*

DATE: June 28, 2022

RE: Transfer Remaining Road Funds to Current Projects

The Purchasing and Contracting Office has requested bids to construct Skyline Road. The bids received for the project are higher than the appropriated amount.

After review of all road service area accounts, there are funds from projects, which can be utilized to fund this project.

Remaining Funds from Accounts:

\$253,000 from account 434-33950-N3POL-49999 Poolside Ave.



Purchasing will be transferring funds from the Poolside Road project to fund the Skyline Road and Chinulna Road projects. The Skyline Project needs \$120,000 to complete. The remainder of \$133,000 will be dedicated to fund the Chinulna Project.


 Charlie Pierce, Borough Mayor

6/29/2022

Date

NA

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>434.33950.W1CHN.43011 - \$133,000</u>	
Acct. No. <u>434.33950.W6SKY.43011 - \$120,000</u>	
By:  <i>CF</i>  <i>BH</i>	Date: <u>6/29/2022</u>

Kenai Peninsula Borough
Assessing Department

MEMORANDUM

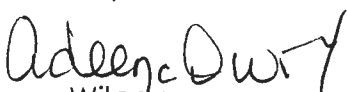
TO: Charlie Pierce, Borough Mayor
FROM: Adeena Wilcox, Director of Assessing
DATE: July 8, 2022
RE: Tax Adjustment Request Approval

Attached is a spreadsheet of tax adjustment requests required by changes to the assessment roll. These adjustments are being submitted to the Finance Department for processing.

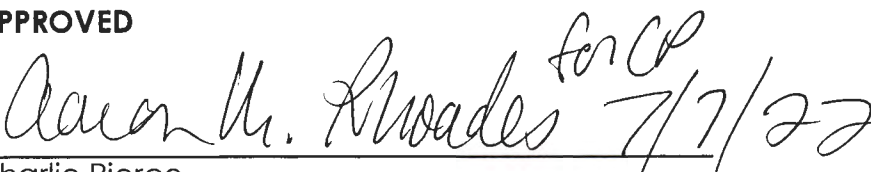

Borough code 5.12.119 (D) authorizes the mayor to approve tax adjustment requests prepared by the borough assessor.

I hereby certify that I have reviewed the tax adjustment requests submitted for your signature and I find them to be proper and correct.

DATED: July 8, 2022


Adeena Wilcox
Director of Assessing

APPROVED


Charlie Pierce
Borough Mayor 

JULY TARS

	2022	2021	2020	2019	2018
TAG 10 (assessed)					
(taxable)					
TAG 11 (assessed)	\$0				
(taxable)	(\$347,900)				
TAG 20 (assessed)	\$0				
(taxable)	\$175,500				
TAG 21 (assessed)					
(taxable)					
TAG 30 (assessed)	\$0				
(taxable)	(\$496,900)				
TAG 40 (assessed)					
(taxable)					
TAG 41 (assessed)					
(taxable)					
TAG 42 (assessed)					
(taxable)					
TAG 43 (assessed)					
(taxable)					
TAG 52 (assessed)					
(taxable)					
TAG 53 (assessed)					
(taxable)					
TAG 54 (assessed)					
(taxable)					
TAG 55 (assessed)					
(taxable)					
TAG 57 (assessed)					
(taxable)					
TAG 58 (assessed)	(\$836,100)				
(taxable)	(\$1,270,500)				
TAG 61 (assessed)					
(taxable)					
TAG 63 (assessed)					
(taxable)					
TAG 64 (assessed)					
(taxable)					
TAG 65 (assessed)					
(taxable)					
TAG 67 (assessed)					
(taxable)					
TAG 68 (assessed)	(\$38,607)				
(taxable)	(\$237,607)				
TAG 70 (assessed)					
(taxable)					
TAG 80 (assessed)					
(taxable)					
TAG 81 (assessed)	\$0				
(taxable)	(\$222,600)				
TOTAL ASSESSED	(\$874,707)	\$0	\$0	\$0	\$0
TOTAL TAXABLE	(\$2,400,007)	\$0	\$0	\$0	\$0
KPB FLAT TAX	(\$550)	(\$50)			

JULY TARS CITY VALUES

	2022	2021	2020	2019	2018
TAG 10 (assessed)					
(taxable)					
Seldovia Flat Tax					
TAG 20 (assessed)	\$0				
(taxable)	\$145,500				
Homer Flat Tax					
TAG 21 (assessed)					
(taxable)					
TAG 30 (assessed)	\$0				
(taxable)	(\$260,800)				
Disability Tax Credit					
TAG 40 (assessed)					
(taxable)					
TAG 41 (assessed)					
(taxable)					
TAG 70 (assessed)	\$0				
(taxable)	(\$150,000)				
Soldotna Flat Tax					
TAG 80 (assessed)					
(taxable)					

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2021 TAR NUMBER 68-21-019

PARCEL ID 99035

PRIMARY OWNER CAMBA BRANDON O

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>68</u>	<u>68</u>
BOAT CLASS/COUNT	<u>BC3 - 1</u>	<u>BC3 - 0</u>
PLANE CLASS/COUNT	<u></u>	<u></u>
KPB ASSESSED (VT 1001)	<u></u>	<u></u>
KPB TAXABLE (VT 1003)	<u></u>	<u></u>
CITY ASSESSED (VT 1011)	<u></u>	<u></u>
CITY TAXABLE (V 1013)	<u></u>	<u></u>

EXPLANATION MANIFEST CLERICAL ERROR. 2021 SUPPLEMENTAL ROLLOVER. TAXPAYER HAD
INFORMED KPB STAFF THAT BOAT SOLD IN 2020. ACCOUNT SHOULD HAVE BEEN CLOSED FOR 2021.

	CHANGE SUMMARY
DATE <u>06/13/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY <u>C. JOHNSON</u>	KPB TAXABLE <u>\$0</u>
VERIFIED BY <u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
	CITY TAXABLE <u>\$0</u>
	KPB FLAT TAX <u>(\$50)</u>
	CITY FLAT TAX <u>\$0</u>

MANIFEST CLERICAL ERROR - CHECKLIST

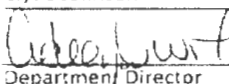
The Assembly may correct manifest clerical errors made by the borough in an assessment notice, tax statement or other borough tax record at any time. A manifest clerical error is a typographical, computational or other similar error readily apparent from the assessment notice, tax statement or other borough tax record and trace by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties.

Parcel ID / Acct # 00099035

- X _____ Typographical, computational or other similar error?
Identify & Describe:
 MANIFEST CLERICAL ERROR. 2021 SUPPLEMENTAL ROLLOVER. TAXPAYER HAD INFORMED KPB STAFF THAT BOAT SOLD IN 2020. ACCOUNT SHOULD HAVE BEEN CLOSED FOR 2021.
- X _____ Readily apparent from the assessment notice, tax statement or other borough tax record?
Identify & Describe:
 MANIFEST CLERICAL ERROR. 2021 SUPPLEMENTAL ROLLOVER. TAXPAYER HAD INFORMED KPB STAFF THAT BOAT SOLD IN 2020. ACCOUNT SHOULD HAVE BEEN CLOSED FOR 2021.
- X _____ Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
Identify & Describe:
 MANIFEST CLERICAL ERROR. 2021 SUPPLEMENTAL ROLLOVER. TAXPAYER HAD INFORMED KPB STAFF THAT BOAT SOLD IN 2020. ACCOUNT SHOULD HAVE BEEN CLOSED FOR 2021.

Certified Value	Land	
	Improvements	
	Personal Property	
	Total	\$0

Adjusted Value	Land	
	Improvements	
	Personal Property	
	Total	\$0

Prepared by	Clyde Johnson	6/13/2022
		Date
Approved by		6/12/22
	Department Director	Date

TAX ADJUSTMENT REQUEST

ROLL/YEAR	<u>2022</u>	TAR NUMBER	<u>70-22-001</u>
PARCEL ID	<u>100834</u>		
PRIMARY OWNER	<u>FIVE DOGS FISHING LLC</u>		

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>70</u>	<u>67</u>
BOAT CLASS/COUNT	<u>BC-3</u>	<u>BC-3</u>
PLANE CLASS/COUNT	<u></u>	<u></u>
KPB ASSESSED (VT 1001)	<u>\$0</u>	<u>\$0</u>
KPB TAXABLE (VT 1003)	<u>\$0</u>	<u>\$0</u>
CITY ASSESSED (VT 1011)	<u>\$0</u>	<u>\$0</u>
CITY TAXABLE (V 1013)	<u>\$0</u>	<u>\$0</u>

EXPLANATION MANIFEST CLERICAL ERROR. 2022 ACCT TRSNFR FROM PERS TO BUS, TAG NOTED

ON MR FILING AS TAG 67, NO LONGER IN TAG 70. TAG CHANGE OVERLOOKED DURING PROCESSING.

FLAT RATE FOR VESSEL ONLY TAG 70 & TAG 67

		CHANGE SUMMARY
DATE	<u>07/05/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>M PAYFER</u>	KPB TAXABLE <u>\$0</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$0</u>
		KPB FLAT TAX <u></u>
		CITY FLAT TAX <u>(\$50)</u>

[illegible]

MANIFEST CLERICAL ERROR - CHECKLIST

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Parcel ID / Acct # 00100834

X Typographical, computational or other similar error?
Identify & Describe:
 2022 ACCT TRSNFR FROM PERS TO BUS, TAG NOTED ON MR FILING AS TAG 67,
 NO LONGER IN TAG 70. TAG CHANGE OVERLOOKED DURING PROCESSING.

X Readily apparent from the assessment notice, tax statement or other borough tax record?
Identify & Describe:
 2022 ACCT TRSNFR FROM PERS TO BUS, TAG NOTED ON MR FILING AS TAG 67,
 NO LONGER IN TAG 70. TAG CHANGE OVERLOOKED DURING PROCESSING.

X Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
Identify & Describe:
 2022 ACCT TRSNFR FROM PERS TO BUS, TAG NOTED ON MR FILING AS TAG 67,
 NO LONGER IN TAG 70. TAG CHANGE OVERLOOKED DURING PROCESSING.

Certified Value	Land	
	Improvements	
	Personal Property	\$0
	Total	\$0

Adjusted Value	Land	
	Improvements	
	Personal Property	\$0
	Total	\$0

Prepared by M PAYFER 7/5/2022

Approved by  7/5/22
 Department Director Date

TAX ADJUSTMENT REQUEST

ROLL/YEAR	<u>2022</u>	TAR NUMBER	<u>68-22-001</u>
PARCEL ID	<u>101034</u>		
PRIMARY OWNER	<u>CELTIC COMMERCIAL FINANCE</u>		

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>68</u>	<u>68</u>
BOAT CLASS/COUNT	<u></u>	<u></u>
PLANE CLASS/COUNT	<u></u>	<u></u>
KPB ASSESSED (VT 1001)	<u>\$285,406</u>	<u>\$246,799</u>
KPB TAXABLE (VT 1003)	<u>\$185,406</u>	<u>\$146,799</u>
CITY ASSESSED (VT 1011)	<u>\$0</u>	<u>\$0</u>
CITY TAXABLE (V 1013)	<u>\$0</u>	<u>\$0</u>

EXPLANATION 2022 MAIN ROLL FILER, CLERICAL ERROR, INPUT INCORRECT YR OF PUR.

		CHANGE SUMMARY
DATE	<u>05/24/22</u>	KPB ASSESSED <u>(\$38,607)</u>
SUBMITTED BY	<u>M PAYFER</u>	KPB TAXABLE <u>(\$38,607)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$0</u>
		KPB FLAT TAX <u></u>
		CITY FLAT TAX <u>\$0</u>

Value Group	Appraised	Value	Is Taxable	Current Date of Value Change	Previous Date of Value Change	Expand to Filter Values
Default - Default Value Group						
	Appraised	Improvement Market Value				
		TAG				\$285,406.00
		TAG.LD				68.00
	Assessed	Furniture, Fixtures & Equipment				68.00
		Personal Property Assessed Value				\$246,799.00
		Total Assessed Value - City				\$246,799.00
		Total Borough Optional Exempt Value				0
		Total City Optional Exempt Value				\$100,000.00
		Total Assessed Value - Borough				\$185,406.00
	Taxable	City Taxable Value	68 - WESTERN EMERGENCY S/S			0
		Taxable Value - Borough				\$185,406.00
	Exemption	Exemption Value City	68 - WESTERN EMERGENCY S/S			0
		OP PP Bur \$100K Ex Value				\$100,000.00
		OP PPV 100K Exemption				\$100,000.00
		OP PPV Borough \$100K Exemption				\$100,000.00
		OP PPV City \$100K Exemption				\$100,000.00
		Exemption Value Borough				\$100,000.00
	Date	Year of Cadastre				2022.0000000000
		Effective date of value change				2022.01.01.0000000000

MANIFEST CLERICAL ERROR - CHECKLIST

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Parcel ID / Acct # 00101034

X _____ Typographical, computational or other similar error?
Identify & Describe:
 CLERICAL ERROR, INPUT INCORRECT YR OF PURCHASE, INCREASED VALUE IN ERROR

X _____ Readily apparent from the assessment notice, tax statement or other borough tax record?
Identify & Describe:
 CLERICAL ERROR, INPUT INCORRECT YR OF PURCHASE, INCREASED VALUE IN ERROR

X _____ Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
Identify & Describe:
 CLERICAL ERROR, INPUT INCORRECT YR OF PURCHASE, INCREASED VALUE IN ERROR

Certified Value	Land	
	Improvements	
	Personal Property	\$185,406
	Total	\$185,406

Adjusted Value	Land	
	Improvements	
	Personal Property	\$146,799
	Total	\$146,799

Prepared by M PAYFER 5/24/2022

Approved by *[Signature]* 6/5/22
 Department Director Date

.....

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2022TAR NUMBER 30-22-001PARCEL ID 045-030-18PRIMARY OWNER MCMOORE KIP

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>30</u>	<u>30</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>12,300</u>	<u>12,300</u>
IMPROVEMENT ASSESSED (VT5)	<u>291,900</u>	<u>291,900</u>
KPB ASSESSED (VT 1001)	<u>304,200</u>	<u>304,200</u>
KPB TAXABLE (VT 1003)	<u>304,200</u>	<u>0</u>
CITY ASSESSED (VT 1011)	<u>304,200</u>	<u>304,200</u>
CITY TAXABLE (VT 1013)	<u>304,200</u>	<u>154,200</u>

EXPLANATION SENIOR CITIZEN EXEMPTION APPROVED AFTER CONFIRMING PFD ELIGIBILITY.

		CHANGE SUMMARY
DATE	<u>07/06/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>(\$304,200)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>(\$150,000)</u>
		KPB FLAT TAX _____
		CITY FLAT TAX _____

Calculate Value(s)	Category	Category Description	Assessed	Legal Acres	Assessed Value	Secondary Exemption	Exemption Value	Expand to Filter Values
Default - Default Value Group	Appraised	Legal Acres		.30 Acres				.30 Acres
		Improvement Market Value			\$291,900.00			\$291,900.00
	Assessed	Land Market Value			\$12,300.00			\$12,300.00
		TAG			30.00			30.00
		Improvements			\$291,900.00			\$291,900.00
		Land			\$12,300.00			\$12,300.00
		Parcel Assessed Value			\$304,200.00			\$304,200.00
		Personal Property Assessed Value			0			0
		Qualified for Exemption			\$304,200.00			\$304,200.00
		Total Assessed Value - City			\$304,200.00			\$304,200.00
		Total Borough Optional Exempt Value			0			0
		Total City Optional Exempt Value			\$304,200.00			\$304,200.00
		Total Mandatory Exempt Value			\$304,200.00			\$304,200.00
		Land Assessed Value			\$154,200.00			\$154,200.00
		Improvement Assessed Value			\$150,000.00			\$150,000.00
		Total Assessed Value - Borough			\$12,300.00			\$12,300.00
		City Taxable Value			\$291,900.00			\$291,900.00
		Taxable Value - Borough			\$304,200.00			\$304,200.00
		BOROUGH SENIOR Exempt Value			0			0
		Cap for Senior Exemption			\$150,000.00			\$150,000.00
		Exemption Value City			\$150,000.00			\$150,000.00
		OP Residential Prop Exemption			\$4,200.00			\$4,200.00
		OP Senior Resident >150k Exempt Value			\$150,000.00			\$150,000.00
		Residential Exemption			\$50,000.00			\$50,000.00
		Senior Citizen Exemption			\$150,000.00			\$150,000.00
		Senior Mandatory Exempt Value			\$150,000.00			\$150,000.00
		Senior Mandatory Imp			\$150,000.00			\$150,000.00
		Working Improvement Assessed Value			\$291,900.00			\$291,900.00
		Exemption Value Borough			0			\$304,200.00
		Year of Cadastre			2022 0000000000			2022 0000000000
		Effective date of value change			20220101 0000000000			20220101 0000000000

TAX ADJUSTMENT REQUESTROLL/YEAR 2022TAR NUMBER 30-22-002PARCEL ID 045-153-20PRIMARY OWNER GIBBS, MARLEN

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>30</u>	<u>30</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>10,900</u>	<u>10,900</u>
IMPROVEMENT ASSESSED (VT5)	<u>207,200</u>	<u>207,200</u>
KPB ASSESSED (VT 1001)	<u>218,100</u>	<u>218,100</u>
KPB TAXABLE (VT 1003)	<u>0</u>	<u>218,100</u>
CITY ASSESSED (VT 1011)	<u>218,100</u>	<u>218,100</u>
CITY TAXABLE (VT 1013)	<u>68,100</u>	<u>218,100</u>

EXPLANATION MANIFEST CLERICAL ERROR; SENIOR EXEMPTION APPLICANT DECEASED 9/19/21.

		CHANGE SUMMARY
DATE	<u>06/10/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>\$218,100</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$150,000</u>
		KPB FLAT TAX <u></u>
		CITY FLAT TAX <u></u>

MANIFEST CLERICAL ERROR - CHECKLIST

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Parcel ID / Acct # 00079519

- YES Typographical, computational or other similar error?
Identify & Describe:
 SENIOR APPLICANT DECEASED PRIOR TO 1-1-2022 - WAS NOT DETECTED BY CLERK
- YES Readily apparent from the assessment notice, tax statement or other borough tax record?
Identify & Describe:
 YES, EXEMPTION WAS NOTED ON ALL BOROUGH STATEMENTS. HEIRS TO THE DECEASED SHOULD HAVE LET THE BOROUGH KNOW THAT APPLICANT WAS DECEASED.
- YES Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
Identify & Describe:
 YES, THE CLERK APPROVED THE EXEMPTION WHEN THE APPLICANT WAS DECEASED.

Certified Value	Land	<u>\$10,900</u>
	Improvements	<u>\$207,200</u>
	Personal Property	<u> </u>
	Total	<u>\$218,100</u>
Adjusted Value	Land	<u>\$10,900</u>
	Improvements	<u>\$207,200</u>
	Personal Property	<u> </u>
	Total	<u>\$218,100</u>

Prepared by SGUZMAN 6/10/2022
 Date

Approved by Adeem Owt 6/14/22
 Department/Director Date

.....

TAX ADJUSTMENT REQUESTROLL/YEAR 2022TAR NUMBER 30-22-003PARCEL ID 049-160-76PRIMARY OWNER WHITELEY, GARY

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>30</u>	<u>30</u>
CLASS CODE	<u>112</u>	<u>112</u>
LAND ASSESSED (VT4)	<u>21,700</u>	<u>21,700</u>
IMPROVEMENT ASSESSED (VT5)	<u>383,800</u>	<u>383,800</u>
KPB ASSESSED (VT 1001)	<u>405,500</u>	<u>405,500</u>
KPB TAXABLE (VT 1003)	<u>355,500</u>	<u>55,500</u>
CITY ASSESSED (VT 1011)	<u>405,500</u>	<u>405,500</u>
CITY TAXABLE (VT 1013)	<u>405,500</u>	<u>255,500</u>

EXPLANATION MANIFEST CLERICAL ERROR - SENIOR EXEMPTION APPROVED FOR 2022CLERK ERROR IN AUDIT FOLLOW UP

		CHANGE SUMMARY
DATE	<u>07/06/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>(\$300,000)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>(\$150,000)</u>
		KPB FLAT TAX <u>-</u>
		CITY FLAT TAX <u>-</u>

Headline Values

Default - Default Value Group

Legal Acres

Approved
Improvement Market Value
Land Market Value

TAG

Assessed
TAG,ld
Improvements

Land

Parcel Assessed Value
Personal Property Assessed Value
Qualified for Exemption

Total Assessed Value - City

Total Borough Optional Exempt Value

Total City Optional Exempt Value

Total Mandatory Exempt Value

Unqualified Improvements

Unqualified Land

Land Assessed Value

Improvement Assessed Value

Total Assessed Value - Borough

City Taxable Value

Taxable Value - Borough

BOROUGH SENIOR Exempt Value

Cap for Senior Exemption

Exemption Value City

OP Residential Boro Exemption

OP Senior Resident > 150K Exempt Value

Residential Exemption

Senior Citizen Exemption

Senior Mandatory Exempt Value

Senior Mandatory/Imp

Working Improvement Assessed Value

Exemption Value Borough

Year of Cadastre

Effective rate of value change

Expand to filter values

OP Senior Resident > 150K

Residential Exemption

Senior Citizen Exemption

Senior Mandatory Exempt Value

Senior Mandatory/Imp

Working Improvement Assessed Value

Exemption Value Borough

Year of Cadastre

Effective rate of value change

OP Senior Resident > 150K

Residential Exemption

Senior Citizen Exemption

Senior Mandatory Exempt Value

Senior Mandatory/Imp

Working Improvement Assessed Value

Exemption Value Borough

Year of Cadastre

Effective rate of value change

OP Senior Resident > 150K

Residential Exemption

Senior Citizen Exemption

Senior Mandatory Exempt Value

Senior Mandatory/Imp

Working Improvement Assessed Value

Exemption Value Borough

Year of Cadastre

Effective rate of value change

Legal Acres

Approved
Improvement Market Value
Land Market Value

TAG

Assessed
TAG,ld
Improvements

Land

Parcel Assessed Value
Personal Property Assessed Value
Qualified for Exemption

Total Assessed Value - City

Total Borough Optional Exempt Value

Total City Optional Exempt Value

Total Mandatory Exempt Value

Unqualified Improvements

Unqualified Land

Land Assessed Value

Improvement Assessed Value

Total Assessed Value - Borough

City Taxable Value

Taxable Value - Borough

BOROUGH SENIOR Exempt Value

Cap for Senior Exemption

Exemption Value City

OP Residential Boro Exemption

OP Senior Resident > 150K Exempt Value

Residential Exemption

Senior Citizen Exemption

Senior Mandatory Exempt Value

Senior Mandatory/Imp

Working Improvement Assessed Value

Exemption Value Borough

Year of Cadastre

Effective rate of value change

Headline Values

Default - Default Value Group

Legal Acres

Approved
Improvement Market Value
Land Market Value

TAG

Assessed
TAG,ld
Improvements

Land

Parcel Assessed Value
Personal Property Assessed Value
Qualified for Exemption

Total Assessed Value - City

Total Borough Optional Exempt Value

Total City Optional Exempt Value

Total Mandatory Exempt Value

Unqualified Improvements

Unqualified Land

Land Assessed Value

Improvement Assessed Value

Total Assessed Value - Borough

City Taxable Value

Taxable Value - Borough

BOROUGH SENIOR Exempt Value

Cap for Senior Exemption

Exemption Value City

OP Residential Boro Exemption

OP Senior Resident > 150K Exempt Value

Residential Exemption

Senior Citizen Exemption

Senior Mandatory Exempt Value

Senior Mandatory/Imp

Working Improvement Assessed Value

Exemption Value Borough

Year of Cadastre

Effective rate of value change

Expand to filter values

OP Senior Resident > 150K

Residential Exemption

Senior Citizen Exemption

Senior Mandatory Exempt Value

Senior Mandatory/Imp

Working Improvement Assessed Value

Exemption Value Borough

Year of Cadastre

Effective rate of value change

OP Senior Resident > 150K

Residential Exemption

Senior Citizen Exemption

Senior Mandatory Exempt Value

Senior Mandatory/Imp

Working Improvement Assessed Value

Exemption Value Borough

Year of Cadastre

Effective rate of value change

OP Senior Resident > 150K

Residential Exemption

Senior Citizen Exemption

Senior Mandatory Exempt Value

Senior Mandatory/Imp

Working Improvement Assessed Value

Exemption Value Borough

Year of Cadastre

Effective rate of value change

MANIFEST CLERICAL ERROR - CHECKLIST

The assembly may correct manifest clerical errors made by the borough in an assessment notice, tax statement or other borough tax record at any time. A manifest clerical error is a typographical, computational or other similar error readily apparent from the assessment notice, tax statement or other borough tax record and made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties.

Parcel ID / Acct # 04916076

YES Typographical, computational or other similar error?

Identify & Describe:

YES, EXEMPTION EXAMINER FAILED TO ENTER THE CORRECT NOTE TO GENERATE A REMINDER TO APPLY FOR THE FOLLOWING YEAR. APPLICANT WAS NOT NOTIFIED HE NEEDED TO REAPPLY

YES Readily apparent from the assessment notice, tax statement or other borough tax record?

Identify & Describe:

YES, EXEMPTION DID NOT APPEAR ON ANY BOROUGH CORRESPONDENCE

YES Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?

Identify & Describe:

YES, EXEMPTION EXAMINER FAILED TO ENTER CORRECT CODE TO GENERATE THE COMPUTER LIST OF APPLICANTS WHO NEEDED TO REAPPLY.

Certified Value	Land	\$21,700
	Improvements	\$383,800
	Personal Property	
	Total	\$405,500

Adjusted Value	Land	\$21,700
	Improvements	\$383,800
	Personal Property	
	Total	\$405,500

Prepared by SGUZMAN 7/6/2022

Approved by William CW 7/6/22
Department Director Date

TAX ADJUSTMENT REQUESTROLL/YEAR 2022TAR NUMBER 30-22-004PARCEL ID 049-210-35PRIMARY OWNER ZOLLMAN KATHLEEN

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>30</u>	<u>30</u>
CLASS CODE	<u>130</u>	<u>130</u>
LAND ASSESSED (VT4)	<u>12,500</u>	<u>12,500</u>
IMPROVEMENT ASSESSED (VT5)	<u>0</u>	<u>0</u>
KPB ASSESSED (VT 1001)	<u>12,500</u>	<u>12,500</u>
KPB TAXABLE (VT 1003)	<u>12,500</u>	<u>0</u>
CITY ASSESSED (VT 1011)	<u>12,500</u>	<u>12,500</u>
CITY TAXABLE (VT 1013)	<u>12,500</u>	<u>0</u>

EXPLANATION SENIOR CONTIG TO 04921036, APPROVED AFTER CONFIRMING PFD ELIGIBILITY

		CHANGE SUMMARY
DATE	<u>06/22/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>(\$12,500)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>(\$12,500)</u>
		KPB FLAT TAX _____
		CITY FLAT TAX _____

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2022TAR NUMBER 30-22-005PARCEL ID 049-210-36PRIMARY OWNER ZOLLMAN, KATHLEEN

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>30</u>	<u>30</u>
CLASS CODE	<u>130</u>	<u>130</u>
LAND ASSESSED (VT4)	<u>12,500</u>	<u>12,500</u>
IMPROVEMENT ASSESSED (VT5)	<u>85,800</u>	<u>85,800</u>
KPB ASSESSED (VT 1001)	<u>98,300</u>	<u>98,300</u>
KPB TAXABLE (VT 1003)	<u>98,300</u>	<u>0</u>
CITY ASSESSED (VT 1011)	<u>98,300</u>	<u>98,300</u>
CITY TAXABLE (VT 1013)	<u>98,300</u>	<u>0</u>

EXPLANATION SENIOR EXEMPTION APPLIED AFTER CONFIRMING PFD ELIGIBILITY

		CHANGE SUMMARY
DATE	<u>06/22/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>(\$98,300)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>(\$98,300)</u>
		KPB FLAT TAX _____
		CITY FLAT TAX _____

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2022TAR NUMBER 58-22-001PARCEL ID 055-074-40PRIMARY OWNER Henry, Eric

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>58</u>	<u>58</u>
CLASS CODE	<u>390</u>	<u>390</u>
LAND ASSESSED (VT4)	<u>93,200</u>	<u>14,000</u>
IMPROVEMENT ASSESSED (VT5)	<u>59,000</u>	<u>59,000</u>
KPB ASSESSED (VT 1001)	<u>152,200</u>	<u>73,000</u>
KPB TAXABLE (VT 1003)	<u>152,000</u>	<u>73,000</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION Clerical Error

CHANGE SUMMARY

KPB ASSESSED	<u>(\$79,200)</u>
KPB TAXABLE	<u>(\$79,000)</u>
CITY ASSESSED	<u>\$0</u>
CITY TAXABLE	<u>\$0</u>
KPB FLAT TAX	<u>_____</u>
CITY FLAT TAX	<u>_____</u>

DATE 07/06/22SUBMITTED BY L. CraneVERIFIED BY C. FINLEY

[illegible]

MANIFEST CLERICAL ERROR - CHECKLIST

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Parcel ID / Acct # 055-074-40

- X Typographical, computational or other similar error?
Identify & Describe:
Farm application received on time, application misfiled and did not get processed
- X Readily apparent from the assessment notice, tax statement or other borough tax record?
Identify & Describe:
Farm application received on time, application misfiled and did not get processed.
- X Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
Identify & Describe:
Farm application received on time, application misfiled and did not get processed

Certified Value	Land	<u>\$93,200</u>
	Improvements	<u>\$59,000</u>
	Personal Property	<u> </u>
	Total	<u>\$152,200</u>

Adjusted Value	Land	<u>\$14,000</u>
	Improvements	<u>\$59,000</u>
	Personal Property	<u> </u>
	Total	<u>\$73,000</u>

Prepared by	<u>L Crane</u>	<u>7/6/2022</u>
		Date
Approved by	<u></u>	<u>7/6/22</u>
	Department Director	Date

TAX ADJUSTMENT REQUESTROLL/YEAR 2022TAR NUMBER 58-22-002PARCEL ID 055-290-83PRIMARY OWNER Davis, Richard & Terry

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>58</u>	<u>58</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>601,900</u>	<u>145,000</u>
IMPROVEMENT ASSESSED (VT5)	<u>227,000</u>	<u>227,000</u>
KPB ASSESSED (VT 1001)	<u>828,900</u>	<u>372,000</u>
KPB TAXABLE (VT 1003)	<u>778,900</u>	<u>322,000</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION Clerical Error

CHANGE SUMMARY

DATE	<u>07/06/22</u>	KPB ASSESSED	<u>(\$456,900)</u>
SUBMITTED BY	<u>A Wilcox</u>	KPB TAXABLE	<u>(\$456,900)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>\$0</u>
		KPB FLAT TAX	<u></u>
		CITY FLAT TAX	<u></u>

Account Name	Default - Default	Value Group	Value Type	Unit	Secondary Entity	Expand to Filter Values
Assessed	Appraised	Legal Acres	Legal Acres	2.74 ACRES		2.74 ACRES
		Improvement Market Value	Improvement Market Value	\$227,000.00		\$227,000.00
		Land Market Value	Land Market Value	\$601,900.00		\$601,900.00
		TAC	TAC	58.00		58.00
Assessed		Improvements	Improvements	58.00		58.00
		Land	Land	\$227,000.00		\$227,000.00
		Parcel Assessed Value	Parcel Assessed Value	\$601,900.00		\$601,900.00
		Personal Property Assessed Value	Personal Property Assessed Value	\$145,000.00		\$145,000.00
		Qualified for Exemption	Qualified for Exemption	\$372,000.00		\$372,000.00
		Total Assessed Value - City	Total Assessed Value - City	0		0
		Total Borough Optional Exempt Value	Total Borough Optional Exempt Value	0		0
		Total City Optional Exempt Value	Total City Optional Exempt Value	\$50,000.00		\$50,000.00
Taxable		Land Assessed Value	Land Assessed Value	\$601,900.00		\$601,900.00
		Improvement Assessed Value	Improvement Assessed Value	\$227,000.00		\$227,000.00
		Total Assessed Value - Borough	Total Assessed Value - Borough	\$828,900.00		\$828,900.00
		City Taxable Value	City Taxable Value	0		0
Exemption		Taxable Value - Borough	Taxable Value - Borough	\$828,900.00		\$828,900.00
		Exemption Value City	Exemption Value City	0		0
		OP Residential Boro Exemption	OP Residential Boro Exemption	\$50,000.00		\$50,000.00
		Residential Exemption	Residential Exemption	\$50,000.00		\$50,000.00
Date		Working Improvement Assessed Value	Working Improvement Assessed Value	\$227,000.00		\$227,000.00
		Exemption Value Borough	Exemption Value Borough	\$50,000.00		\$50,000.00
		Year of Calculation	Year of Calculation	2022,0000000000		2022,0000000000
		Effective date of value change	Effective date of value change	20220101,0000000000		20220101,0000000000

MANIFEST CLERICAL ERROR - CHECKLIST

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Parcel ID / Acct # 055-290-83

 x Typographical, computational or other similar error?
Identify & Describe:
Land type input incorrectly.

 x Readily apparent from the assessment notice, tax statement or other borough tax record?
Identify & Describe:
Land type input incorrectly.

 x Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
Identify & Describe:
Land type input incorrectly.

Certified Value	Land	\$601,900
	Improvements	\$227,000
	Personal Property	
	Total	\$828,900

Adjusted Value	Land	\$145,000
	Improvements	\$227,000
	Personal Property	
	Total	\$372,000

Prepared by A Wilcox 7/6/2022

Approved by  7/6/22
 Department Director Date

.....

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2022TAR NUMBER 58-22-003PARCEL ID 055-421-23PRIMARY OWNER BROWN, DONNA

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>58</u>	<u>58</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>22,200</u>	<u>22,200</u>
IMPROVEMENT ASSESSED (VT5)	<u>458,300</u>	<u>458,300</u>
KPB ASSESSED (VT 1001)	<u>480,500</u>	<u>480,500</u>
KPB TAXABLE (VT 1003)	<u>430,500</u>	<u>130,500</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION SENIOR EXEMPTION APPROVED AFTER CONFIRMING PFD ELIGIBILITY.

CHANGE SUMMARY

DATE	<u>06/22/22</u>	KPB ASSESSED	<u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE	<u>(\$300,000)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>\$0</u>
		KPB FLAT TAX	<u></u>
		CITY FLAT TAX	<u></u>

Address	Legal Acres	Improvement Market Value	Land Market Value	TAG	TAG ID	Improvements	Land	Parcel Assessed Value	Personal Property Assessed Value	Qualified for Exemption	Total Assessed Value - City	Total Borough Optional Exempt Value	Total City Optional Exempt Value	Total Mandatory Exempt Value	Land Assessed Value	Improvement Assessed Value	Total Assessed Value - Borough	City Taxable Value	Taxable Value - Borough	BOROUGH SENIOR Exempt Value	Cap for Senior Exemption	Exemption Value City	OP Residential Boro Exemption	OP Senior Resident >150k Exempt Value	Residential Exemption	Senior Citizen Exemption	Senior Mandatory Exempt Value	Senior Mandatory Imp	Working Improvement Assessed Value	Exemption Value Borough	Year of Cadastre	Effective date of value change
Appraised																																
Assessed																																
Taxable																																
Exemption																																
Date																																

TAX ADJUSTMENT REQUESTROLL/YEAR 2022TAR NUMBER 58-22-004PARCEL ID 055-430-24PRIMARY OWNER AVIGO, MARC

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>58</u>	<u>58</u>
CLASS CODE	<u>350</u>	<u>350</u>
LAND ASSESSED (VT4)	<u>76,500</u>	<u>76,500</u>
IMPROVEMENT ASSESSED (VT5)	<u>580,400</u>	<u>580,400</u>
KPB ASSESSED (VT 1001)	<u>656,900</u>	<u>656,900</u>
KPB TAXABLE (VT 1003)	<u>606,900</u>	<u>489,300</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION SENIOR CITIZEN EXEMPTION APPROVED AFTER CONFIRMING PFD ELIGIBILITY

		CHANGE SUMMARY
DATE	<u>07/01/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>(\$117,600)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$0</u>
		KPB FLAT TAX _____
		CITY FLAT TAX _____

Cadastral Value		Value Type		Exemption		Property Address		Property Details		Expand to Filter Values	
Value	Default - Default Value Group	Value Type	Legal Acres	Exemption	Exemption	Property Address	Property Address	Property Details	Property Details	Value	Default - Default Value Group
Appraised		Legal Acres	Legal Acres								
		Improvement Market Value	Improvement Market Value								
		Land Market Value	Land Market Value								
		TAG	TAG								
		TAG Id	TAG Id								
		Improvements	Improvements								
		Land	Land								
		Partial Assessed Value	Partial Assessed Value								
		Personal Property Assessed Value	Personal Property Assessed Value								
		Qualified for Exemption	Qualified for Exemption								
		Total Assessed Value - City	Total Assessed Value - City								
		Total Borough Optional Exempt Value	Total Borough Optional Exempt Value								
		Total City Optional Exempt Value	Total City Optional Exempt Value								
		Total Mandatory Exempt Value	Total Mandatory Exempt Value								
		Land Assessed Value	Land Assessed Value								
		Improvement Assessed Value	Improvement Assessed Value								
		Total Assessed Value - Borough	Total Assessed Value - Borough								
		City Taxable Value	City Taxable Value								
		Taxable Value - Borough	Taxable Value - Borough								
		BOROUGH SENIOR Exemption	BOROUGH SENIOR Exemption								
		Cap for Senior Exemption	Cap for Senior Exemption								
		Exemption Value City	Exemption Value City								
		Op Residential Boro Exemption	Op Residential Boro Exemption								
		Op Senior Resident >150k Exempt Value	Op Senior Resident >150k Exempt Value								
		Residential Exemption	Residential Exemption								
		Senior Citizen Exemption	Senior Citizen Exemption								
		Senior Mandatory Exempt Value	Senior Mandatory Exempt Value								
		Senior Mandatory Imp	Senior Mandatory Imp								
		Working Improvement Assessed Value	Working Improvement Assessed Value								
		Exemption Value Borough	Exemption Value Borough								
		Year of Cadastre	Year of Cadastre								
		Effective date of value change	Effective date of value change								

TAX ADJUSTMENT REQUESTROLL/YEAR 2022TAR NUMBER 70-22-002PARCEL ID 060-015-07PRIMARY OWNER LITTLE ROXIE & LESLIE

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>70</u>	<u>70</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>38,500</u>	<u>38,500</u>
IMPROVEMENT ASSESSED (VT5)	<u>210,500</u>	<u>210,500</u>
KPB ASSESSED (VT 1001)	<u>249,000</u>	<u>249,000</u>
KPB TAXABLE (VT 1003)	<u>199,000</u>	<u>0</u>
CITY ASSESSED (VT 1011)	<u>249,000</u>	<u>249,000</u>
CITY TAXABLE (VT 1013)	<u>249,000</u>	<u>99,000</u>

EXPLANATION APPLIED SENIOR EXEMPTION AFTER RECEIVING PROOF OF AGE.

CHANGE SUMMARY

DATE	<u>06/22/22</u>	KPB ASSESSED	<u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE	<u>(\$199,000)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>(\$150,000)</u>
		KPB FLAT TAX	<u>_____</u>
		CITY FLAT TAX	<u>_____</u>

MANIFEST CLERICAL ERROR - CHECKLIST

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Parcel ID / Acct # 06001507

YES Typographical, computational or other similar error?
Identify & Describe:
 YES, PROOF OF AGE WAS NOT COLLECTED AT THE TIME THE EXEMPTION WAS SUBMITTED

YES Readily apparent from the assessment notice, tax statement or other borough tax record?
Identify & Describe:
 YES, EXEMPTION WAS NOT SHOWN ON ANY BOROUGH RECORDS

YES Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?
Identify & Describe:
 YES, THE PROOF OF AGE WAS NOT COLLECTED AT THE TIME THE EXEMPTION WAS RECEIVED AT THE ASSESSING DEPARTMENT

Certified Value	Land	\$38,500
	Improvements	\$210,500
	Personal Property	
	Total	\$249,000

Adjusted Value	Land	\$38,500
	Improvements	\$210,500
	Personal Property	
	Total	\$249,000

Prepared by SGUZMAN 6/22/2022

Approved by *Richard O'W* 6/22/22
 Department/Director Date

TAX ADJUSTMENT REQUESTROLL/YEAR 2022TAR NUMBER 58-22-005PARCEL ID 066-280-26PRIMARY OWNER BRANSCOMBE FAMILY TRUST

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>58</u>	<u>58</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>47,200</u>	<u>47,200</u>
IMPROVEMENT ASSESSED (VT5)	<u>109,800</u>	<u>109,800</u>
KPB ASSESSED (VT 1001)	<u>157,000</u>	<u>157,000</u>
KPB TAXABLE (VT 1003)	<u>157,000</u>	<u>107,000</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION \$50,000 RESIDENTIAL EXEMPTION ENTERED LATE DUE TO LATE DOCUMENTATION

REQUEST

		CHANGE SUMMARY
DATE	<u>06/24/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>(\$50,000)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$0</u>
		KPB FLAT TAX <u></u>
		CITY FLAT TAX <u></u>

Geographic Areas		Expand to Filter Values	
City	Default Value Group	Market Value	Percent of Assessed Value
Appraisal	Legal Acres	5.00 Acres	5.00 Acres
	Improvement Market Value	\$109,800.00	\$109,800.00
	Land Market Value	\$47,200.00	\$47,200.00
	TAG	\$8.00	\$8.00
	IMAGID	\$8.00	\$8.00
	Improvements	\$109,800.00	\$109,800.00
	Land	\$47,200.00	\$47,200.00
	Parcel Assessed Value	\$157,000.00	\$157,000.00
	Personal Property Assessed Value	0	0
	Qualified for Exemption	\$157,000.00	\$157,000.00
Assessed	Total Assessed Value - City	\$157,000.00	\$157,000.00
	Total Borough Optional Exempt Value	0	0
	Total City Optional Exempt Value	0	0
	Land Assessed Value	\$47,200.00	\$47,200.00
	Improvement Assessed Value	\$109,800.00	\$109,800.00
	Total Assessed Value - Borough	\$157,000.00	\$157,000.00
	City Taxable Value	\$157,000.00	\$157,000.00
	Taxable Value - Borough	0	0
	Exemption Value City	0	0
	OP Residential Boro Exemption	0	0
Taxable	Residential Exemption	\$109,800.00	\$109,800.00
	Working Improvement Assessed Value	0	0
	Exemption Value Borough	2022.0000000000	\$50,000.00
	Year of Cadastre	2022.0000000000	\$50,000.00
	Effective date of value change	2022.01.01.0000000000	\$50,000.00
		2022.01.01.0000000000	\$50,000.00
		2022.01.01.0000000000	\$50,000.00
		2022.01.01.0000000000	\$50,000.00
		2022.01.01.0000000000	\$50,000.00
		2022.01.01.0000000000	\$50,000.00
Exemption		59 - CENTRAL EMERGENCY SERVICES	\$109,800.00
		58 - CENTRAL EMERGENCY SERVICES	\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
Date			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00
			\$109,800.00

MANIFEST CLERICAL ERROR - CHECKLIST

The assembly may correct manifest clerical errors made by the borough in an assessment notice, tax statement or other borough tax record at any time. A manifest clerical error is a typographical, computational or other similar error readily apparent from the assessment notice, tax statement or other borough tax record and made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties.

Parcel ID / Acct # 06628026

YES Typographical, computational or other similar error?

Identify & Describe:

YES, APPLICATION WAS RECEIVED BUT DOCUMENTATION WAS NOT REQUESTED
TO APPROVE EXEMPTION IN A TIMELY MANNER

YES Readily apparent from the assessment notice, tax statement or other borough tax record?

Identify & Describe:

YES, EXEMPTION WAS NOT EVIDENT ON ANY KPB TAX DOCUMENTS

YES Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?

Identify & Describe:

YES, EXEMPTION EXAMINER DID NOT REQUEST THE TRUST DOCUMENTATION
TIMELY; THUS THE APPLICANT COULD NOT PROVIDE IT TIMELY.

Certified Value	Land	\$47,200
	Improvements	\$109,800
	Personal Property	
	Total	\$157,000

Adjusted Value	Land	\$47,200
	Improvements	\$109,800
	Personal Property	
	Total	\$157,000

Prepared by SGUZMAN 6/24/2022

Approved by Ordeens Swift Date 6/24/22
Department/Director Date

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2022TAR NUMBER 58-22-006PARCEL ID 066-480-31PRIMARY OWNER MARY JO KING

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>58</u>	<u>58</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>20,100</u>	<u>20,100</u>
IMPROVEMENT ASSESSED (VT5)	<u>121,000</u>	<u>121,000</u>
KPB ASSESSED (VT 1001)	<u>141,100</u>	<u>141,100</u>
KPB TAXABLE (VT 1003)	<u>141,100</u>	<u>0</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION SENIOR AND 50K EXEMPTION APPROVED AFTER CONFIRMING PFD ELIGIBILITY

		CHANGE SUMMARY
DATE	<u>06/28/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>(\$141,100)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$0</u>
		KPB FLAT TAX _____
		CITY FLAT TAX _____

Calculate Values		Expand to Filter Values	
Site	Default Value Group	Value	Amount
Appraised	Default Value Group	Value 1 - A	1.25 Acres
		Legal Acres	1.25 Acres
		Improvement Market Value	\$121,000.00
		Land Market Value	\$20,100.00
		TAG	\$8.00
		TAG ID	\$8.00
		Improvements	\$121,000.00
		Land	\$20,100.00
		Personal Property Assessed Value	\$141,100.00
		Qualified for Exemption	0
Assessed	Default Value Group	Total Assessed Value - City	0
		Total City Optional Exempt Value	\$141,100.00
		Total Mandatory Exempt Value	0
		Land Assessed Value	\$141,100.00
		Improvement Assessed Value	0
		Total Assessed Value - Borough	0
		City Taxable Value	0
		Taxable Value - Borough	\$141,100.00
		BOROUGH SENIOR EXEMPT VALUE	0
		Cap for Senior Exemption	0
Taxable	Default Value Group	Exemption Value City	0
		Residential Exemption	\$50,000.00
		Senior Citizen Exemption	\$141,100.00
		Senior Mandatory Exempt Value	\$141,100.00
		Senior Mandatory Imp	\$121,000.00
		Senior Mandatory Land	\$20,100.00
		Working Improvement Assessed Value	\$121,000.00
		Exemption Value Borough	\$141,100.00
		Year of Cadastre	2022.0000000000
		Effective date of value change	20220101.0000000000
Exemption	Default Value Group	30 - CENTRAL EMERGENCY SERVICES	0
		38 - CENTRAL EMERGENCY SERVICES	0
		Residential Exemption	\$50,000.00
		Senior Citizen Exemption	\$141,100.00
		Senior Mandatory Exempt Value	\$141,100.00
		Senior Mandatory Imp	\$121,000.00
		Senior Mandatory Land	\$20,100.00
		Working Improvement Assessed Value	\$121,000.00
		Exemption Value Borough	\$141,100.00
		Year of Cadastre	2022.0000000000
Date	Default Value Group	Effective date of value change	20220101.0000000000
		30 - CENTRAL EMERGENCY SERVICES	0
		38 - CENTRAL EMERGENCY SERVICES	0
		Residential Exemption	\$50,000.00
		Senior Citizen Exemption	\$141,100.00
		Senior Mandatory Exempt Value	\$141,100.00
		Senior Mandatory Imp	\$121,000.00
		Senior Mandatory Land	\$20,100.00
		Working Improvement Assessed Value	\$121,000.00
		Exemption Value Borough	\$141,100.00

TAX ADJUSTMENT REQUESTROLL/YEAR 2022TAR NUMBER 58-22-007PARCEL ID 131-200-32PRIMARY OWNER FENDER, SHANNON

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>58</u>	<u>58</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>21,700</u>	<u>21,700</u>
IMPROVEMENT ASSESSED (VT5)	<u>192,100</u>	<u>192,100</u>
KPB ASSESSED (VT 1001)	<u>213,800</u>	<u>213,800</u>
KPB TAXABLE (VT 1003)	<u>163,800</u>	<u>163,800</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION LATE FILE DISABLED RESIDENT EXEMPTION APPROVED BY MAYOR PIERCE

		CHANGE SUMMARY
DATE	<u>07/05/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>\$0</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$0</u>
		KPB FLAT TAX <u>(\$500.00)</u>
		CITY FLAT TAX <u></u>

TAX ADJUSTMENT REQUESTROLL/YEAR 2022TAR NUMBER 58-22-008PARCEL ID 131-340-63PRIMARY OWNER HOLDAWAY, CLAIRE

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>58</u>	<u>58</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>20,100</u>	<u>20,100</u>
IMPROVEMENT ASSESSED (VT5)	<u>290,600</u>	<u>290,600</u>
KPB ASSESSED (VT 1001)	<u>310,700</u>	<u>310,700</u>
KPB TAXABLE (VT 1003)	<u>260,700</u>	<u>0</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION SENIOR EXE APPROVED AFTER CONFIRMING PFD ELIGIBILITY

		CHANGE SUMMARY
DATE	<u>07/06/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>(\$260,700)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$0</u>
		KPB FLAT TAX _____
		CITY FLAT TAX _____

Land Use Values	Attribute	Setpoint Attribute	Previous Amount	Expend for Rates Values
Legal Area			1.01 Acres	1.01 Acres
Improvement Market Value			\$290,600.00	\$290,600.00
Land Market Value			\$20,100.00	\$20,100.00
TAG			58.00	58.00
TAG Id			58.00	58.00
Improvement:				
Land			\$290,600.00	\$290,600.00
Parcel Assessed Value			\$20,100.00	\$20,100.00
Personal Property Assessed Value			\$310,700.00	\$310,700.00
Qualified for Exemption			0	0
Total Assessed Value - City			\$310,700.00	\$310,700.00
Total Borough Optional Exempt Value			\$50,000.00	\$160,700.00
Total City Optional Exempt Value			0	0
Total Mandatory Exempt Value				\$150,000.00
Land Assessed Value			\$20,100.00	\$20,100.00
Improvement Assessed Value			\$290,600.00	\$290,600.00
Total Assessed Value - Borough			\$310,700.00	\$310,700.00
City Taxable Value		58 - CENTRAL EMERGENCY SERVICES	0	0
Taxable Value - Borough			\$260,700.00	\$260,700.00
BOROUGH SENIOR Exempt Value				\$300,600.00
Cap for Senior Exemption		58 - CENTRAL EMERGENCY SERVICES	0	\$150,000.00
Exemption Value City			\$50,000.00	0
OP Residential Boro Exemption				\$10,700.00
OP Senior Resident >150k Exempt Value			\$50,000.00	\$150,000.00
Residential Exemption				\$50,000.00
Senior Citizen Exemption				\$130,600.00
Senior Mandatory Exempt Value				\$150,000.00
Senior Mandatory Imp				\$150,000.00
Working Improvement Assessed Value			\$290,600.00	\$290,600.00
Exemption Value Borough			\$50,000.00	\$310,700.00
Year of Catastrophe			2022.0000000000	2022.0000000000
Effective date of value change			20220101.0000000000	20220101.0000000000

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2022TAR NUMBER 58-22-009PARCEL ID 131-601-02PRIMARY OWNER WOODS JEFFREY

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>58</u>	<u>58</u>
CLASS CODE	<u>112</u>	<u>112</u>
LAND ASSESSED (VT4)	<u>38,900</u>	<u>38,900</u>
IMPROVEMENT ASSESSED (VT5)	<u>126,100</u>	<u>126,100</u>
KPB ASSESSED (VT 1001)	<u>165,000</u>	<u>165,000</u>
KPB TAXABLE (VT 1003)	<u>165,000</u>	<u>0</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION SENIOR AND 50K APPROVED AFTER CONFIRMING PFD ELIGIBILITY

CHANGE SUMMARY

DATE	<u>06/28/22</u>	KPB ASSESSED	<u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE	<u>(\$165,000)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED	<u>\$0</u>
		CITY TAXABLE	<u>\$0</u>
		KPB FLAT TAX	<u></u>
		CITY FLAT TAX	<u></u>

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2022TAR NUMBER 20-22-047PARCEL ID 175-300-09PRIMARY OWNER BRIGGS, PHILIP R

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>20</u>	<u>20</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>40,700</u>	<u>40,700</u>
IMPROVEMENT ASSESSED (VT5)	<u>210,100</u>	<u>210,100</u>
KPB ASSESSED (VT 1001)	<u>250,800</u>	<u>250,800</u>
KPB TAXABLE (VT 1003)	<u>75,300</u>	<u>250,800</u>
CITY ASSESSED (VT 1011)	<u>250,800</u>	<u>250,800</u>
CITY TAXABLE (VT 1013)	<u>105,300</u>	<u>250,800</u>

EXPLANATION EXEMPTION APPLICANT DECEASED PRIOR TO 1/1/2022.

		CHANGE SUMMARY
DATE	<u>06/28/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>\$175,500</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$145,500</u>
		KPB FLAT TAX _____
		CITY FLAT TAX _____

Class	Value Group	Value Type	Attribute	Secondary Attribute	Previous Amount	Expand to Filter Values
Appraised	Default - Default	Legal Acres			.23 Acres	
		Improvement Market Value			\$210,100.00	\$210,100.00
		Land Market Value			\$40,700.00	\$40,700.00
		TAG			20.00	20.00
		TAG Id			20.00	20.00
Assessed		Improvements			\$105,100.00	\$105,100.00
		Land			\$20,400.00	\$20,400.00
		Partial Assessed Value			\$250,800.00	\$250,800.00
		Personal Property Assessed Value			0	0
		Qualified for Exemption			\$125,500.00	\$125,500.00
		Total Assessed Value - City			\$50,000.00	\$50,000.00
		Total Borough Optional Exempt Value			\$20,000.00	\$20,000.00
		Total City Optional Exempt Value			\$125,500.00	\$125,500.00
		Total Mandatory Exempt Value			\$105,000.00	\$105,000.00
		Unqualified Improvements			\$20,300.00	\$20,300.00
		Unqualified Land			\$40,700.00	\$40,700.00
		Land Assessed Value			\$210,100.00	\$210,100.00
		Improvement Assessed Value			\$250,800.00	\$250,800.00
		Total Assessed Value - Borough			\$105,300.00	\$105,300.00
Taxable		City Taxable Value			\$75,300.00	\$75,300.00
Exemptions		BOROUGH SENIOR Exempt Value			\$125,500.00	\$125,500.00
		Cap for Senior Exemption			\$150,000.00	\$150,000.00
		Exemption Value City			\$143,500.00	\$143,500.00
		OP 20th City Residential Exemption			\$50,000.00	\$50,000.00
		OP Residential Boro Exemption			\$50,000.00	\$50,000.00
		Residential Exemption			\$125,500.00	\$125,500.00
		Senior Citizen Exemption			\$125,500.00	\$125,500.00
		Senior Mandatory Exempt Value			\$105,100.00	\$105,100.00
		Senior Mandatory/Imp			\$20,400.00	\$20,400.00
		Senior Mandatory Land			\$210,100.00	\$210,100.00
		Working Improvement Assessed Value			\$175,500.00	\$175,500.00
		Exemption Value Borough			2022.0000000000	2022.0000000000
		Year of Cadastre			20220101.0000000000	20220101.0000000000
		Effective date of value change				

MANIFEST CLERICAL ERROR - CHECKLIST

The assembly may correct manifest clerical errors made by the borough in an assessment notice, tax statement or other borough tax record at any time. A manifest clerical error is a typographical, computational or other similar error readily apparent from the assessment notice, tax statement or other borough tax record and made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties.

Parcel ID / Acct # 17530009

YES Typographical, computational or other similar error?

Identify & Describe:

THE EXEMPTION WAS NOT REMOVED PRIOR TO CERTIFICATION

YES Readily apparent from the assessment notice, tax statement or other borough tax record?

Identify & Describe:

YES, EXEMPTION SHOWED INCORRECTLY ON BOROUGH TAX RECORDS

YES Made by a borough employee in the performance of typing, record keeping, filing, measuring, or other similar duties?

Identify & Describe:

YES, EXEMPTION EXAMINER DID NOT DISCOVER THE DEATH OF PHILIP BRIGGS PRIOR TO 2022 TAX YEAR.

Certified Value	Land	\$40,700
	Improvements	\$210,100
	Personal Property	
	Total	\$250,800

Adjusted Value	Land	\$40,700
	Improvements	\$210,100
	Personal Property	
	Total	\$250,800

Prepared by SGUZMAN 6/28/2022

Date

Approved by  6/28/22

Department Director

Date

TAX ADJUSTMENT REQUESTROLL/YEAR 2022TAR NUMBER 81-22-001PARCEL ID 185-290-23PRIMARY OWNER LEBLANC GERALD

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>81</u>	<u>81</u>
CLASS CODE	<u>110</u>	<u>110</u>
LAND ASSESSED (VT4)	<u>49,400</u>	<u>49,400</u>
IMPROVEMENT ASSESSED (VT5)	<u>295,300</u>	<u>295,300</u>
KPB ASSESSED (VT 1001)	<u>344,700</u>	<u>344,700</u>
KPB TAXABLE (VT 1003)	<u>344,700</u>	<u>122,100</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION SENIOR CITIZEN AND 50K APPROVED AFTER CONFIRMING PFD ELIGIBILITY. VARIABLE
DUE TO OWNERSHIP

		CHANGE SUMMARY
DATE	<u>06/29/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>(\$222,600)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$0</u>
		KPB FLAT TAX <u></u>
		CITY FLAT TAX <u></u>

TAX ADJUSTMENT REQUEST

ROLL/YEAR 2022TAR NUMBER 11-22-001PARCEL ID 191-300-08PRIMARY OWNER SCHLOTT, ALFRED

	CURRENT VALUE	CORRECTED VALUE
TAG	<u>11</u>	<u>11</u>
CLASS CODE	<u>112</u>	<u>112</u>
LAND ASSESSED (VT4)	<u>25,500</u>	<u>25,500</u>
IMPROVEMENT ASSESSED (VT5)	<u>322,400</u>	<u>322,400</u>
KPB ASSESSED (VT 1001)	<u>347,900</u>	<u>347,900</u>
KPB TAXABLE (VT 1003)	<u>347,900</u>	<u>0</u>
CITY ASSESSED (VT 1011)	<u>0</u>	<u>0</u>
CITY TAXABLE (VT 1013)	<u>0</u>	<u>0</u>

EXPLANATION MANIFEST CLERICAL ERROR - SENIOR APPLICATION DID NOT GET EMAILED FROM
THE HOMER OFFICE TO THE SOLDOTNA OFFICE

		CHANGE SUMMARY
DATE	<u>06/16/22</u>	KPB ASSESSED <u>\$0</u>
SUBMITTED BY	<u>SGUZMAN</u>	KPB TAXABLE <u>(\$347,900)</u>
VERIFIED BY	<u>C. FINLEY</u>	CITY ASSESSED <u>\$0</u>
		CITY TAXABLE <u>\$0</u>
		KPB FLAT TAX <u></u>
		CITY FLAT TAX <u></u>

Worksheet: Values	Value (USD)	Category	Exemption	Exempted Value	Exempted Area	Exempted Volume
Default - Default Value Group						
Appraised		Legal Acres		3.20 Acres		
		Improvement Market Value		\$322,400.00		
		Land Market Value		\$25,500.00		
		TAG		11.00		
		TAG Id		85.00		
		Improvements		\$222,400.00		
		Land		\$25,500.00		
		Period Assessed Value		\$347,900.00		
		Personal Property Assessed Value		0		
		Qualified for Exemption		\$347,900.00		
		Total Assessed Value - City		0		
		Total Borough Optional Exempt Value		\$197,900.00		
		Total City Optional Exempt Value		0		
		Total Mandatory Exempt Value		\$150,000.00		
		Land Assessed Value		\$25,500.00		
		Improvement Assessed Value		\$322,400.00		
		Total Assessed Value - Borough		\$347,900.00		
		City Taxable Value		0		
		Taxable Value - Borough		\$347,900.00		
		BOROUGH SENIOR Exempt Value		\$300,000.00		
		Cap for Senior Exemption		\$150,000.00		
		Exemption Value City		0		
		OP Residential Boro Exemption		\$47,900.00		
		OP Senior Resident >150K Exempt Value		\$130,000.00		
		Residential Exemption		\$50,000.00		
		Senior Citizen Exemption		\$150,000.00		
		Senior Mandatory Exempt Value		\$150,000.00		
		Senior Mandatory Imp		\$150,000.00		
		Working Improvement Assessed Value		\$322,400.00		
		Exemption Value Borough		\$347,900.00		
		Year of Cadastre		2022.0000000000		
		Effective date of value change*		20220101.0000000000		

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

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

FROM: Chad Friedersdorff, Financial Planning Manager *CF*

DATE: July 28, 2022

RE: Investment Report quarter ended 6/30/22

Attached is the Quarterly Investment Report of the Kenai Peninsula Borough for the quarter ending June 30, 2022.

Portfolio Statistics	Quarter Ended 3/31/2022	Quarter Ended 6/30/2022
Average Daily Balance	\$281,488,429	\$272,485,083
Earned Interest Yield	0.741%	1.160%
Duration in Years	2.00	2.00
Book Value	\$281,733,105	\$291,479,158
Market Value	\$274,965,066	\$282,968,084
Percent % of Market Value	102.46%	103.01%

Investment Description	Yield quarter ending 3/31/2022	Yield quarter ending 6/30/2022	Market Value quarter ending 6/30/2022
Cash and Cash Equivalents	0.43%	1.25%	\$46,889,421
AMLIP	0.04%	1.22%	3,946,190
U.S. Treasury Securities	0.60%	0.73%	70,033,089
US Agencies	0.95%	1.37%	77,811,013
Corporate Bonds	1.26%	1.80%	50,618,633
Municipal Bonds	1.19%	1.30%	20,722,380
Money Market Mutual Funds	0.13%	1.21%	10,454,604
Special Assessments	5.38%	5.37%	1,043,140
Commercial Paper	0.60%	NA	0
CDs	0.33%	0.33%	1,449,614
Total			\$282,968,084

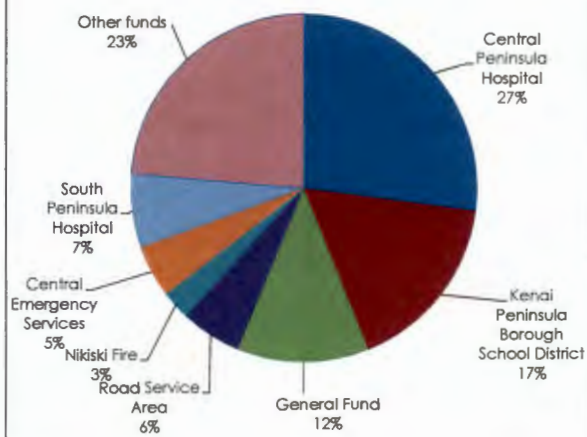
Major Categories:	Percentage of Portfolio	Book Value quarter ending 6/30/2022
Bond related funds	3.63%	\$10,568,424
Hospital service area funds & plant/equipment replacement funds (PREF)	25.72%	74,967,748
School District	13.79%	40,200,537
Capital Project fund restrictions	16.48%	48,039,820
Special Revenue funds restrictions	20.30%	59,171,924
Internal Service/Agency fund restrictions	5.45%	15,888,217
General Fund	14.63%	42,642,488
Total	100.00%	\$291,479,158

INVESTMENT PORTFOLIO
June 30, 2022

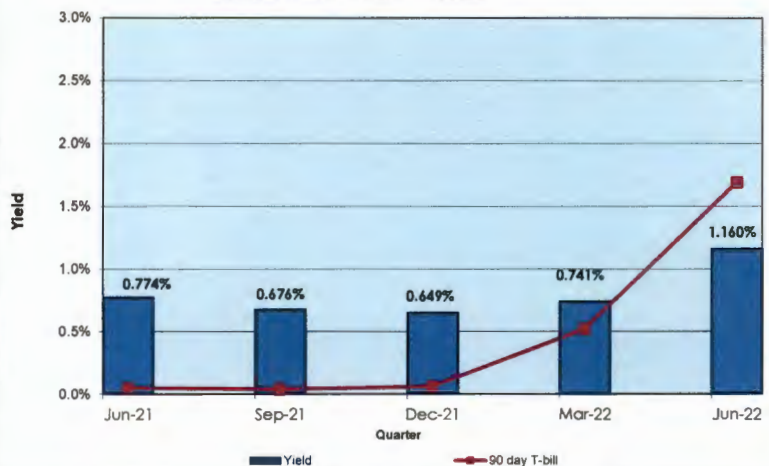
	Par Value	Purchase Price	Fair Value 06/30/2022
Investments by Borough Finance Director			
CORPORATE	19,090,000	19,339,645	19,016,484
CDs	1,485,000	1,485,000	1,449,614
AGENCY	43,500,000	43,654,216	42,845,665
US TREASURY	40,995,000	41,389,405	40,578,545
Total Investment by Borough Finance Director:	105,070,000	105,868,266	103,890,309
Investment with External Manager:			
CORPORATE	32,089,000	32,987,514	31,602,149
MUNICIPAL	21,520,000	22,042,731	20,722,380
AGENCY	36,860,087	36,902,144	34,965,348
US TREASURY	33,450,000	33,134,046	31,195,182
Total Security Investment with External Manager:	123,919,087	125,066,435	118,485,058
TOTAL SECURITY INVESTMENTS	228,989,087	230,934,701	222,375,367
CASH & CASH EQUIVALENTS	59,545,215	59,501,317	59,549,577
SPECIAL ASSESSMENTS	1,043,140	1,043,140	1,043,140
TOTAL PORTFOLIO	289,577,442	291,479,158	282,968,084

Security Portfolio - Purchase Price	\$ 229,771,250.79
Security Portfolio - Fair Value 6/30/22	221,260,176.51
Fair Value Adjustment -6/30/22	(8,511,074.28)
Fair Value Adjustment - 6/30/21	495,230.15
Change in Fair Value FY2022	\$ (9,006,304.43)

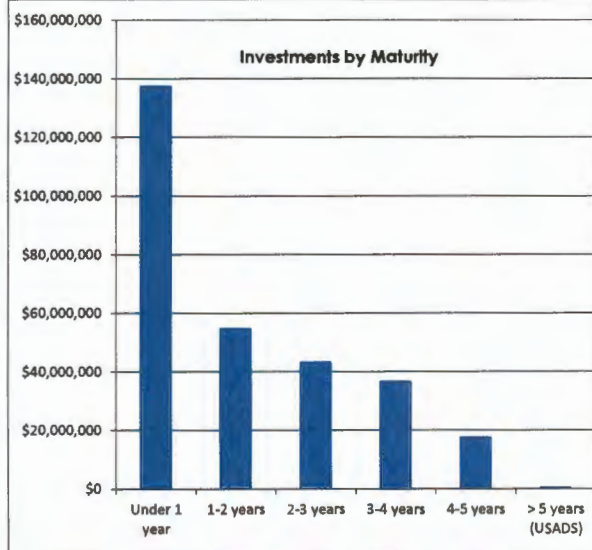
Equity in Central Treasury by Fund



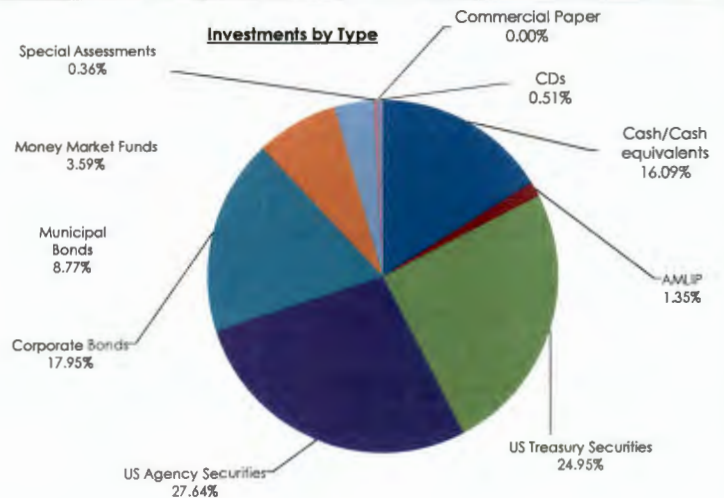
Portfolio Yield for FY2021 & FY2022



Investments by Maturity



Investments by Type



KENAI PENINSULA BOROUGH - LAND TRUST INVESTMENT FUND

Account Statement - Period Ending April 30, 2022



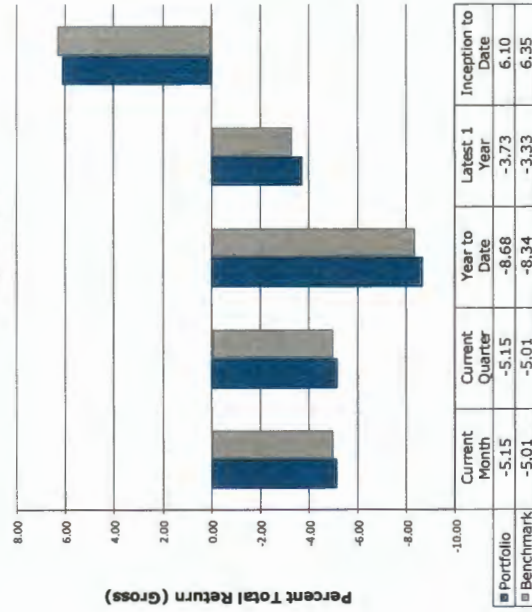
ACCOUNT ACTIVITY

Portfolio Value on 03-31-22	8,947,046
Contributions	0
Withdrawals	-1,118
Change in Market Value	-467,971
Interest	13
Dividends	7,195

Portfolio Value on 04-30-22 8,485,163

INVESTMENT PERFORMANCE

Current Account Benchmark:
Equity Blend

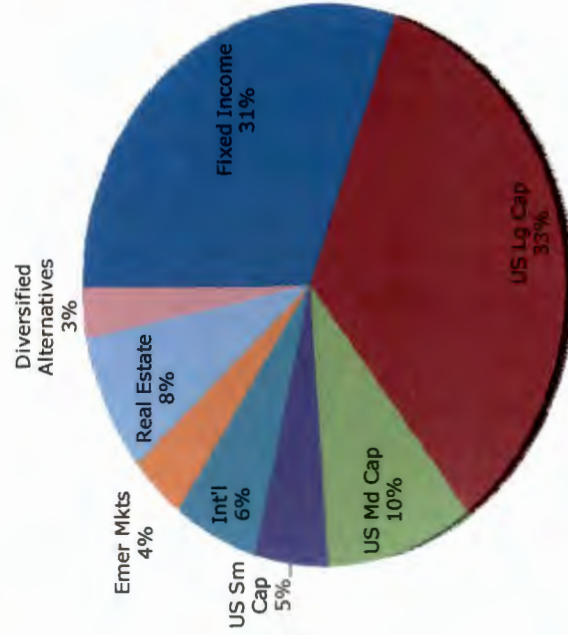


Performance is Annualized for Periods Greater than One Year

MANAGEMENT TEAM

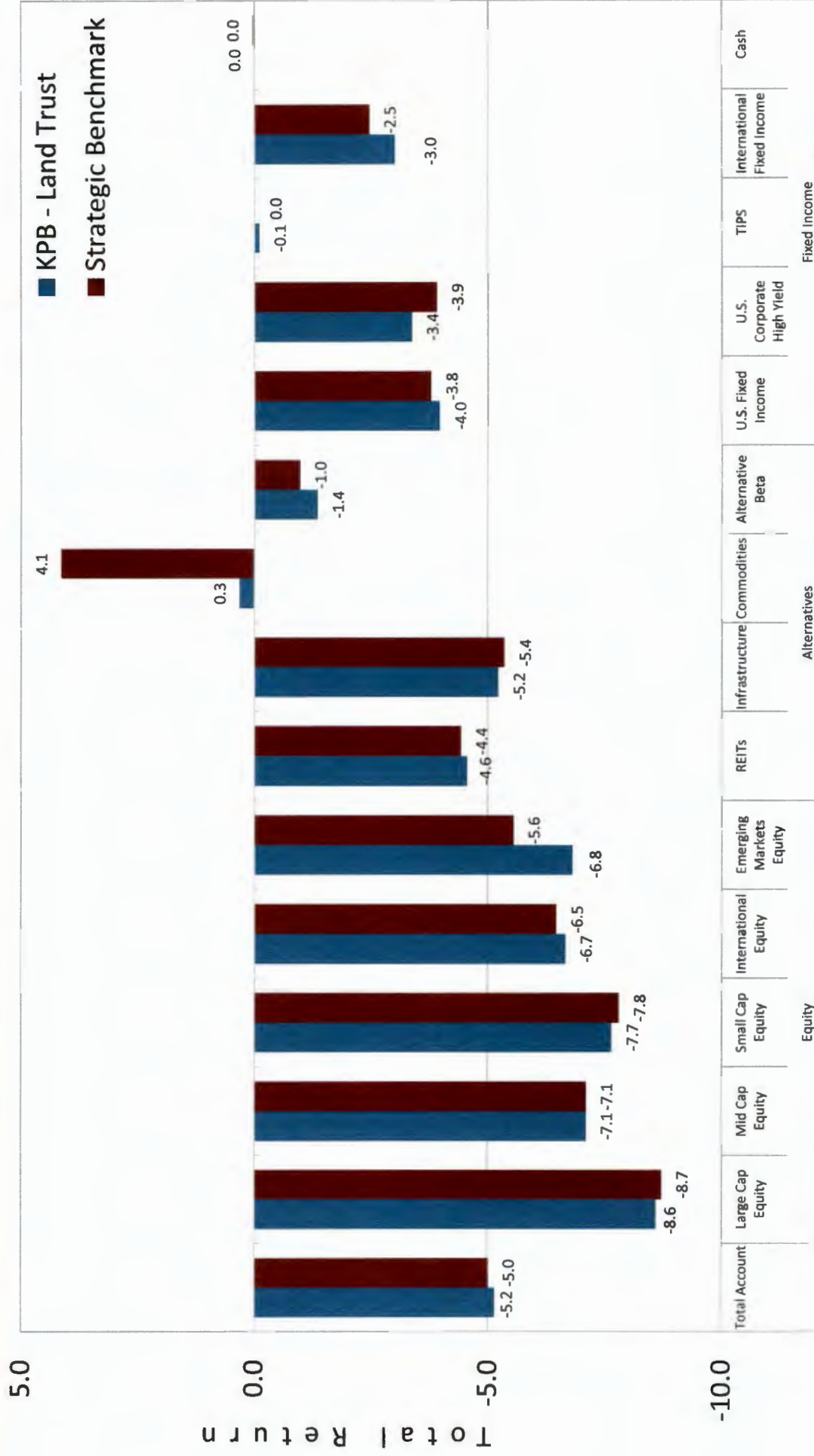
Client Relationship Manager:	Blake Phillips, CFA® Blake@apcm.net
Your Portfolio Manager:	Brandy Niclai, CFA®
Contact Phone Number:	907/272-7575

PORTFOLIO COMPOSITION



Asset Class Performance April 2022

Kenai Peninsula Borough Land Trust Investment Fund



Performance is gross of management fees and net of internal fund fees.

KENAI PENINSULA BOROUGH - LAND TRUST INVESTMENT FUND

Account Statement - Period Ending May 31, 2022



ACCOUNT ACTIVITY

Portfolio Value on 04-30-22	8,485,163
Contributions	0
Withdrawals	-1,061
Change in Market Value	53,795
Interest	47
Dividends	4,516

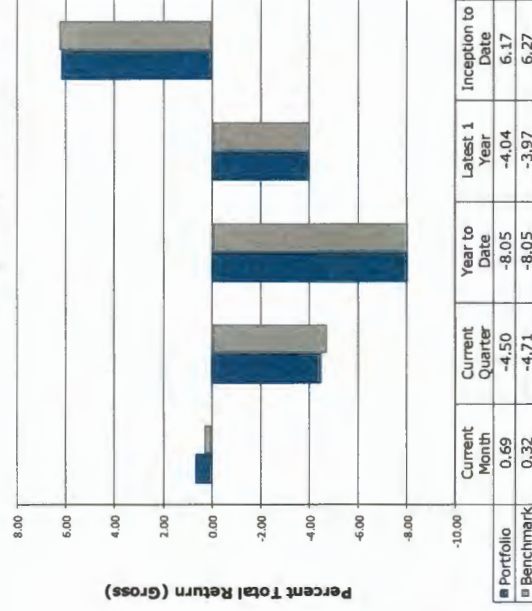
Portfolio Value on 05-31-22 8,542,460

MANAGEMENT TEAM

Client Relationship Manager:	Blake Phillips, CFA® Blake@apcm.net
Your Portfolio Manager:	Brandy Niclai, CFA®
Contact Phone Number:	907/272-7575

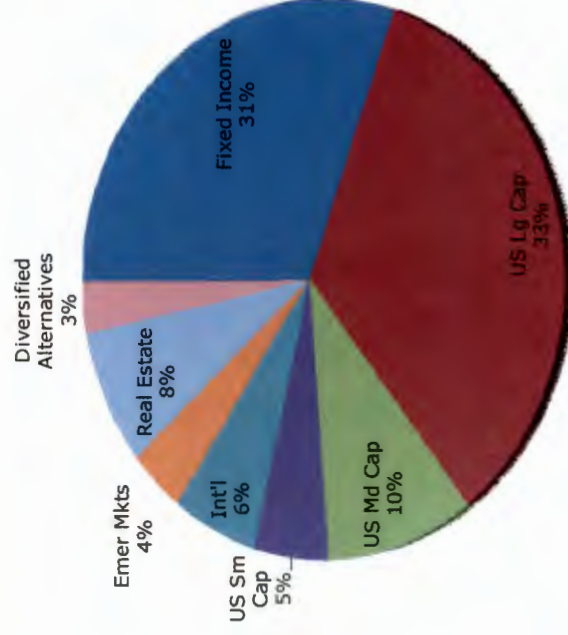
INVESTMENT PERFORMANCE

Current Account Benchmark:
Equity Blend



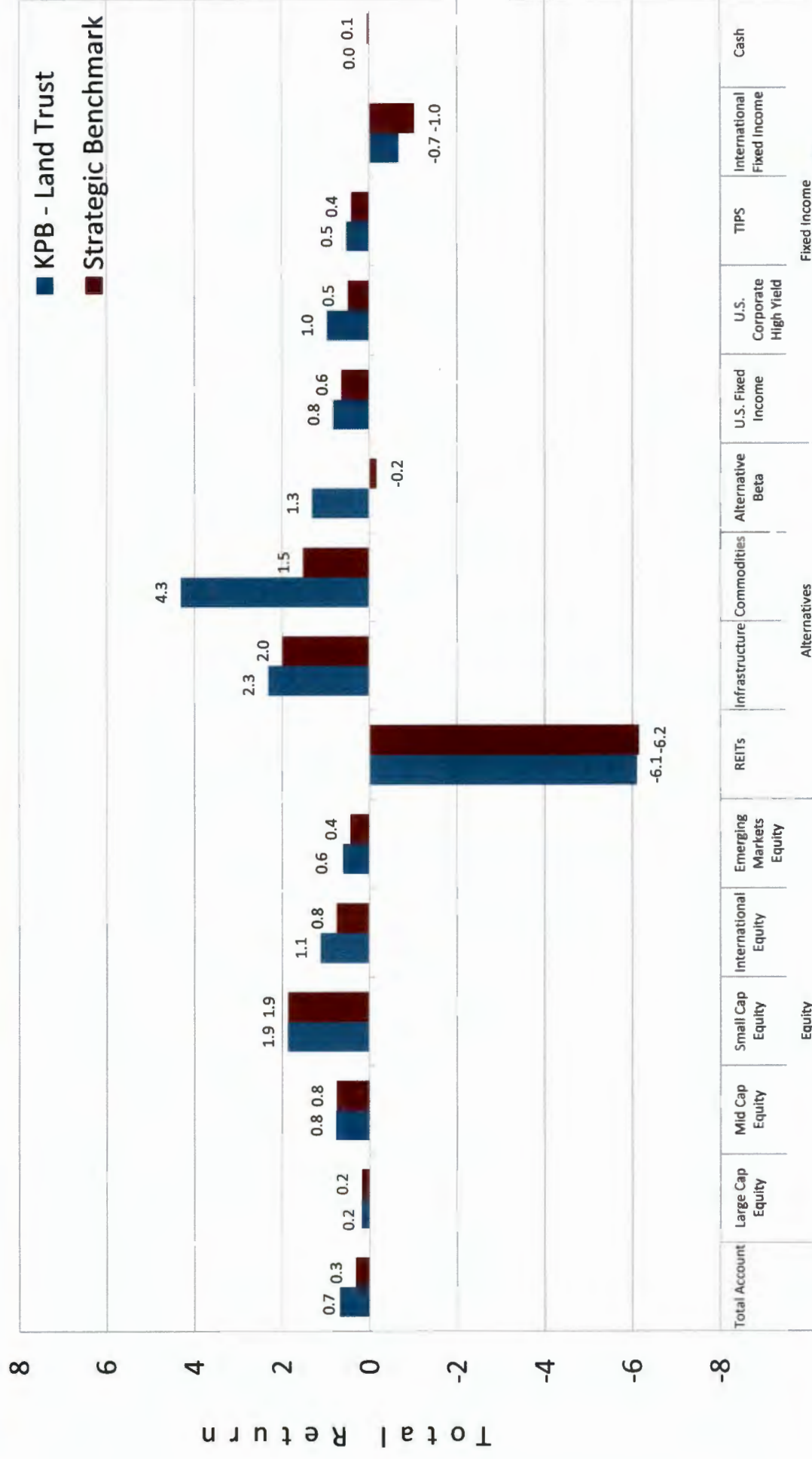
Performance is Annualized for Periods Greater than One Year

PORTFOLIO COMPOSITION



Asset Class Performance May 2022

Kenai Peninsula Borough Land Trust Investment Fund



Performance is gross of management fees and net of internal fund fees.

KENAI PENINSULA BOROUGH - LAND TRUST INVESTMENT FUND

Account Statement - Period Ending June 30, 2022



ACCOUNT ACTIVITY

Portfolio Value on 05-31-22	8,542,460
Contributions	0
Withdrawals	-1,068
Change in Market Value	-514,604
Interest	148
Dividends	35,166

Portfolio Value on 06-30-22

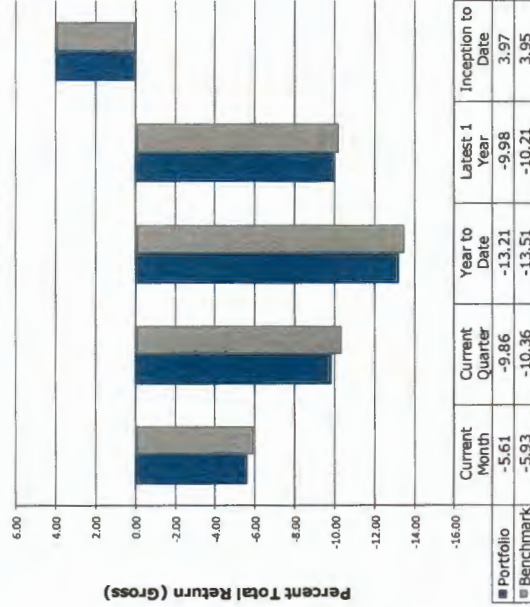
8,062,102

MANAGEMENT TEAM

Client Relationship Manager:	Blake Phillips, CFA® Blake@apcm.net
Your Portfolio Manager:	Brandy Niclai, CFA®
Contact Phone Number:	907/272-7575

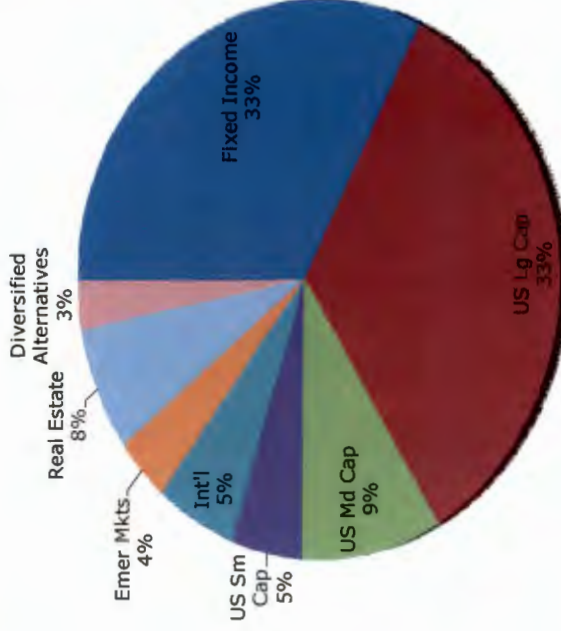
INVESTMENT PERFORMANCE

Current Account Benchmark:
Equity Blend



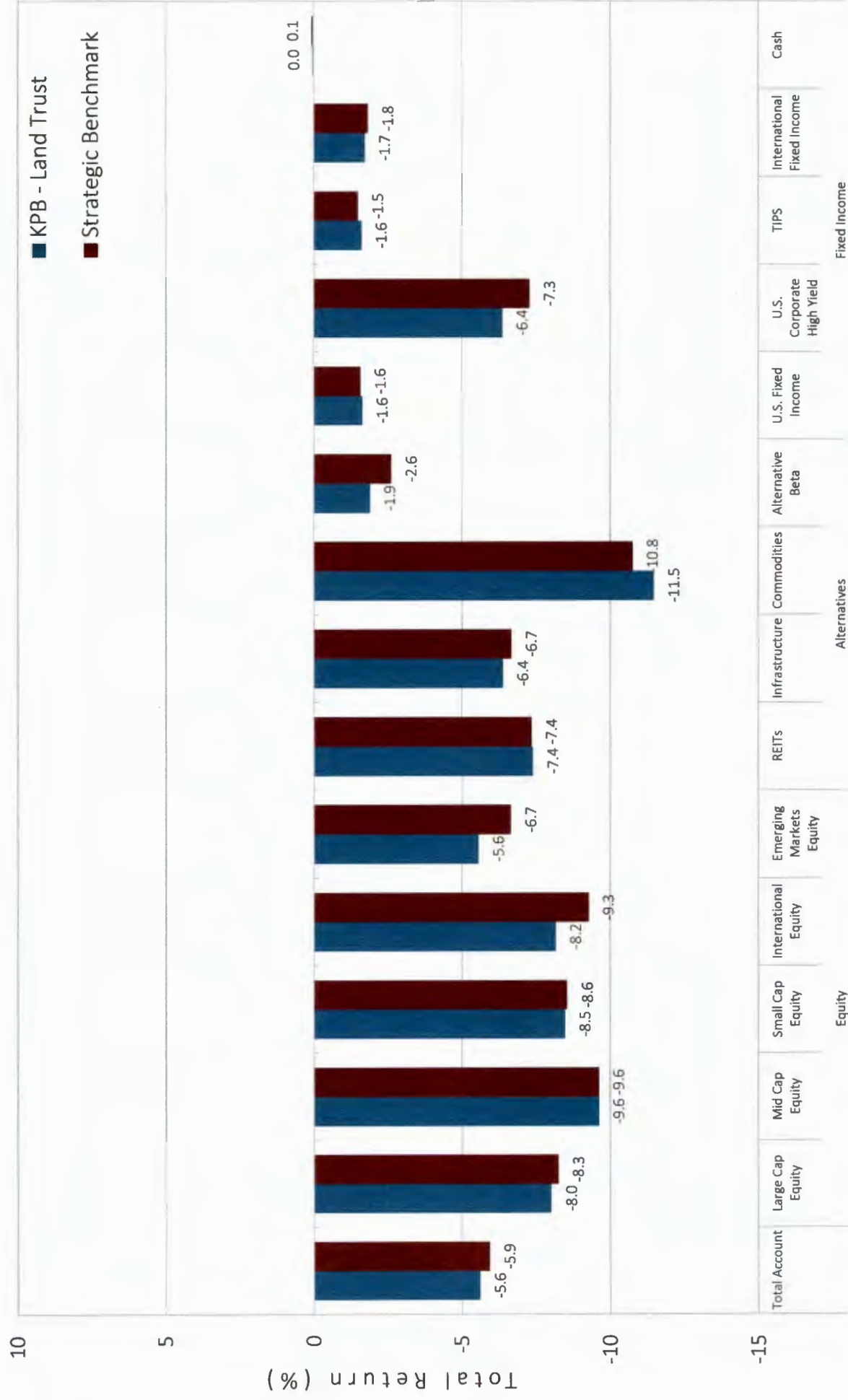
Performance is Annualized for Periods Greater than One Year

PORTFOLIO COMPOSITION



PORTFOLIO REVIEW

Asset Class Performance June 2022 Kenai Peninsula Borough Land Trust Investment Fund



Performance is gross of management fees and net of internal fund fees.



Legal Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2120 • (907) 714-2379 Fax

Charlie Pierce
Borough Mayor

LITIGATION STATUS REPORT

TO: Brent Johnson, Assembly President
Zen Kelly, President, Board of Education
Members, Kenai Peninsula Borough Assembly
Members, Kenai Peninsula Borough School District

THRU: Charlie Pierce, Mayor *CP*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: July 28, 2022

RE: Litigation Status Report – Quarter Ending 06/30/22

This report includes brief descriptions of pending non-routine court cases, as well as administrative appeals and code compliance enforcement actions set for hearing before the administrative hearing officer.

A. The following is a summary of the non-routine litigation in which the borough and school district are involved. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the borough:

1. Halstead v. Anderson and Kenai Peninsula School District, Case No. 3KN-18-00744CI. Plaintiff has sued Mr. Anderson and the Kenai Peninsula Borough School District for damages relating to Mr. Anderson's sexual abuse of her as a minor. The complaint against the school district claims it failed to protect her from Mr. Anderson and seeks damages and actual attorney fees. Trial is scheduled for the week of October 17, 2022. Discovery is ongoing.
2. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185CI. This case was filed against a school district employee to recover substantial health care costs paid by the health care plan ("Plan"). Trial is rescheduled to the week of September 12, 2022. Discovery is continuing.

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July 28, 2022

Re: Litigation Status Report

3. Fischer v. KPBSD, Case No. 3KN-20-00495CI. This case was filed by Matthew Fischer on behalf of his minor child. The parties agreed to participate in mediation and ultimately agreed to a resolution of the plaintiff's claims at mediation. The court subsequently entered an order dismissing this matter, with prejudice, on July 5, 2022.
 4. Furie Operating Alaska, LLC. v. State of Alaska, Department of Revenue, and State Assessment Review Board, Case No. 3AN-21-06462CI. The owner of oil and gas production property appealed the State Assessment Review Board's decision upholding the tax assessment of the property performed by the State of Alaska, Department of Revenue pursuant to AS 43.56. The borough entered an appearance in this matter and has engaged Jessica Dillon a partner at the firm Dillon & Findley in Anchorage to act as lead counsel in this matter. This appeal has been consolidated with the taxpayer's 2022 tax assessment appeal. A non-jury trial is currently scheduled in this matter for the week of October 10, 2022.
- B. The following is a summary of open or recently resolved administrative appeals from Planning Commission decisions:
1. Case No. 2020-01 PCA, Beachcomber. Neighboring property owners appealed a planning commission's decision approving a modification of a conditional use material site permit. The borough filed a notice of non-participation in the matter and is not a party to the appeal. This case is stayed currently.
 2. Case No. 2022-04 PCA, Bilben, et al. v. KPB PC, Beachcomber LLC, et al., This case involves a second appeal to the Office of Administrative Hearings ("OAH") of a planning commission conditional land use permit (CLUP) approval after the matter was remanded from the superior court. The borough did not participate in the superior court appeal because only private interests were at stake. The superior court issued its decision remanding the matter back to the planning commission for additional findings. Subsequently, Beachcomber, LLC filed an appeal to the Alaska Supreme Court. The Supreme Court denied the petition for review and the matter went before the planning commission on remand. In January 2022, the planning commission determined not to reopen the record for new evidence or public comment, and to deliberate in adjudicative session. On April 11, 2022, the planning commission voted to deny the CLUP on remand. Opening statements were filed with the OAH on Tuesday, July 26, 2022.

Page -3-

July 28, 2022

Re: Litigation Status Report

3. Case No. 3KN-22-00026CI, TLR Adventures v. Kenai Peninsula Borough. The owner of a bed and breakfast located in a local option zoning district (LOZD) appealed the planning commission's decision reversing and modifying the planning director's reconsideration decision on the owner/applicant's nonconforming use application. The planning commission's decision was upheld. The owners filed this appeal to the superior court. Subsequently, the appeal was dismissed on April 29, 2022, with each party to bear their own costs and fees.
4. Case No. 2022-02 PCA and 2022-03 PCA, Rosenberg & Schielbein v CIRI. Neighboring property owners appealed the planning commission's decision in 2021-03 PCA, Rosenberg v. CIRI, approving a modification of a conditional land use permit which was subsequently upheld by the planning commission. Mr. Rosenberg and Mr. Schiefelbien have now appealed the decision in 2021-03 PCA. Mr. Rosenberg's case was subsequently dismissed on lack of standing grounds. The hearing on the Schiefelbien appeal was held on July 27, 2022, and the OAH will issue its decision within 30 days.
5. Case No. 2022-01 PCA, McBride v. River Resources, LLC. This appeal was filed on December 20, 2021, following the planning commission's decision on remand of the River Resources appeal. Following hearing on this matter, the hearing officer upheld the planning commission's decision. The deadline for appeal to the superior court has passed, and no such appeal has been filed. Thus, this matter has been closed, and the CLUP at issue was recorded by the Planning Department.

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Borough Mayor *dp*

THRU: Brandi Harbaugh, Finance Director *BH*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: July 28, 2022

RE: Revenue-Expenditure Report – June 2022

Attached is the Revenue-Expenditure Report of the General Fund for the month of June 2022. Please note that 100% of the year has elapsed, 92.73% of budgeted revenues have been collected, and 94.19% of budgeted expenditures have been made.

** These numbers are not final as there will be additional amounts posted due to fiscal year-end adjustments. **

KENAI PENINSULA BOROUGH
Revenue Report
For the Period
June 1 through June 30, 2022

ACCOUNT NUMBER	DESCRIPTION	ESTIMATED REVENUE	YEAR TO DATE RECEIPTS	MONTH TO DATE RECEIPTS	VARIANCE	% COLLECTED
31100	Real Property Tax	\$ 31,078,028	\$ 31,482,883	\$ 94,243	\$ 404,855	101.30%
31200	Personal Property Tax	1,928,769	2,121,137	(101,158)	192,368	109.97%
31300	Oil Tax	6,680,655	6,680,656	-	1	100.00%
31400	Motor Vehicle Tax	642,580	508,318	114,095	(134,262)	79.11%
31510	Property Tax Penalty & Interest	697,431	636,136	10,006	(61,295)	91.21%
31610	Sales Tax	38,500,000	33,687,523	1,618,728	(4,812,477)	87.50%
33110	In Lieu Property Tax	3,100,000	3,506,481	3,506,481	406,481	113.11%
33117	Other Federal Revenue	164,700	160,595	-	(4,105)	97.51%
33220	Forestry Receipts	604,022	604,022	-	-	100.00%
34110	School Debt Reimbursement	1,277,544	852,485	41,158	(425,059)	66.73%
34138	DOA Division of Retirement	591,929	591,929	591,929	-	100.00%
34221	Electricity & Phone Revenue	155,000	-	-	(155,000)	0.00%
34222	Fish Tax Revenue Sharing	500,000	28,482	-	(471,518)	5.70%
34210	Revenue Sharing	467,110	467,110	-	-	100.00%
37350	Interest on Investments	289,673	(932,449)	53,908	(1,222,122)	-321.90%
39000	Other Local Revenue	279,791	432,035	38,060	152,244	154.41%
290	Solid Waste	898,865	642,206	104,596	(256,659)	71.45%
Total Revenues		\$ 87,856,097	\$ 81,469,549	\$ 6,072,046	\$ (6,386,549)	92.73%

KENAI PENINSULA BOROUGH
Expenditure Report
For the Period
June 1 through June 30, 2022

DESCRIPTION	REVISED BUDGET	YEAR TO DATE EXPENDED	MONTH TO DATE EXPENDED	AMOUNT ENCUMBERED	AVAILABLE BALANCE	% EXPENDED
Assembly:						
Administration	\$ 495,116	\$ 412,228	\$ 25,810	\$ -	\$ 82,888	83.26%
Clerk	607,884	541,077	88,630	140	66,667	89.01%
Elections	242,758	110,042	461	-	132,716	45.33%
Records Management	349,848	321,542	50,186	-	28,306	91.91%
Mayor Administration	836,836	669,463	107,333	-	167,373	80.00%
Purch/Contracting/Cap Proj	700,973	609,166	153,867	-	91,807	86.90%
Human Resources:						
Administration	785,365	648,056	84,539	-	137,309	82.52%
Print/Mail	199,604	170,197	23,591	-	29,407	85.27%
Custodial Maintenance	130,544	127,989	20,800	-	2,555	98.04%
Information Technology	2,210,640	1,916,218	374,005	4,399	290,022	86.68%
Emergency Management	1,058,106	864,880	154,228	1,529	191,697	81.74%
Legal Administration	1,477,719	938,819	197,279	270,835	268,065	63.53%
Finance:						
Administration	561,895	561,177	90,629	-	718	99.87%
Services	1,184,520	1,070,207	150,919	-	114,313	90.35%
Property Tax	1,177,574	1,032,472	146,037	41,469	103,633	87.68%
Sales Tax	1,175,530	1,052,685	154,924	-	122,845	89.55%
Assessing:						
Administration	1,434,795	1,326,940	183,404	3,118	104,738	92.48%
Appraisal	1,812,346	1,447,716	238,006	3,118	361,512	79.88%
Resource Planning:						
Administration	1,312,148	1,060,582	172,796	1,853	249,713	80.83%
GIS	707,255	659,267	178,175	700	47,288	93.21%
River Center	745,267	682,300	104,245	70	62,897	91.55%
Senior Citizens Grant Program	719,494	719,494	133,087	-	-	100.00%
School District Operations	55,710,125	55,578,890	5,801,500	-	131,235	99.76%
Solid Waste Operations	10,350,829	9,343,783	2,385,466	106,490	900,556	90.27%
Economic Development	400,000	301,242	177,513	-	98,758	75.31%
Non-Departmental	3,964,081	2,932,446	104,086	48,841	982,794	73.98%
Total Expenditures	\$ 90,351,253	\$ 85,098,880	\$ 11,301,516	\$ 482,560	\$ 4,769,813	94.19%

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Borough Mayor *CP*

THRU: Brandi Harbaugh, Finance Director *BH*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: July 28, 2022

RE: Budget Revisions – June 2022

Attached is a budget revision listing for June 2022. The attached list contains budget revisions between major expenditure categories (i.e., maintenance & operations and capital outlay). Other minor transfers were processed between object codes within major expenditure categories.

CENTRAL EMERGENCY SERVICES

To purchase software for the Fire Marshal's computer.

211-51610-00000-43019 (Software Licensing)		\$217.60
211-51610-00000-42120 (Computer Software)	\$217.60	

CLERK'S OFFICE - ADMINISTRATION

To cover advertising needs through the end of the fiscal year.

100-11120-00000-43260 (Training)		\$700.00
100-11120-00000-43210 (Transportation & Subsistence)		\$620.00
100-11120-00000-48710 (Minor Office Equipment)		\$500.00
100-11120-00000-43310 (Advertising)	\$1,820.00	

CLERK'S OFFICE - ADMINISTRATION

To restock first aid kits.

100-11120-00000-43140 (Postage & Freight)		\$14.29
100-11120-00000-42210 (Operating Supplies)	\$14.29	

CLERK'S OFFICE - ADMINISTRATION

To cover the final newspaper public notices for the fiscal year.

100-11120-00000-40130 (Overtime)		\$1,350.00
100-11120-00000-43310 (Advertising)	\$1,350.00	

CLERK'S OFFICE - ASSEMBLY

To replace the Assembly conference room computer that is no longer working.

100-11110-00000-43215 (Travel Out Of State)		\$1,000.00
100-11110-00000-48710 (Minor Office Equipment)	\$1,000.00	

CLERK'S OFFICE - RECORDS MANAGEMENT

To cover electricity costs for the rest of the fiscal year.

100-11140-00000-40110 (Regular Wages)		\$2,000.00
100-11140-00000-43610 (Public Utilities)	\$2,000.00	

FINANCE - ADMIN & FINANCIAL SERVICES

To clean up negative personnel balance.

100-11430-00000-40110 (Regular Wages)		\$18,000.00
100-11410-00000-40110 (Regular Wages)	\$18,000.00	

JUNE 2022 CONTINUED**INCREASE DECREASE****MAINTENANCE DEPARTMENT**

To purchase Mega Press and a Key Machine.

241-41010-00000-43764 (Snow Removal)		\$25,000.00
241-41010-00000-48311 (Machinery & Equipment)	\$25,000.00	

MAINTENANCE DEPARTMENT

To purchase fire alarm testing tools, and other repair/maintenance supplies.

241-41010-00000-43764 (Snow Removal)		\$33,779.95
241-41010-00000-43780 (Building & Grounds Maintenance)		\$23,459.49
241-41010-00000-48740 (Minor Machines & Equipment)	\$6,000.00	
241-41010-00000-42310 (Repair & Maintenance Supplies)	\$25,000.00	
241-41010-00000-42410 (Small Tools & Minor Equipment)	\$26,239.44	

PURCHASING DEPARTMENT

To purchase a new TV and computer monitor for the Director's office.

100-11227-00000-42210 (Operating Supplies)		\$1,000.00
100-11227-00000-48710 (Minor Office Equipment)	\$1,000.00	

SELDOVIA RECREATION

To cover Amazon Prime membership.

227-61210-00000-48755 (Minor Recreational Equipment)		\$54.12
227-61210-00000-43920 (Dues & Subscriptions)	\$54.12	

SOLID WASTE - HOMER TRANSFER

To purchase a welder and a CVC recovery unit.

290-32310-00000-43011 (Contract Services)		\$6,100.00
290-32310-00000-48740 (Minor Machines & Equipment)	\$6,100.00	

SOLID WASTE - HOMER TRANSFER

To purchase temporary fencing and hand held radios.

290-32310-00000-43011 (Contract Services)		\$10,110.00
290-32310-00000-48740 (Minor Machines & Equipment)	\$10.00	
290-32310-00000-48710 (Minor Office Equipment)	\$3,100.00	
290-32310-00000-48630 (Improvements Other Than Buildings)	\$7,000.00	

SOLID WASTE - HOMER TRANSFER

To purchase gas modine heater for the maintenance shop.

290-32310-00000-43011 (Contract Services)		\$7,000.00
290-32310-00000-48630 (Improvements Other Than Buildings)	\$7,000.00	

JUNE 2022 CONTINUED

INCREASE DECREASE

SOLID WASTE - HOMER TRANSFER

To cover additional costs for the gas modine heater.

290-32310-00000-43011 (Contract Services)		\$650.00
290-32310-00000-48630 (Improvements Other Than Buildings)	\$650.00	

SOLID WASTE - HOMER TRANSFER

To purchase a sander to prepare for winter.

290-32310-00000-43011 (Contract Services)		\$7,646.92
290-32310-00000-48311 (Machinery & Equipment)	\$7,646.92	

SOLID WASTE - HOMER TRANSFER

To purchase a safety cabinet for the maintenance shop.

290-32310-00000-43011 (Contract Services)		\$1,509.19
290-32310-00000-48740 (Minor Machines & Equipment)	\$1,509.19	

SOLID WASTE - HOMER TRANSFER

To rebuild the 953C Track Loader.

290-32310-00000-40110 (Regular Wages)		\$20,000.00
290-32310-00000-43011 (Contract Services)		\$8,000.00
290-32310-00000-43750 (Vehicle Maintenance)	\$28,000.00	

SOLID WASTE - HOMER TRANSFER

To cover fuel costs.

290-32010-00000-43210 (Transportation & Subsistence)		\$2,027.54
290-32010-00000-42230 (Fuel, Oils & Lubricants)	\$2,027.54	

SOLID WASTE - LANDFILL

To cover increased cost of fuel for the rest of the fiscal year.

290-32122-00000-43011 (Contract Services)		\$15,000.00
290-32122-00000-42230 (Fuels, Oils & Lubricants)	\$15,000.00	

SOLID WASTE - LANDFILL

To cover additional fuel purchases and utility costs.

290-32122-00000-43011 (Contract Services)		\$62,000.00
290-32122-00000-42230 (Fuel, Oils & Lubricants)	\$12,000.00	
290-32122-00000-43610 (Public Utilities)	\$50,000.00	

Introduced by:	Mayor, Johnson
Date:	12/07/21
Hearing:	01/18/22
Action:	Postponed as Amended to 02/01/22
Vote:	5 Yes, 3 No, 1 Absent
Date:	02/01/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-41**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055
REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND
PROCEDURES**

- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 1 of the 2019 Comprehensive Plan is to adopt limited development standards for specific areas and uses to reduce potential off site impacts of development on adjoining uses and the natural environment; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough’s existing conditional use regulations for gravel extraction and other uses to better address reoccurring land use conflicts; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding uses, and if/when a conditional use permit can be denied and consider establishing conditions that require larger setbacks, safety and visual screening, control on access routes, control on hours of operation, and address environmental concerns; and
- WHEREAS,** Goal 2, Focus Area: Land Use and Changing Climate, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and protecting quality of life for borough residents; and

- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and
- WHEREAS,** KPB 21.25.040 requires a permit for the commencement of certain land uses within the rural district of the Kenai Peninsula Borough; and
- WHEREAS,** the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and
- WHEREAS,** the planning commission and planning department received comments expressing concerns about dust, noise, safety, and aesthetics; and
- WHEREAS,** approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;
- WHEREAS,** the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and
- WHEREAS,** the assembly established a material site work group by adoption of Resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and
- WHEREAS,** assembly Resolution 2018-025 extended the deadline for the final report to be submitted to the assembly, administration and planning commission to April 30, 2019; and
- WHEREAS,** certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, safety, and unsightliness of material sites; and
- WHEREAS,** at its regularly scheduled meeting of November 12, 2019, the planning commission recommended approval by unanimous consent;

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

SECTION 1. That KPB 21.25.030 is hereby amended, as follows:

21.25.030. - Definitions.

Unless the context requires otherwise, the following definitions apply to CLUPs:

Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

- a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
- b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
- c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
- d. Slaughterhouses are animal feeding operations.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Animal waste means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

Animal waste management system means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

Assisted living home means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

Child care facility means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

Concentrated animal feeding operation (CAFO) means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

Correctional community residential center (CCRC) means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

Correctional institution means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

Development plan means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

Disturbed includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[EXHAUSTED MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

Federal prisoners means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

Haul route includes the roads used to haul materials from the permit area to a roadway designated as collector, arterial or interstate by the Alaska Department of Transportation & Public Facilities.

Liquid manure or liquid animal waste system means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

Multi-purpose senior center is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The

services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

Permit area includes all excavation, processing, buffer and haul route areas of a CLUP or counter permit.

Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

Prisoner means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

Private school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

Public school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.

Senior housing project means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of

renewable resources on the site within a reasonable period of time by natural processes.

Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

Vicinity means the same as the area of notification.

Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which storm water runoff is directed.

Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 2. That KPB 21.29 is hereby amended, as follows:

CHAPTER 21.29. MATERIAL SITE PERMITS

21.29.010. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

21.29.020. Material extraction and activities requiring a permit.

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
 - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
 - 2. Expected life span of the material site;
 - 3. A buffer plan consistent with KPB 21.29.050(A)(2);
 - 4. Reclamation plan consistent with KPB 21.29.060;
 - 5. The depth of excavation;
 - 6. Type of material to be extracted and type of equipment to be used;
 - 7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;

8. Surface water protection measures, if any, for adjacent properties designed by a civil engineer, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
 - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
 - c. Identification of all encumbrances, including, but not limited to easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
 - e. Anticipated haul routes;
 - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation;
 - g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;
 - h. Location of any water body on the parcel, including the location of any riparian wetland as determined by ["WETLAND MAPPING AND CLASSIFICATION OF THE KENAI LOWLAND, ALASKA" MAPS CREATED BY THE KENAI WATERSHED FORUM] best available data;
 - [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH

STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]

[J]i. Location of any processing areas on parcel, if applicable;

[K]j. North arrow;

[L]k. The scale to which the site plan is drawn;

[M]l. Preparer's name, date and seal;

[N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

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

21.29.040. Standards for sand, gravel or material sites.

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

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to [OTHER] adjacent properties;
3. [MINIMIZES] Protects against off-site movement of dust;
4. [MINIMIZES] Protects against noise disturbance to other properties;
5. [MINIMIZES] Protects against visual impacts of the material site; [AND]
6. Provides for alternate post-mining land uses[.];
7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;
8. Protects against traffic impacts; and

9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.

21.29.050. Permit conditions.

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

1. [PARCEL]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

- [2. *BUFFER ZONE.* A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

- A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

- I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

- II. A MINIMUM SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

- III. A MINIMUM SIX-FOOT FENCE.

- B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 30 DAYS FROM THE TIME OF REMOVAL.

- C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. Buffer Area. Material sites shall maintain buffer areas in accord with this section.

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with at least a 2/1 slope or a combination thereof.
- b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable.
- d. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed

use as deemed appropriate by the planning commission or the planning director.

- e. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, a minimum six-foot berm, or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- f. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.
- g. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- h. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required.

- 3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit.

4. *Water source separation.*

- a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
- b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM]between extraction operations and the seasonal high water table be maintained.
- c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM]between

extraction operations and the seasonal high water table be maintained.

- d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.
5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
- a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
 - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
 - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
 - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
- a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent

discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.

- b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
 - a. Processing equipment shall not be operated between 7:00 p.m. and 6:00 a.m.
 - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.

12. *Reclamation.*

- a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
- b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. [~~VOLUNTARY~~]Volunteered *permit conditions.* Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [~~VOLUNTARY~~] Volunteered permit

conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.

15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.
16. *Appeal.* No clearing of vegetation shall occur within the 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. *Sound level.*
 - a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).
 - b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
 - i. Five dB(A) for a total of 15 minutes in any one hour; or
 - ii. Ten dB(A) for a total of five minutes in any hour; or
 - iii. Fifteen db(A) for a total of one and one-half minutes in any one-hour period.
 - c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
 - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.

18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment shall be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an “Approval to Construct” or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way.
20. Dust suppression. Dust suppression shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer.
22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation.
23. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback.

21.29.055. Decision.

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as

specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE, RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$2,000.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.
- C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.
 - 1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. [THIS MATERIAL WILL BE PROTECTED FROM EROSION AND CONTAMINATION BY ACIDIC OR TOXIC MATERIALS AND PRESERVED IN A CONDITION SUITABLE FOR LATER USE.]
 - 2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR

REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).

3. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
5. [PEAT AND T]Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
6. Ponding may be used as a reclamation method as approved by the planning commission.

- D. The five-year reclamation plan shall describe the total acreage to be reclaimed [EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES] relative to the total excavation plan.

21.29.070. Permit extension and revocation.

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.

- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.50. 21.29.080. - Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

21.29.090. Permit modifications.

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

21.29.100. Recordation.

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

21.29.110. Violations.

- A. Violations of this chapter shall be governed by KPB 21.50.
- B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

21.29.120. Prior existing uses.

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY

PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2022. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

SECTION 3. That KPB 21.50.055 is hereby amended, as follows:

21.50.055. Fines.

- A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

SECTION 4. That this ordinance shall become effective upon its enactment.

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

Brent Johnson, Assembly President

ATTEST:

Johani Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Derkevorkian, Elam, Tupper, Johnson

No: Chesley, Cox, Ecklund

Absent: Hibbert

Kenai Peninsula Borough Assembly

[Clerk's Note: At the 01/18/22 meeting this amendment failed 4 Yes, 4 No, 1 Absent. Notice of reconsideration was given by Mr. Elam.]

MEMORANDUM

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

FROM: Bill Elam, Assembly Member *BE*

DATE: January 18, 2022

SUBJECT: Elam Amendment #2 to Ordinance 2021-41, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Johnson, Mayor)

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

- Amend Section 2, KPB 21.29.040(A), as follows:

21.29.040. Standards for sand, gravel or material sites.

- A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. ~~**[Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:]**~~ **The mandatory conditions of 21.29.050 are express conditions precedent to the granting of any conditional land use permit and after a public hearing, the planning commission must find, in writing, that through imposition of all the mandatory conditions under KPB 21.29.050 that the following standards are met:**
1. ~~**[Protects against the lowering of water sources serving other properties;]**~~ **The use is not inconsistent with the applicable comprehensive plan;**
 2. ~~**[Protects against physical damage to [other] adjacent properties;]**~~ **The use will preserve the value, spirit, character, and integrity of the surrounding area;**

Page 2 of 2

Date: January 18, 2022

RE: Elam Amendment #2 to O2021-41

3. ~~[[Minimizes] Protects against off-site movement of dust;]~~
The applicant has met all other requirements of this chapter pertaining to the use in question;
4. ~~[[Minimizes] Protects against noise disturbance to other properties;]]~~
That granting the permit will not be harmful to the public health, safety and general welfare; and
5. ~~[[Minimizes] Protects against visual impacts of the material site; [and]]~~
The sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in KPB 21.29.050.
- ~~[6. Provides for alternate post-mining land uses[.];]~~
- ~~[7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;]~~
- ~~[8. Protects against traffic impacts; and]~~
- ~~[9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.]~~

Your consideration of this amendment is appreciated.

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Cindy Ecklund, Assembly Member ^{1st}
Mike Tupper, Assembly Member ^{MT}

DATE: January 18, 2022

SUBJECT: Amendment to Ordinance 2021-41, Amending KPB 21.29, KPB 21.25,
and KPB 21.50.055 Regarding Material Site Permits, Applications,
Conditions, and Procedures (Johnson, Mayor)

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

- Amend Section 2, KPB 21.29.050(A)(2)(a), as follows:

21.29.050. Permit conditions.

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel, or material sites:

...

2. Buffer Area. Material sites shall maintain buffer areas in accord with this section.

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation, a minimum six-foot fence, ~~a minimum six-foot berm~~ **a minimum six-foot earthen berm with at least a 2/1 slope** or a combination thereof.

Clerk's Note: This amendment was approved at the 01/18/22 meeting. 8 Yes, 0 No, 1 Absent

Page 2 of 3

January 18, 2021

Re: Ecklund and Tupper Amendments to O2021-41

- Amend Section 2, KPB Section 21.29.050(A)(2)(c), as follows:

21.29.050. Permit conditions.

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel, or material sites:

...

2. Buffer Area. Material sites shall maintain buffer areas in accord with this section.

Clerk's Note: This amendment was approved at the 01/18/22 meeting. 5 Yes, 3 No, 1 Absent

- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable. **d. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed use as deemed appropriate by the planning commission or the planning director.**

- Amend Section 2, KPB Section 21.29.050(A)(2)(d), as follows:

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel, or material sites:

...

2. Buffer Area. Material sites shall maintain buffer areas in accord with this section.

...

- d. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan. The alternate buffer plan must consist of natural undisturbed vegetation, ~~[a minimum six-foot berm]~~, **a minimum six-foot earthen berm with at least a 2/1 slope** or a minimum six-foot fence or a combination thereof; unless the permittee proposes another solution approved by the planning

Page 3 of 3

January 18, 2021

Re: Ecklund and Tupper Amendments to O2021-41

commission or planning director, as applicable, to meet this condition.

➤ Amend Section 2, KPB 21.29.055, as follows:

21.29.055. Decision.

~~[The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.]~~

The planning commission or planning director, as applicable, shall approve permit applications whereby mandatory standards under KPB 21.29.040 have been met through implementation of imposed and volunteered conditions set forth in KPB 21.29.050, or shall disapprove permit applications when the imposed and volunteered conditions do not meet the mandatory standards in KPB 21.29.040.

The decision shall include written findings detailing how the imposed and volunteered condition under KPB 21.29.050 meet, or do not meet the mandatory standards set forth in KPB 21.29.040, and evidence to support those findings. When applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan.

Your consideration of these amendments is appreciated.

Introduced by: Elam, Derkevorkian
Substitute Introduced: 02/01/22
O2021-41 (Mayor, Johnson) See Original Ordinance for Prior History
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-41
(ELAM, DERKEVORKIAN) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB 21.29, KPB 21.25, AND KPB 21.50.055
REGARDING MATERIAL SITE PERMITS, APPLICATIONS, CONDITIONS, AND
PROCEDURES**

- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A of the 2019 Kenai Peninsula Borough Comprehensive Plan is to establish policies to minimize land use conflicts, protect natural systems, and support individual land use freedoms; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2 of the 2019 Comprehensive Plan is to update the Borough's existing conditional use regulations for material extraction to better address reoccurring land use conflicts; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2a of the 2019 Comprehensive Plan is to clarify the broad purpose of the conditional use process and clear parameters for allowable conditional uses that include reasonable, project-specific conditions that reduce impacts on surrounding use; and
- WHEREAS,** Goal 2, Focus Area: Land Use, Objective A, Strategy 2d of the 2019 Comprehensive Plan is to complete improvements to the rules guiding gravel extraction, with the goal of providing an appropriate balance between providing access to affordable materials for development and quality of life for borough residents; and
- WHEREAS,** Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and
- WHEREAS,** an assembly subcommittee was formed in 2005 to review the material site code; and
- WHEREAS,** Ordinance 2006-01 (Substitute) codified as KPB 21.29 was adopted in 2006 after consideration of the subcommittee's report; and
- WHEREAS,** the planning department has been administering Ordinance 2006-01 (Substitute), codified as KPB 21.29 for 13 years; and

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

WHEREAS, the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and

WHEREAS, the planning commission and planning department received comments expressing concerns about dust, noise, safety; and

WHEREAS, approximately 253 registered prior existing use material sites and approximately 99 conditional land use permits for material sites have been granted since 1996;

WHEREAS, the planning department receives numerous complaints regarding unreclaimed parcels registered as nonconforming prior existing material sites which have not been regulated by KPB; and

WHEREAS, the assembly established a material site work group by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code; and

WHEREAS, at its regularly scheduled meeting of November 12, 2019, the planning commission recommended approval by unanimous consent;

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

SECTION 1. That KPB 21.25.030 is hereby amended, as follows:

21.25.030. Definitions.

Unless the context requires otherwise, the following definitions apply to CLUPs:

Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

- a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
- b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
- c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
- d. Slaughterhouses are animal feeding operations.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Animal waste means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

Animal waste management system means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

Assisted living home means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or that receives state or federal payment for service of the number of adults served. The services and activities may include, but are not limited to, housing and food services to its residents, assistance with activities of daily living, and personal assistance, and that complies with Alaska Statutes 47.32.0101 – 47.60.900, as amended.

Child care facility means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

Concentrated animal feeding operation (CAFO) means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

Correctional community residential center (CCRC) means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

Correctional institution means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

Development plan means a plan created to describe a proposed development on a specific building site excluding material sites under KPB 21.29.020.

Disturbed includes active excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas excluding all areas reclaimed for alternate post mining land uses.

[*EXHAUSTED* MEANS THAT ALL MATERIAL OF A COMMERCIAL QUALITY IN A SAND, GRAVEL, OR MATERIAL SITE HAS BEEN REMOVED.]

Federal prisoners means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

Liquid manure or liquid animal waste system means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

Multi-purpose senior center is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

Permit area includes all excavation, processing, buffer and haul route areas of a CLUP or counter permit.

Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

Prisoner means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

Private school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

Public school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.

Senior housing project means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which storm water runoff is directed.

Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 2. That KPB 21.29 is hereby amended, as follows:

CHAPTER 21.29. MATERIAL SITE PERMITS

21.29.010. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood

Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.

- C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.
- D. Material extraction incidental to site development does not require a permit when an approved site development plan is on file with the planning department. Site development plans are approved by the planning director and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

21.29.020. Material extraction and activities requiring a permit.

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. [A CLUP IS REQUIRED FOR MATERIALS PROCESSING.] A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
 - 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;

2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(2);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. Surface water protection measures, if any, for adjacent properties designed by a SWPPP certified individual, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;
9. A site plan prepared by the site operator and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
 - a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
 - c. Identification of all encumbrances, including, but not limited to easements;
 - d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
 - e. Anticipated haul routes;
 - f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug.

- g. Location of wells of adjacent property owners within [300]
200 feet of the proposed parcel boundary;
- h. Location of any water body on the parcel,
- [I. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]
- [J]i. Location of any processing areas on parcel, if applicable;
- [K]j. North arrow;
- [L]k. The scale to which the site plan is drawn;
- [M]l. Preparer's name, date
- [N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

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

21.29.040. Standards for sand, gravel or material sites.

- A. These material site regulations are intended to Minimize aquifer disturbance, road damage, physical damage to adjacent properties, dust, and noise. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
 - 1. [PROTECTS AGAINST] Minimizes the lowering of water sources serving other properties;
 - 2. [PROTECTS AGAINST] Minimizes physical damage to [OTHER] adjacent properties;

3. Minimizes off-site movement of dust;
4. Minimizes noise disturbance to other properties;
5. [MINIMIZES VISUAL IMPACTS] Provides for alternate post-mining land uses.

21.29.050. Permit conditions.

A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

1. [~~PARCEL~~]Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit.

[2. BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM TEN FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE, STABILIZING MATERIAL IS REPLACED WITHIN 90 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED

APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

- D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.
- E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

2. *Buffer Area.*

- a. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 90 days from the time of removal.
- b. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan introduced by the applicant. The alternate buffer plan must consist of natural undisturbed vegetation, or a minimum ten foot berm, or a minimum six-foot fence or a combination thereof, consisting of only one option in a single geographical location; unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- c. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

- d. There is no requirement to buffer a material site from uses that commence after approval of the permit.
- 3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent properties at the time.
- 4. *Water source separation.*
 - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
 - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation [FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED] an excavation distance a maximum of 15 feet below the seasonal high-water table must be maintained under these conditions:
 - 1. No dewatering is allowed.
 - 2. The edge of any water body must be 200 feet from any DEC septic or well.
 - 3. A spill response kit must be maintained onsite.
 - 4. Operations shall stay 2 foot above an aquifer-confining layer.
 - 5. A 200-foot separation from any water body and any stored hazardous material.
 - [C. ALL CLUPS SHALL BE ISSUED WITH A CONDITION WHICH REQUIRES THAT A TWO-FOOT VERTICAL SEPARATION FROM THE SEASONAL HIGH WATER TABLE BE MAINTAINED.]
 - c. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. *Excavation in the water table.* Excavation in the water table greater than ~~[300]~~200 horizontal feet of a water source and 15 feet below water table may be permitted with the approval of the planning commission based on the following:
 - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
 - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
 - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
 - d. Operations shall not breach an aquifer-confining layer.
6. *Waterbodies.*
 - a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet [FROM] of excavation limits and the ordinary high water level of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands [AND MAPPED FLOODPLAINS AS DEFINED IN KPB 21.06]. This regulation shall not apply to ponds less than one acre on private land, man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
 - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for

uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface. Double wall tanks are also acceptable.

8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
 - a. Processing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and ~~visual impacts~~ caused by the material site.
12. *Reclamation.*
 - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
 - b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE

PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.
14. [VOLUNTARY]Volunteered permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. [VOLUNTARY] Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in [VOLUNTARY] volunteered permit conditions may be proposed [AT] by permit [RENEWAL OR AMENDMENT] modification.
15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

16. Appeal. No clearing of vegetation shall occur within the 50 ~~100~~-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired.
17. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment may be more technically advanced devices; such as, a multi-frequency “white noise” alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
19. Dust suppression. Dust suppression may ~~shall~~ be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes within property boundaries. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes within property boundaries.
21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer or SWPPP certified individual.
22. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback. At the time of application.

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan.
- B. The applicant may revegetate with a non-invasive plant species and reclaim all disturbed land [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A PRE-DETERMINED TIME PERIOD FOR LONG-TERM ACTIVITIES, SO AS TO LEAVE THE LAND IN A STABLE CONDITION. RECLAMATION MUST OCCUR FOR ALL EXHAUSTED AREAS OF THE SITE EXCEEDING FIVE ACRES BEFORE A FIVE-YEAR RENEWAL PERMIT IS ISSUED, UNLESS OTHERWISE REQUIRED BY THE PLANNING COMMISSION. IF THE MATERIAL SITE IS ONE ACRE OR LESS IN SIZE AND HAS BEEN GRANTED A CLUP DUE TO EXCAVATION IN THE WATER TABLE,

RECLAMATION MUST BE PERFORMED AS SPECIFIED BY THE PLANNING COMMISSION OR PLANNING DIRECTOR IN THE CONDITIONAL USE OR COUNTER PERMIT] within the time period approved with the reclamation plan so as to leave the land in a stable condition. Bonding shall be required at \$750.00 per acre for all acreage included in the current five-year reclamation plan. In the alternative, the planning director shall accept a civil engineer's estimate for determining the amount of bonding. If the applicant is bonded with the state, the borough's bonding requirement is waived. Compliance with reclamation plans shall be enforced under KPB 21.50.

- C. The following measures must be considered in the [PREPARING] preparation, approval and [IMPLEMENTING] implementation of the reclamation plan, although not all will be applicable to every reclamation plan.
1. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT WILL BE STABILIZED TO A CONDITION THAT WILL ALLOW SUFFICIENT MOISTURE FOR REVEGETATION] so that it will be stabilized to a condition that will allow for the revegetation as required by KPB 21.29.060(B).
 2. [SUFFICIENT QUANTITIES OF STOCKPILED OR IMPORTED TOPSOIL WILL BE SPREAD OVER THE RECLAIMED AREA TO A DEPTH OF FOUR INCHES TO PROMOTE NATURAL PLANT GROWTH THAT CAN REASONABLY BE EXPECTED TO REVEGETATE THE AREA WITHIN FIVE YEARS. THE APPLICANT MAY USE THE EXISTING NATURAL ORGANIC BLANKET REPRESENTATIVE OF THE PROJECT AREA IF THE SOIL IS FOUND TO HAVE AN ORGANIC CONTENT OF 5% OR MORE AND MEETS THE SPECIFICATION OF CLASS B TOPSOIL REQUIREMENTS AS SET BY ALASKA TEST METHOD (ATM) T-6.] The [MATERIAL] topsoil used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
 4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
 5. [PEAT AND T] Topsoil mine operations shall ensure a minimum of [TWO] four inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).

6. Ponding may be used as a reclamation method as approved by the planning commission.

[D. THE PLAN SHALL DESCRIBE THE TOTAL ACREAGE TO BE RECLAIMED EACH YEAR, A LIST OF EQUIPMENT (TYPE AND QUANTITY) TO BE USED IN RECLAMATION, AND A TIME SCHEDULE OF RECLAMATION MEASURES.]

21.29.070. Permit extension and revocation.

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.
- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KP.B 21.29.030-050 with public notice given as provided by KP.B 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KP.B 21.29.070(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KP.B 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KP.B 21.50.

21.29.080. Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

21.29.090. Permit modifications.

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

21.29.100. Recordation.

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

21.29.110. Violations.

- A. Violations of this chapter shall be governed by KPB 21.50.
- B. In addition to the remedies provided in KPB 21.50, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

21.29.120. Prior existing uses.

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered

abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.

- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. [ANY PRIOR EXISTING USE THAT HAS NOT OPERATED AS A MATERIAL SITE BETWEEN MAY 21, 1996, AND MAY 21, 2011, IS CONSIDERED ABANDONED AND MUST THEREAFTER COMPLY WITH THE PERMIT REQUIREMENTS OF THIS CHAPTER. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER A PRIOR EXISTING USE HAS BEEN ABANDONED. AFTER GIVING NOTICE TO THE PARCEL OWNER THAT A PEU IS CONSIDERED ABANDONED, A PARCEL OWNER MAY PROTEST THE TERMINATION OF THE PEU BY FILING WRITTEN NOTICE WITH THE PLANNING DIRECTOR ON A FORM PROVIDED BY THE PLANNING DEPARTMENT. WHEN A PROTEST BY A PARCEL OWNER IS FILED, NOTICE AND AN OPPORTUNITY TO MAKE WRITTEN COMMENTS REGARDING PRIOR EXISTING USE STATUS SHALL BE ISSUED TO OWNERS OF PROPERTY WITHIN A ONE-HALF MILE RADIUS OF THE PARCEL BOUNDARIES OF THE SITE. THE OWNER OF THE PARCEL SUBJECT TO THE PRIOR EXISTING USE MAY SUBMIT WRITTEN INFORMATION, AND THE PLANNING DIRECTOR MAY GATHER AND CONSIDER ANY INFORMATION RELEVANT TO WHETHER A MATERIAL SITE HAS OPERATED. THE PLANNING DIRECTOR MAY CONDUCT A HEARING IF HE OR SHE BELIEVES IT WOULD ASSIST THE DECISION-MAKING PROCESS. THE PLANNING DIRECTOR SHALL ISSUE A WRITTEN DETERMINATION WHICH SHALL BE DISTRIBUTED TO ALL PERSONS MAKING WRITTEN COMMENTS. THE PLANNING DIRECTOR'S DECISION REGARDING TERMINATION OF THE PRIOR EXISTING USE STATUS MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN 15 DAYS OF THE DATE OF THE NOTICE OF DECISION.]

The owner of a material site that has been granted a PEU determination shall provide proof of compliance with AS 27.19.030 – 050 concerning reclamation to the planning department no later than July 1, 2021. The proof shall consist of an Alaska Department of Natural Resources (DNR) approved reclamation plan and receipt for bonding or a letter of intent filed with DNR.

- 1. The planning department may request proof of continued compliance with AS 27.19.030 – 050 on an annual basis.
- 2. Pursuant to KPB 21.29.110 the enforcement process and remedies set forth in KPB 21.50 shall govern if the proof that the statutory requirements contained in AS 27.19.030-050 is not provided to the planning department.

SECTION 3. That KPB 21.50.055 is hereby amended, as follows:

21.50.055. Fines.

- A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
<u>KPB 21.29.120</u>	<u>Failure to Provide Reclamation Plan and Proof of Bonding or Letter of Intent</u>	<u>\$300.00</u>
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00
KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

SECTION 4. That this ordinance shall become effective upon its enactment.

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

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Planning Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: Melanie Aeschliman, Planning Director MA

DATE: November 23, 2021

SUBJECT: Ordinance 2021-41 Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Mayor)

On December 13, 2019, the assembly failed to enact Ordinance 2019-30(SUB). As requested, this proposed ordinance reintroduces, word for word, O2019-30(SUB). Any amendments to this proposed ordinance will be proposed as separate amendment memorandums.

A timeline regarding the material site work group recommendations, planning commission recommendations, and the history of O2019-30(SUB) is attached.

Your consideration of these amendments is appreciated.

MEMORANDUM

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

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

FROM: Bryan Taylor, Planner *BT*

DATE: November 17, 2021

RE: Reintroduction of Ordinance 2019-30 SUB; An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

The mayor would like to reintroduce the above ordinance at the December 7, 2021, Assembly meeting. The Planning Commission reviewed the original ordinance at its regularly scheduled November 12, 2019 meeting. Prior to that, the Planning Commission reviewed an ordinance proposed by the Material Site Work Group and recommended amendments. Ordinance 2019-30 Substitute incorporates all changes recommended by the Planning Commission. Below is a timeline of the ordinance's development and legislative history.

- **January 16, 2018:** KPB Assembly established a Material Site Work Group (MSWG) through Resolution 2018-004 Substitute.
- **January 31, 2018 through April 30, 2019:** The MSWG held work session meetings and took public comment. (Meetings were not held between May 23 and October 10, 2018, to avoid overlapping with the construction season when operators would not be available to participate.) At its second meeting on February 14, 2018, the MSWG adopted the following mission statement: *"To evaluate our existing KPB codes with respect to material sites (gravel extraction) to ensure that we collectively believe the appropriate balance exists to meet the need for affordable development while also protecting quality of life for our residents."*
- **May 15, 2018:** Through Resolution 2018-25, the Assembly extended the deadline for the MSWG to produce a report until April 30, 2019.
- **April 30, 2019:** At its final meeting, the MSWG forwarded a proposed ordinance to the Planning Commission for review.
- **May 13, 2019:** The Planning Commission held a regular meeting and the MSWG's proposed ordinance was placed on the Planning Commission's agenda under "Pending Items for Future Action". There was some commission discussion of the item. The minutes noted that the commission would consider it at its June 24, 2019, meeting when

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Date: November 17, 2021

To: Blair Martin, Planning Commission Chair
Members, Kenai Peninsula Borough Planning Commission

RE: Reintroduction of Ordinance 2019-30 SUB; An Ordinance Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures

key staff and commissioners could be present.

- **June 18, 2019:** The chair of the MSWG, Robert Ruffner, gave a presentation to the Assembly during its regularly scheduled meeting.
- **June 24, 2019:** The Planning Commission held a public hearing on the unnumbered ordinance proposed by the MSWG entitled "An Ordinance Amending KPB Chapter 21.25, Conditional Land Use Permits and Amending KPB Chapter 21.29, Material Site Permits".
- **July 15, 2019:** The Planning Commission held a work session on the ordinance proposed by the MSWG.
- **August 26, 2019:** The Planning Commission held a public hearing on the ordinance proposed by the MSWG. The commission voted to postpone further consideration until its September 9, 2019, regular meeting.
- **September 9, 2019:** The Planning Commission continued deliberation on the ordinance proposed by the MSWG. After voting on a number of proposed amendments to the ordinance, the commission requested staff arrange a work session with the Assembly and postponed further deliberation.
- **October 24, 2019:** A memo providing a sectional analysis of proposed amendments was sent from Sean Kelly, Deputy Borough Attorney, and Max Best, Planning Director, to KPB Assembly. The memo outlined amendments to the MSWG ordinance proposed by the Planning Commission. All amendments outlined within the memo were later included within Ordinance 2019-30 Substitute.
- **November 5, 2019:** A joint work session between the Assembly and the Planning Commission was held regarding Ordinance 2019-30. At its regularly scheduled meeting, Ordinance 2019-30 was introduced and the Assembly set a public hearing for December 3, 2019.
- **November 12, 2019:** At its regular meeting, the Planning Commission recommended approval of Ordinance 2019-30 and several amendments.
- **November 20, 2019:** In a memo to the KPB Assembly, Max Best, Planning Director, notified the Assembly of the Planning Commission's recommendation of approval and outlined recommended amendments proposed by the Planning Commission at its November 12, 2019, meeting. All amendments outlined within the memo were included within Ordinance 2019-30 Substitute.
- **December 3, 2019:** The Assembly held a public hearing on Ordinance 2019-30. A motion to amend by substitute was carried but the motion to enact the substitute ordinance failed. Assembly member Bjorkman gave notice of reconsideration of Ordinance 2019-30 Substitute.
- **January 7, 2020:** At the Assembly's regularly scheduled meeting, a motion to reconsider Ordinance 2019-30 Substitute failed.

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Brent Johnson, Assembly president
Members, Kenai Peninsula Borough Assembly

FROM: A. Walker Steinhage, Deputy Borough Attorney *AW*
Sean Kelley, Borough Attorney *SK*

CC: Charlie Pierce, Mayor
Melanie Aeschliman, Planning Director

DATE: January 14, 2022

RE: Questions for the Assembly to consider regarding Ordinance 2021-41

Appeals from Planning Commission decisions approving or denying material site conditional land use permit (CLUP) applications, and remands to the Commission which sometimes follow such appeals, cost the Borough time, resources, and money.

In response to inquiries from KPB Assembly members, the purpose of this memo is to present some questions for the Assembly to consider as it reviews Ordinance 2021-41. If the Assembly is able to resolve some or all of these questions, the costs associated with appeals from the Commission's CLUP decisions may be alleviated. The questions are as follows:

1) Should the Planning Commission continue to have the discretion to deny a CLUP application?

Current Code: The Planning Commission is vested with discretion to deny a permit application. Under KPB 21.25.050(B) the Planning Commission shall either "approve, modify or disapprove the permit application."

O2021-41 as proposed: The new section KPB 21.29.055 provides that the Planning Commission shall approve permit applications that meet all the mandatory conditions under KPB 21.29.050 and shall disapprove a permit application that does not meet all the conditions under KPB 21.29.050.

2) If the Planning Commission has the discretion to deny a CLUP application, what is the scope of that discretion?

- a. Should the Planning Commission have the discretion to deny a CLUP application which otherwise meets or exceeds all the conditions under KPB 21.29.050 if the Commission finds that the application does not meet the standards established under KPB 21.29.040?
- b. Should the Planning Commission have the discretion to deny a CLUP application which otherwise meets or exceeds all the conditions under KPB 21.29.050 **and** even if the Commission finds that the application meets the standards established under KPB 21.29.040?

3) If the Assembly decides the Planning Commission should have the discretion to deny a CLUP application, how can the applicable KPB Code (specifically KPB 21.29.040 and 21.29.050) be improved to best equip the Commission to make findings of fact, based on substantial evidence in the record, to withstand scrutiny on appeal and thereby reduce remands after appellate review?

Several tables are appended to this memo comparing current KPB Code language and the language proposed in Ordinance 02021-41¹ with the language drawn from the analogous codes from other second-class boroughs; namely, the Matanuska-Susitna Borough (Appendix A), the Ketchikan Gateway Borough (Appendix B), the Kodiak Island Borough (Appendix C), and the Fairbanks North Star Borough (Appendix D).

4) If the Assembly decides to eliminate the Planning Commission's discretion to deny CLUP applications, then what is the purpose of the Planning Commission's review of CLUP applications?

- a. If the Planning Commission's discretion is eliminated, then should review of CLUP applications simply become an administrative process?
- b. What effect will eliminating the Planning Commission's discretion to deny CLUP applications have on the public's ability to be heard?

Enclosures:

- (1) Appendix A
- (2) Appendix B
- (3) Appendix C
- (4) Appendix D
- (5) Sectional Analysis provided when O2019-30 was originally considered

¹ New Text Underlined; [DELETED TEXT BRACKETED]

APPENDIX A

KPB/MATANUSKA-SUSITNA BOROUGH

KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)	MSB 17.30.060 General Standards for Approval
A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:	(A) In granting an administrative permit or a conditional use permit, the director or commission must make the following findings:
1. Protects against the lowering of water sources serving other properties;	(1) that the use is not inconsistent with the applicable comprehensive plan;
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	(2) that the use will preserve the value, spirit, character, and integrity of the surrounding area;
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	(3) that the applicant has met all other requirements of this chapter pertaining to the use in question;
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	(4) that granting the permit will not be harmful to the public health, safety and general welfare; and
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	(5) that the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in MSB 17.30.050 (B).
6. Provides for alternate post-mining land uses[.];	
<u>7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
<u>8. Protects against traffic impacts; and</u>	
<u>9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

APPENDIX B
KPB/KETCHIKAN GATEWAY BOROUGH

KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)	KGB Code 18.55.050
A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:	(a) Purpose. A conditional use permit, issued hereunder, is a device which gives flexibility to the zoning ordinance in a uniform and controlled manner. It permits inclusion, in zones where it is permitted by the zoning ordinance (of which this chapter is part), of uses which are basically desirable to the community, but where the nature of the use will not permit its location at every location in the said zones without restrictions and conditions designed to fit the special problems which the use presents. A conditional use permit allows a landowner to put his property to a use which the zoning ordinance expressly permits: It does not allow a landowner to use his property in a manner forbidden by the zoning ordinance.
1. Protects against the lowering of water sources serving other properties;	(b) Standards. As express conditions precedent to the granting of any conditional use permit, a majority of the planning commission members (not merely a majority of the members present), after a public hearing, must find in writing that:
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	(1) The requested conditional use is reasonably necessary for the public health, safety, and general welfare; and
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	(2) The requested conditional use will not permanently or substantially injure the lawful use of neighboring uses; and
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	(3) The requested conditional use will generally be in harmony with the comprehensive plan; and
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	(4) The requested conditional use is a conditional use expressly permitted by the zoning ordinance in the zone in which the conditional use permit is requested.
6. Provides for alternate post-mining land uses[.];	
7. <u>Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
8. <u>Protects against traffic impacts; and</u>	
9. <u>Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

APPENDIX C

KPB/KODIAK ISLAND BOROUGH

KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)	KIB 17.200.050 General Standards for Approval²
A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:	A. <i>Approval.</i> If it is the finding of the commission, after consideration of staff's report and receipt of testimony at the public hearing, that the use proposed in the application, or under appropriate conditions or restrictions, meets all of the following, the conditional use permit shall be granted:
1. Protects against the lowering of water sources serving other properties;	1. That the conditional use will preserve the value, spirit, character and integrity of the surrounding area;
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	2. That the conditional use fulfills all other requirements of this chapter pertaining to the conditional use in question;
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	3. That granting the conditional use permit will not be harmful to the public health, safety, convenience and comfort;
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	4. That the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in subsections <u>(A)(1)</u> through <u>(3)</u> of this section;
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	5. If the permit is for a public use or structure, the commission must find that the proposed use or structure is located in a manner which will maximize public benefits.
6. Provides for alternate post-mining land uses[.];	
<u>7. Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
<u>8. Protects against traffic impacts; and</u>	
<u>9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

² Interestingly, KIB Code 17.200.050 contains the following subsection: "B. Denial. If the commission finds, after consideration of staff's report and receipt of testimony at the public hearing, that it cannot make all of the required findings in subsection A of this section it shall deny the conditional use permit."

APPENDIX D
KPB/FAIRBANKS NORTH STAR BOROUGH

KPB 21.29.040. Standards for sand, gravel or material sites. (As proposed in O2021-41)	FNSB 18.104.050 Procedures for conditional uses.
A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:	C. Hearing and Decision by the Planning Commission. The Planning Commission shall review, hear and decide whether or not to approve a request for a conditional use. The Planning Commission shall also consider and adopt findings in each of the following:
1. Protects against the lowering of water sources serving other properties;	1. Whether or not the proposed conditional use conforms to the intent and purpose of this title and of other ordinances and state statutes;
2. Protects against physical damage to [OTHER] <u>adjacent</u> properties;	2. Whether or not there are adequate existing sewage capacities, transportation facilities, energy and water supplies, and other public services to serve the proposed conditional use;
3. [MINIMIZES] <u>Protects against</u> off-site movement of dust;	3. Whether or not the proposed conditional use will protect the public health, safety and welfare.
4. [MINIMIZES] <u>Protects against</u> noise disturbance to other properties;	
5. [MINIMIZES] <u>Protects against</u> visual impacts of the material site; [AND]	
6. Provides for alternate post-mining land uses[.];	
7. <u>Protects Receiving Waters against adverse effects to fish and wildlife habitat;</u>	
8. <u>Protects against traffic impacts; and</u>	
9. <u>Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents.</u>	

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Mayor

FROM: Sean Kelley, Deputy Borough Attorney
Max Best, Planning Director

DATE: October 24, 2019

RE: Material Site Sectional Analysis

Please find following a sectional analysis of the amendments to the material site ordinance proposed by the Kenai Peninsula Borough Planning Commission.

1. In KPB 21.25.030. - Definitions.

A definition of "assisted living home" is added because a setback is proposed to be required from those facilities. A definition for "development plan" is added to support a new exemption from the material site ordinance that allows extraction for on-site development. A definition of "disturbed" is added and the definition of "exhausted" is eliminated. This change is made to avoid the situation where reclamation is delayed or avoided by asserting a material site is not yet exhausted, instead reclamation is in reference to disturbed areas. The term "disturbed" is also consistent with the state of Alaska reclamation language. A definition of "haul route" is added to support the proposed requirement for off-site dust suppression. A definition of "permit area" is added—this clarifies that a portion of a parcel, as opposed to an entire parcel, may be subject to a material site permit and defines what attributes will be considered part of the permitted area. A definition of "vicinity" is added to include all existing uses within the ½-mile notification area. This defines the area that should be considered when waiving or lessening the conditions on the permit.

Material Site Sectional Analysis

October 24, 2019

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2. KPB 21.29.010. -Material extraction exempt from obtaining a permit.

Subsection (D) adds a new exemption for parcels with a development plan on file with the planning department. This provision exempts from the ordinance short-term extraction that is incidental to site development for a building project.

3. KPB 21.29.030. -Application procedure.

Surface water protection measures are moved from the site plan section of the application to Paragraph (A)(8) because a surveyor is required to prepare the site plan, but an engineer is necessary to design the surface water protection measures.

Paragraph (A)(9)(f) is clarified to require more than 1 test hole placed anywhere on the parcel as that requirement allowed for taking the test hole at the highest elevation on a parcel which may not be the most accurate measurement of depth to groundwater. The proposed ordinance requires a test hole for every ten acres of excavated area and the test holes must be four feet below the proposed depth of excavation. This is consistent with the proposed increased requirement that excavation remain four feet above ground water which is consistent with Alaska DEC User's Manual Best Management Practices for Gravel/Rock Aggregate Extraction Projects – Protecting Surface Water & Groundwater Quality in Alaska (Sept. 2012) (hereinafter "Best Management Practices") and is also consistent with the current requirement for counter permits.

4. KPB 21.29.040. -Standards for sand, gravel or material sites.

Three new standards are added that either existing or proposed conditions will meet. Receiving waters are protected for fish and wildlife. This standard is consistent with mandatory condition #6 which requires a setback from waterbodies for material site extraction. Standard #8 is added to protect against traffic impacts which is consistent with the conditions regarding damage to borough roads, proposed ingress and egress, noise, and dust. Standard #9 is added because planning decisions should be consistent with the comprehensive plan.

Material Site Sectional Analysis

October 24, 2019

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5. KPB 21.20.050(A)(1) is changed to require staking the permit boundaries, rather than the parcel boundaries prior to issuance of the permit. (Staking the boundaries of the parcel is currently required at time of application.)
 6. KPB 21.20.050(A)(2) is changed to require a maximum buffer of 100 feet unless the operator can demonstrate to the planning commission that there are good reasons for a reduced buffer. A fence, vegetation, or berm or a combination thereof may be used as a buffer. Unlike the current code, the maximum vegetative buffer is not 50 feet but could be up to the entire 100 foot of buffer required. Another new requirement is that when a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required. This is to avoid the practice of making application and then destroying the vegetation that could have served as a buffer. Finally, there is a new condition allowing the buffer to be reduced with an approved alternate buffer plan which may consist of a berm, vegetation, fence or other type of buffer solution. For example, a moveable wall that would screen noise and the visual impact of the material site could be allowed.
 7. Language is revised in KPB 21.29.050(A)(3) for consistency by using the term "vicinity" rather than the term "adjacent".
 8. In KPB 21.20.050(A)(6) the buffer from waterbodies is increased to 200 feet. This condition is consistent with the Alaska DEC User Manual Best Management Practices and the newly proposed standard regarding the protection of "receiving waters".
 9. Paragraph KPB 21.29.050(A)(11) is revised to prohibit processing from 7 p.m. to 6 a.m. The current prohibition is 10 p.m. to 6 a.m. for rock crushing. Paragraph (b) is added to allow the planning commission to grant exceptions to the restrictions on processing hours based on a variety of factors including surrounding land uses, topography, screening the material site from adjacent properties and conditions placed on the permit by the planning commission to mitigate the noise, dust, and visual impacts caused by the material site.
 10. Paragraph KPB 21.29.050(A)(12)(b) clarifies the requirement for a reclamation plan and bonding for material sites that are not exempt from the state bonding requirements. This condition is further detailed in KPB 21.29.060(B) addressing reclamation.

Material Site Sectional Analysis

October 24, 2019

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11. Air quality is added to the list of other regulations in condition KPB 21.29.050(A)(13) that a material site is responsible for following.
 12. Language is revised in KPB 21.29.050(A)(14) for consistency by using the term "volunteered" rather than the term "voluntary".
 13. In KPB 21.29.050(A)(16), a new condition clarifies that a material site permit shall not be issued until the 15-day appeal period has passed to avoid someone operating prior to an appeal being filed only to be required to cease because of the stay required by KPB 21.20.260.
 14. A new condition is added in KPB 21.29.050(A)(17), Sound Level. The condition requires that sounds levels from material site activities not exceed 75 dB(A), measured at or within the property boundary of the material site. Some exceptions are made to increase that limit for sound of a short duration between 7 a.m. and 7 p.m. The planning commission may reduce the sound level requirements in consideration of the existing land uses in the vicinity. This sound level requirement has a sunset clause of 365 days after adoption unless extended by the assembly in order to gather information on noise levels and ensure that this new requirement is workable for site operations. This condition meets the standard regarding reduction of noise impacts generated by a material site.
 15. KPB 21.29.050(A)(18) is a new requirement that white noise devices be used instead of high-pitched tone alarms. This requirement may be waived based on existing land uses in the vicinity of the material site. This condition meets the standard regarding reduction of noise impacts generated by a material site.
 16. KPB 21.29.050(A)(19) is a new condition allowing the planning commission or planning director as appropriate to determine the points of ingress and egress of a material site as concerns regarding the direction of haul route traffic are frequently raised. Driveway authorizations for access to public roads must be received prior to permit issuance. This condition meets the standards regarding traffic, noise, and dust.
 17. KPB 21.29.050(A)(20) is a new condition requiring dust suppression on haul routes. The condition can be relaxed based on surrounding land uses. This condition meets the standard regarding reduction of dust generated by material sites.

Material Site Sectional Analysis

October 24, 2019

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18. KPB 21.29.050(A)(21) provides that if surface water protection measures are to be provided as defined in KPB 21.29.030(A)(8), they must be approved by a licensed civil engineer.
 19. KPB 21.29.050(A)(22) is a new condition requiring material sites to maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation. This condition is consistent with the new requirement that excavation remain four feet above groundwater. This condition addresses the standard of protection of surrounding water sources.
 20. KPB 21.29.050(A)(23) is a new requirement for a setback from local option zoning districts, schools, child care facilities, senior centers, assisted living homes and licensed health care facilities.
 21. KPB 21.20.055, Decision, is added which clarifies the planning commission's authority to approve or disapprove a permit application and authority to modify permit conditions.
 22. KPB 21.29.060 is amended to clarify that reclamation plans last for five years consistent with the five-year renewal requirement for material site permits. Bonding is required at \$2000.00 per acre for all acreage included in the five-year reclamation plan, or the planning director may accept a civil engineer's estimate for determining the amount of the bond. If the applicant is bonded with the state, the applicant need not be bonded with the borough.
 23. KPB 21.29.120, Prior Existing Uses, is amended to delete the provision regarding terminating abandoned material site permits since it was only applicable to permits that did not operate between May 21, 1996 and May 21, 2011. New language is added requiring PEUs to provide proof of compliance with the state reclamation, bonding, and letter of intent requirements. Failure to file this documentation may result in an enforcement action.
 24. KPB 21.50.055, Fines, is amended to include a \$300.00 fine for failure to provide a reclamation plan and proof of bonding or letter of intent pursuant to KPB 21.29.120.

Broyles, Randi

From: Hans Bilben <catchalaska@alaska.net>
Sent: Tuesday, February 8, 2022 6:12 PM
To: Blankenship, Johni
Subject: <EXTERNAL-SENDER>Info for 2/15/22 Committee of the Whole (Material Site Ordinance)

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

Date:
2/8/2022

To:
KPB Assembly Members

Subject:
KPB 21.29.050 (A)(2) Buffer Area/Zone

Assembly Members,

During the January 18th Assembly meeting Gina DeBardelaben of McLane Consulting spoke concerning the proposed material site ordinance revision. She followed up with a letter to the Assembly dated January 19th. While most of Gina's proposals have merit and should be considered, her proposal to allow an applicant to extract material from under and within the Buffer Zone is seriously flawed.

The Buffer Zone is just what the name implies, a buffer to protect neighboring property owners from noise, visual, and to some degree dust impacts. The buffer zone is designed in accordance with existing uses of neighboring properties, and may consist of fifty feet of undisturbed natural vegetation, a six foot earthen berm with a 2/1 slope, a six foot fence, or a combination of the three. In cases where there are no neighboring properties that will have negative impacts, the buffer zone can be minimal or nonexistent. When existing uses dictate the need for protections the Buffer Zone is designed accordingly. The reason for the entire CLUP ordinance is stated in **KPB 21.25.020 Purpose**. It says "...impose minimum standards for certain land uses which may be damaging to the public health, safety, and welfare..." Those minimum standards are spelled out in **KPB 21.29.040** and need to be adhered to during all aspects of the proposed use.

Gina's final statement that allowing excavation in the Buffer Zone will reduce need for additional material sites has no merit, as the need for additional sites will be totally demand driven. Another oversight in her proposal is just where is all of the material going to come from to replace and rebuild the Buffer Zone after excavating twenty feet or more in depth.

Allowing excavation in the Buffer Zone deprives borough residents of the protections spelled out in the ordinance, contradicts the stated Purpose of the entire ordinance, and should not be allowed under any circumstances.

Thank you for your service to the people of the Kenai Peninsula,

Broyles, Randi

From: Hans Bilben <catchalaska@alaska.net>
Sent: Wednesday, February 9, 2022 10:52 AM
To: Blankenship, Johni
Subject: <EXTERNAL-SENDER> Supporting Documents for proposed material site amendments.

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

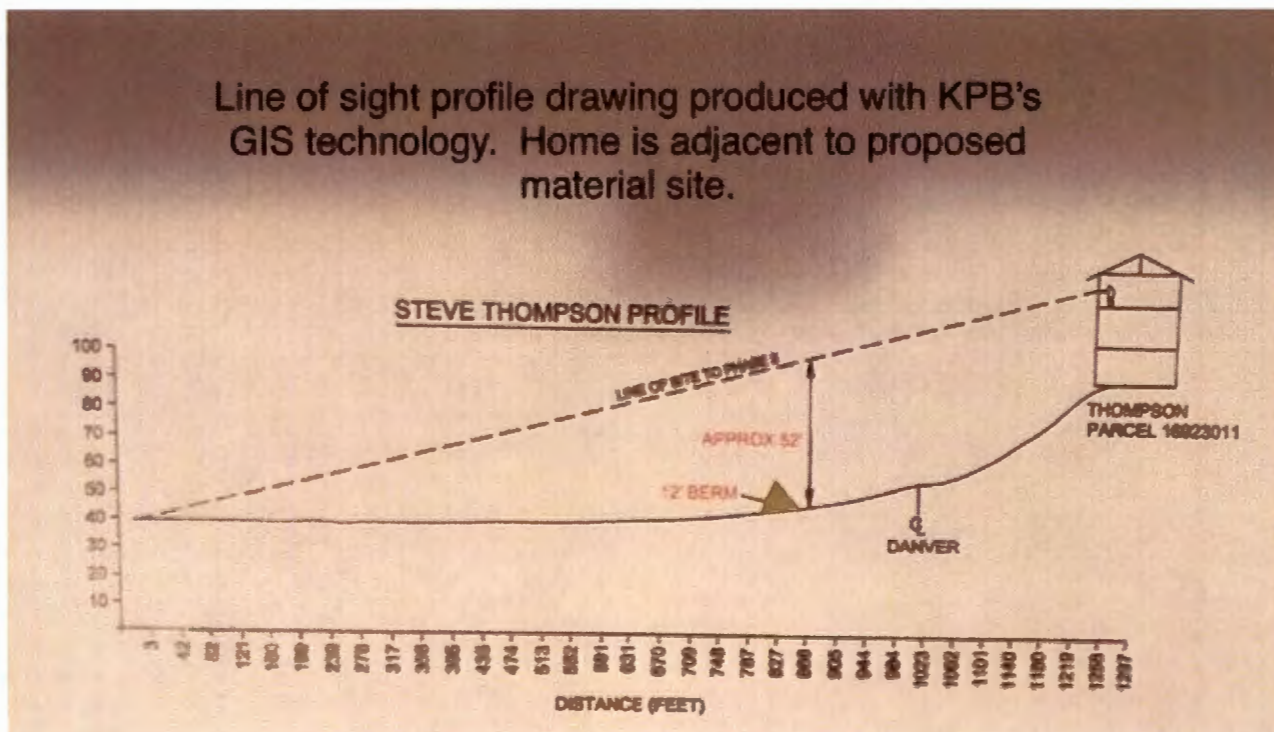
Hi Johni,

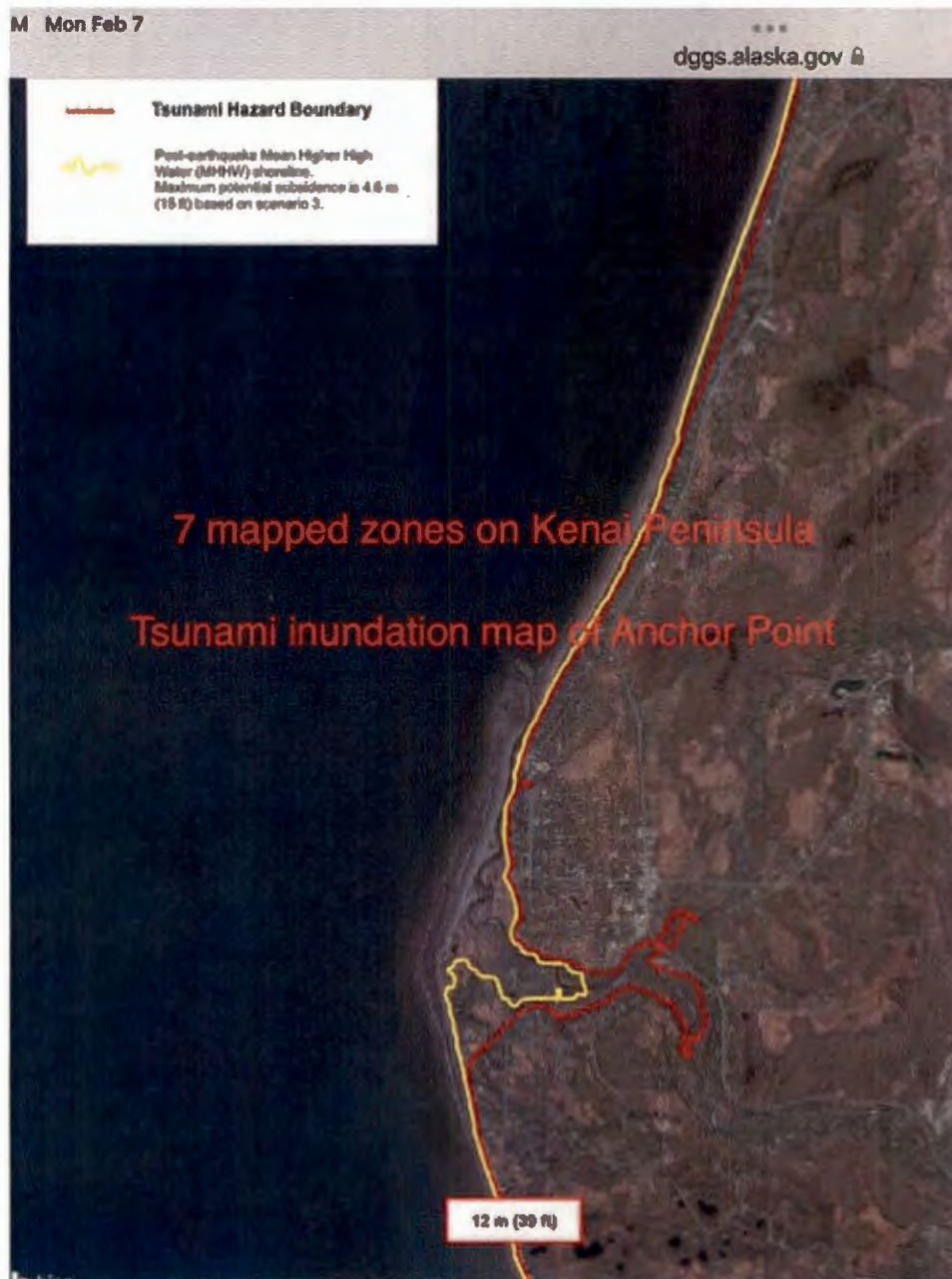
I should have sent these with the proposed amendments yesterday, but OOPS! If you could include these supporting documents with my proposed amendments to the material site ordinance for the Committee of the Whole session on 2/15/2022 that would be great!!

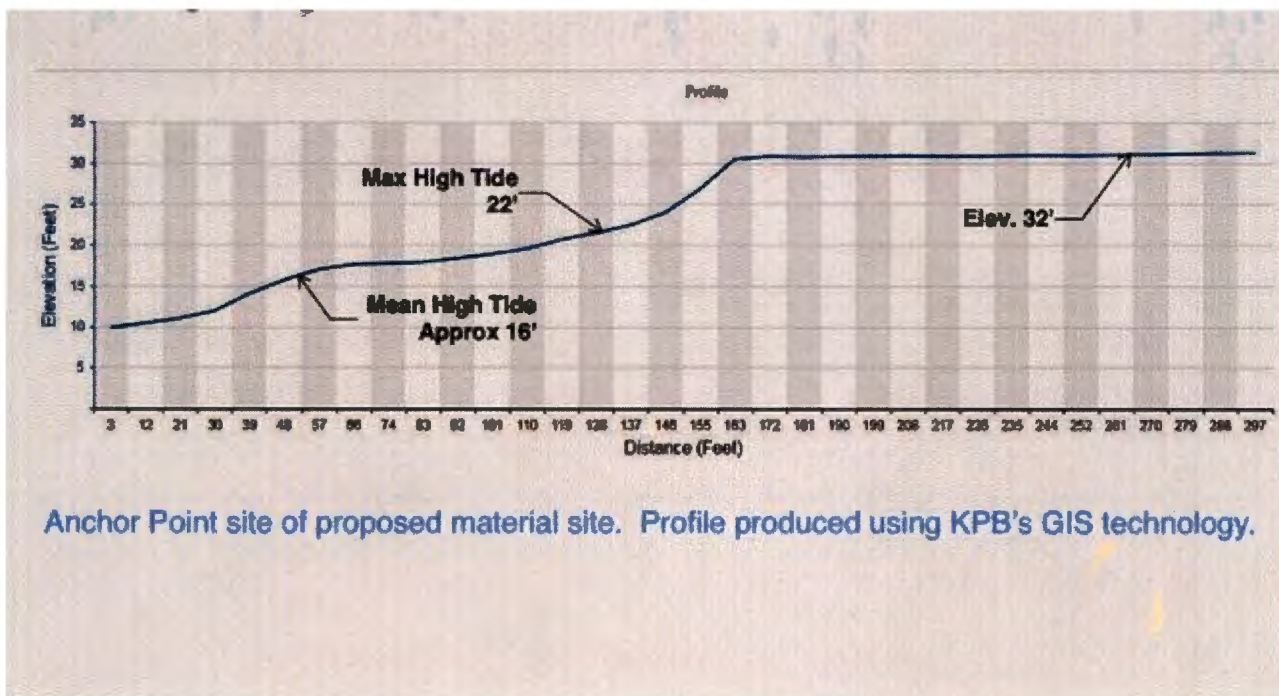
Thanks,

Hans Bilben

Document in support of proposed amendment 21.29.050 (A)(2)(b) Buffer Area.







8:37 AM Wed Feb 9

sms-tsunami-warning.com

100%

rebuilding and road reconstruction) are critical.



Image: Tsunami environmental impact

Combined with the issue of waste is that of hazardous materials and toxic substances that can be inadvertently mixed up with ordinary debris. These include asbestos, oil fuel, and other industrial raw materials and chemicals. Rapid clean-up of affected areas can result in inappropriate disposal methods, including air burning and open dumping, leading to secondary impacts on the environment.

Contamination of soil and water is the second key environmental impact of a tsunami. Salination of water bodies such as rivers, wells, inland lakes, and groundwater aquifers can occur in most cases. This also affects the soil fertility of agricultural lands due to salination and debris contamination, which will affect yields in the medium and long term. Sewage, septic tanks and toilets are damaged contaminating the water supply.

Last but not least, there may be radiation resulting from damage to nuclear plants, as it happened in Japan in March 2011. Since radiation exists for a long time, it has the capacity to inflict damage upon anything exposed to it. Radiation is most dangerous to animals and humans causing destruction as molecules lose their electrons. The damage caused by radiation to the DNA structure determines birth defects, cancers even death.

Cost

Massive costs hit communities and nations when a tsunami happens. Victims and survivors of the tsunami need immediate help from rescue teams.

Broyles, Randi

From: Hans Bilben <catchalaska@alaska.net>
Sent: Tuesday, February 8, 2022 6:00 PM
To: Blankenship, Johni
Cc: Aeschliman, Melanie; Kelley, Sean; Chesley, Lane
Subject: <EXTERNAL-SENDER>Material Site Ordinance Amendments
Attachments: Standard #1 Amendment.pages; CLUP Category Amendment.pages; Buffer Area amendments.pages; Waterbody Amendments.pages

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Hi Johni,

Please provide these proposed amendments to the Committee of the Whole dealing with the Material Site Ordinance on 2/15/2022. If there is any trouble opening these because of format, let me know and I'll adjust accordingly!

Thanks,

Hans Bilben

1. 21.29.050 (A)(2) Buffer Area (3 amendments)

Replace (a) with:

- a. A buffer area shall be established between the area of excavation and the parcel boundaries. The buffer area for a Class 1 (processing) CLUP shall consist of the following: A minimum fifty feet of undisturbed natural vegetation and a minimum twelve-foot earthen berm with a minimum 2/1 slope. The buffer area for a Class 2 (non-processing) CLUP shall consist of one or any combination of the following: Fifty feet of undisturbed natural vegetation, a minimum six-foot fence, a minimum six-foot earthen berm with a minimum 2/1 slope.
-

- 2. Add a new paragraph to 21.29.050 (A)(2) Buffer Area—maybe call it (b) and move remainder of letters down one?**

- b. KPB's Geographic Information System (GIS) technology will be utilized in the design of the buffer area when differing elevations exist between the proposed site and neighboring property owners. Using this technology, line of sight profile drawings from the uppermost inhabitable level of existing properties located within one thousand feet of the proposed parcel boundary shall be utilized in the determination of sufficiency of the buffer area.
-

3. In the revised proposal under Buffer Area (c) the word “**not**” is omitted from what the wording was in the current (**see 21.29.050 (A)(2) in original**) ordinance. This is a huge takeaway from borough residents and I believe that when it was discussed at the material site group they decided to keep the word “**not**”. As worded, the proposed revision would include any easements between a property owner and a gravel pit as part of the Buffer Area.

21.29.050 (A)(2)(c) Should be amended to read:

c. Where an easement exists, a buffer shall **not** overlap the easement, unless otherwise conditioned by the planning commission or planning director.

1. Three Amendments to create two Categories of CLUPs.

21.29.020 (B) Conditional Land Use Permit.

B. A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. [~~A CLUP IS REQUIRED FOR MATERIALS PROCESSING.~~] **CLUPs will be categorized at the time of application as: Class 1 (Processing), or Class 2 (Non-Processing).** A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPs and the provisions of 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of 21.29 are controlling.

2. 21.29.050 (A) Permit Conditions.

A. The following mandatory conditions apply to counter permits, [~~CLUPs~~] **Class 1 CLUPs, and Class 2 CLUPs** issued for sand, gravel, or material sites:

3. 21.29.050 (A)(3) Permit Conditions

3. Processing. In the case of a [~~CLUP~~] **Class 1 (processing) CLUP**, any equipment which conditions or processes material must be operated at least [~~300~~] **500** feet from the parcel boundaries. At its discretion, the planning commission may waive the [~~300~~] **500** foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time.

Amendment to Standards

21.29.040 (A)(1) Standards for sand, gravel, or material sites.

1. Protects against the lowering and/or contamination of water sources serving other properties;

Add new paragraphs (c) and (d) to this section:

21.29.050 (A)(6) Waterbodies.

c. No material site extraction shall be allowed within the boundaries of a tsunami inundation area. These areas are mapped by the Alaska DNR, in partnership with the Alaska Earthquake Center and the Alaska Division of Homeland Security and Emergency Management.

d. When material sites are proposed near waterways and estuaries which support salmon rearing habitat existing ground water flow information shall be utilized to determine if standards will be met.

Mr. Brent Johnson, President,
Kenai Peninsula Borough Assembly
and Assembly members

Dear Mr. Johnson and Assembly Members,

Reading about the wish of the Assembly to review the Gravel Pit Ordinance, reminded me of my years if involvement with this.

Drew Scalzi wrote the first one, which the Gravel folks hated, they did not feel it was necessary to control their businesses, and deeply resented the efforts. I got involved thanks to Ann Byes of Anchor Point, who lives near a prime example of gravel pit abuse, where a house stands totally isolated by the deep extractions all around it. She and I were concerned that future extraction would not affect residents nearby, and had asked for at least a 300 ft. distance from a well and the proposed gravel pit.. Before it was voted on, that was changed to 100 ft. At that time Committee meetings were behind closed doors and discussion at the meetings very limited. (During my tenure we changed that.)

So, during my tenure we took another look at it and rewrote it, again to the utter chagrin of the businesses. At that time, as you are now, we came up against a subdivision that faces a busy gravel pit just outside the quiet subdivision, and those folks are not happy about it. They can get local option zoning within the subdivision, but no protection outside the subdivision.

It is time for the Assembly to consider zoning certain areas as residential, that would not allow gravel pits, or commercial businesses. It is the only way to ensure established subdivisions will be protected from commercial disturbances.

In the past there has been a huge outcry against zoning, but I think the time has come. I see the planning committee listening to impassioned cries against proposed gravel pits, and I can empathize. It is impossible to create an ordinance that will protect them.

And somehow we have to recognize there is a need for gravel in order to build anything, roads, homes, etc. That is a vital business on the Peninsula.

I do not envy you what lies ahead. I wish you the best in your endeavors.

Sincerely,

Milli Martin
P.O. Box 2652
Homer, Alaska 99603

Broyles, Randi

From: Blankenship, Johni
Sent: Wednesday, January 26, 2022 11:54 AM
To: Broyles, Randi
Subject: FW: <EXTERNAL-SENDER>Fwd: KPB Ordinance 2021 - 41

From: Larry Smith <dlconst.smith@gmail.com>
Sent: Wednesday, January 26, 2022 11:52 AM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Fwd: KPB Ordinance 2021 - 41

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Please include this in the Assembly packet for the next meeting wherein KPB Ordinance 2021-41 is considered. Thank you.

----- Forwarded message -----

From: **Larry Smith** <dlconst.smith@gmail.com>
Date: Wed, Jan 26, 2022 at 11:47 AM
Subject: KPB Ordinance 2021 - 41
To: <bjohnson@kpb.us>, <bhibbert@kpb.us>, <rderkevorkian@kpb.us>, <bjorkman@kpb.us>, <tysoncox@kpb.us>, <belam@kpb.us>, <cecklund@kpb.us>, <lchesley@kpb.us>, <mtupper@kpb.us>, Pierce, Charlie <cpierce@kpb.us>, Kpac Association <kpacassociation@yahoo.com>

Ladies and Gentlemen,

I attended the KPB Assembly meeting on January 18, 2022 and testified against this Ordinance. I do not know how many emails you received in support of this Ordinance but seem to recall that everyone (at least a majority) who testified in person that evening testified against the Ordinance. And yet at the conclusion of the public testimony the Assembly introduced the Ordinance and offered a number of amendments; some of which were adopted and others rejected.

Therefore I wonder who it is that you are representing? Certainly not the public or your constituents since in my view they requested that you vote down the Ordinance. Are you representing the KPB Planning Commission or the KPB Administration? Why are you moving forward with this Ordinance?

--

Larry Smith

President
D & L Construction Co., Inc.
(907) 262-6160
(907) 262-6163 Fax
(907) 398-4284 Cell

--

Larry Smith

President

D & L Construction Co., Inc.

(907) 262-6160

(907) 262-6163 Fax

(907) 398-4284 Cell

Dibble Creek Rock Ltd.

January 20, 2022

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

RE: Review of Ordinance 2021-41

Dibble Creek Rock Ltd. (DCR) does not support the current proposed changes regarding KPB Ordinance 2021-41. We simply feel that the Borough needs to put more research into logical, effective changes to the ordinance that make sense. Not only economic sense, but changes that are geared towards efficiency, usefulness, and overall production for the operators and to stop acting upon the skewed emotions of landowners.

The proposed changes to the ordinance currently read very distorted. It is very misguided and will ultimately result in more complaints to the Borough, which is why the code was written in the first place, to reduce complaints. Wording within the code should be heavily modified, eliminating wording or phrases that have nothing to do with working within a material site or phrases that relay unattainable results. Wording such as "other uses, protects against, minimizes, vicinity" are just a few examples that are vague and subject to interpretation. Possibly more appropriate wording could be considered. It also appears there is potential for unnecessary overlap in regulation between the Borough and other State and Federal agencies.

As one of the larger gravel processors on the Kenai Peninsula, we are highly disappointed that no one from the KPB Material Site Work Group reached out to Dibble Creek Rock Ltd. in the past two years for our input or suggestions for modifications to the ordinance. What operators did they reach out to for input?

The growing need for **quality**, processed gravel throughout the Kenai Peninsula will become increasingly difficult to attain. Product specifications need to be met to ensure that aggregates of superior quality are produced for not only maintaining roads, but for home and building foundations on less than favorable land conditions. Quality aggregates are a big part of the ready-mix concrete and asphalt manufacturing process. Products that prove to be crucial components in the road building and general construction industry. Challenging demands put forth in the new ordinance would drive the cost of doing business through the roof. In turn, dramatically increasing the price of materials to the end user (State, Feds, Borough, Homeowners).

We do hope that our thoughts, along with others on the Kenai Peninsula are genuinely taken into consideration.

Respectfully,

Cap Shafer
President



To the Kenai Peninsula Borough Assembly,

The Kenai Peninsula Aggregate and Contractors Association has received over a hundred phone calls from our members and the public in regard to the actions of the assembly at the meeting conducted on the 18th of January, 2022. All these calls asked us two things. What is going on?!? Why did the assembly go against the will of the people? Specifically, callers are concerned about the Assembly's decision to do so.

Several of our members have asked the Association to write a letter as a plea of communication and education, asking members of the assembly to contact them before any further amendments are considered. Most of our members and the public are concerned about what damage to the industry, economy, property rights, and equal protection any further amendments will do without industry input.

Many calls received have a consensus that further amendments without education of the industry will result in negative impacts. These impacts have varied from the closure of existing material sites, closure to the public, doubling or tripling of material costs, or significant increase in the cost of material. This will unnecessarily impact the economy of the Kenai peninsula and quite possibly affect the safety of the residents in many ways. Many worried that if the cost of sand increases dramatically, roads will receive less maintenance, causing potentially fatal accidents. That is just the most obvious concern, as we are in the season of slick roads and the residents have already experienced cutbacks in road maintenance during the Walker administration at the state level. We can see how voters responded when Government made decisions that affected basic needs and took advice from special interests. One might note the current situation and reaction of the trucking industry in Canada, due to adverse regulation.

As a plea for communication and education, these members of our association below have asked their names and phone numbers be included. Thank you for your full consideration in this matter.

Ed Martin III, President, KPACA 252-2554.

Cap Shafer, Dibble Creek Rock, 399-4550

Larry Smith, D&L Construction, 398-4284

Robert Peterkin, Northwind Properties LLC, 252-7482

Dave Yragui, 252-1891

Dan Michel, Valley View Gravel, 252-1833

Jake Denbrock, SND Enterprises, 252-0156

Glen Martin, Great Northern Construction and Management, 252-5326



Lou Oliva, L&J Enterprises, 252-1300

Marty Oberg, Peninsula Construction, 398-6331

Matt Letzring, Letzring Inc., 398-5263

Mark Rozak, Steam on Wheels, 252-2335

Troy Jones, East Road Services Inc., 235-6574, 399-1297

Terry Best, 398-1268

Chad Hammond, Hammond Trucking, 398-6715

Scott Foster, Foster Construction, 394-1977

Dennis Merkes, Merkes Builders, 398-3369

Richard Encelewski, Ninilchik Native Assoc., 348-0884, 567-3866

Cole Peterson, Metco Alaska llc, 362-7142

Randy Chumley, A&L Construction, 398-3048

Sean McKeown, Knik Construction, 907-545-3637

From: K, E, & E Martin <keeconstructionllc@yahoo.com>
Sent: Sunday, January 30, 2022 12:14 PM
To: Pierce, Charlie <CPierce@kpb.us>; Planning Dept, <planning@kpb.us>; Kelley, Sean <skelley@kpb.us>; Blankenship, Johni <JBlankenship@kpb.us>
Subject: Fw: <EXTERNAL-SENDER>The Doctrine of Estoppel

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KPB Assembly & Borough Mayor,
 Please consider a no vote on 2021-41 or any substitution.

Go back to square one, with a work group made up of 4 individuals from the Industry & 4 Concerned Property Owners only. Allow them to find consensus on the issues that the Government has powers to enforce **& only those powers (ie: ZONING or not under a second class Borough ?)**. Anything beyond lawful KPB Code & Enforcement powers needs to be resolved in Civil Court. The KPB Administration shouldn't become referee for conflicts ahead or after citizen civil controversies regarding Private Property Rights. .

The government should provide assistance (information) of Law, Jurisdiction & by what means to the KPB can Enforce Code! We feel this is the only equitable solution to this controversy now appearing currently before the Administration, Assembly & it's citizens.

As far as the requested "REMAND " on the civil cases , stay out of it entirely regardless of any demand of the Superior Court order(s). The only response should be "we did our job now do yours & we advise consideration of applying the Doctrine of ESTOPPEL.

It appears to us the time to defend the permits the KPB has issued has maybe long past! You failed to honestly do any defense for the Permit Holders. Why is that ? Being the party who issued the permit(s), you should defend it/them!

No Government should be the catalyst for controversy! Please consider our views.
 Ed & Kathleen Martin.

KEE Construction, LLC

January 6, 2022

Mr. Ed Martin III
President
Kenai Peninsula Aggregate and Contractors Association
via email: Kpac Association [kpacassociation@yahoo.com]

Re: Comments on KPB proposed material site ordinance amendments

Dear Mr. Martin:

You have requested that I review the recently proposed Kenai Peninsula Borough material site ordinance amendments introduced December 7, 2021, by the Mayor along with your suggested revisions to the amendments and provide comments. You and I have also discussed the process leading up to these proposed amendments. My comments are provided pro bono as a courtesy to your organization, as well as to the Kenai Peninsula Borough and all residents and businesses interested in this topic.

I do not have any current clients or projects in the Borough that I would consider a conflict of interest, however I do have more than 39 years of experience performing hydrogeologic work in Alaska with some of it on the Kenai Peninsula, as well as relevant experience being involved in the regulation and management of complex resource development issues from both government and private sector perspectives.

My comments are grouped into two areas: 1) the process of developing these amendments; and 2) technical considerations regarding gravel pits and groundwater resources.

Process

The draft ordinance amendments state that:

the assembly established a material site work group by adoption of resolution 2018-004 (Substitute) to engage in a collaborative discussion involving the public and industry to make recommendations regarding the material site code;

From our discussion, it is obvious that the material site work group did not operate on a level playing field, but rather produced its findings through majority vote. In my opinion, this is a fatal flaw of the process that resulted in the current proposals.

As background, I have been involved in two work groups regarding very complex and controversial topics that were highly successful as a result of operating on a level playing field. By this I mean that all decisions, large and small, were made by consensus, not majority rule.

In the 1980s, there was considerable concern over potential and actual groundwater and water well contamination issues on the Kenai Peninsula related to the oil and gas industry. The result was that I, as an employee of the Alaska Division of Geological and Geophysical Surveys, co-

5701 PENNY CIRCLE, ANCHORAGE, AK, 99516

jamunter@arctic.net

PHONE (907) 345-0165; FAX (907) 348-8592

chaired the Kenai Peninsula Groundwater Task Force. This task force obtained considerable funding from the oil and gas industry that was operating on the peninsula at the time to conduct groundwater studies to better understand groundwater resources and disposal sites such as the Sterling Special Waste Management Site. The condition placed on the task force by industry representatives in order to participate and provide funding was that of a "level playing field". While sometimes it took quite a bit of time to achieve consensus, the results were durable and not very controversial.

More recently, the Alaska Department of Environmental Conservation initiated a statewide effort to regulate the drilling of single-family domestic wells. A Stakeholders Working Group (SWG) was convened to explore the issues, and again, all work was conducted by consensus. The group was hugely successful in developing a set of Best Management Practices for drilling private single-family wells, in developing another document for properly decommissioning wells and in creating a new website with numerous resources for well owners:
<https://dec.alaska.gov/eh/dw/dwp/private-wells/>.

I bring these examples to your attention because, in reviewing the proposed amendments and your comments, it is apparent that these proposed amendments are complex and controversial, often interrelate to one another, and would benefit greatly from more work by a working group operating collaboratively by consensus prior to being considered for adoption.

It is worth noting that in our society ever-tightening environmental regulations are typically a one-way street. The long-term harm from over-regulating resource extraction is increasing costs and increasing scarcity of the resource on the open market. Sand and gravel resources are fundamentally important to the orderly economic development of the Kenai Peninsula Borough, are not highly transportable from other locations, and are dependent on time-limited extraction activities at most sites as a result of resource depletion. In south-central Alaska, there are many examples of reclaimed former gravel pits (some with ponds) that are important assets for long-term community development and wildlife.

A working group operating by consensus should be afforded whatever time it takes to achieve results. They should self-organize, with Chairs or Co-Chairs selected on the basis of impartial administration of the group. A potentially long timeframe should be considered for this important work because the KPB currently has a functional ordinance governing gravel resource extraction to serve in the interim. While many would likely consider the existing ordinances imperfect, it seems that it is far more important to get revisions right, rather than to get them fast.

In a nutshell, the existing proposed amendments should be scrapped and the whole process should start over with a level playing field amongst all stakeholders who agree to work in a collaborative and productive atmosphere towards improvements to the existing ordinances.

Technical considerations

There are many legitimate issues associated with gravel pits such as noise, dust, traffic, visual impacts, etc. which I will not address. One of the key concerns that commonly arises with gravel pits is impacts to groundwater or surface water resources. This is important, because while land

and gravel resources are typically privately owned, water resources in Alaska are reserved to the people for common use and responsibility for their management is delegated to agencies. Also, water has the uncanny habit of moving from place to place. So what happens to water at a gravel pit does not stay at the gravel pit.

The existing ordinance allows excavation into the water table under certain conditions. Proposed revisions by Kpac suggest loosening those restrictions and allowing more general mining of sand and gravel to a depth of up to 15 feet below the water table.

There is not a clear-cut answer to how mining of aggregate resources below the water table should be regulated. As described above, this should be subjected to deliberation by a stakeholder working group operating under consensus rules. Below, however are some considerations.

First, mining resources below the water table is not inherently "bad" or "not permissible" by agencies. The recently completed and approved Environmental Impact Statement for the proposed Donlin gold mine in southwest Alaska, for example, proposes digging an open pit about two miles long, one mile wide and more than 1/4 mile deep that would fill almost to the brim after mining to form a pit lake. With mining below the water table, however, precautions are warranted to protect nearby users of groundwater and potentially-affected surface water resources, wetlands and wildlife.

Throughout south-central Alaska, and notably in the Anchor Point area, numerous old gravel pits are now flooded to form small lakes or ponds. Some of these features provide wildlife habitat and potential visual and recreational enhancement for neighboring homes and businesses.

During gravel pit operations, one of the largest concerns about groundwater contamination comes from accidental fuel spills. All gravel pits should have rigorous and robust measures in place to prevent such spills and some degree of capacity to clean up spills if they occur.

The current ordinance calls for a two-foot vertical separation between the bottom of a pit and the seasonal high water table under most conditions. The rationale for this separation is not clear. In the event of a sizeable fuel spill, such a buffer would not be very useful in preventing fuel from reaching the water table. In a gravel pit, fuel would tend to infiltrate vertically downward from the spill point and "pancake" out on the surface of the water table two feet or more below the ground. The pore-space storage that would capture spilled fuel before reaching the water table could be as low as about 10 gallons. Once a spill encountered the water table, dissolved fuel components would begin to migrate in a downgradient direction along with the groundwater. To be most effective, cleanup should be rapid and may entail excavating a large quantity of contaminated sand and gravel. In contrast, if a fuel spill reached a gravel pit pond, the resulting sheen and/or floating product would likely be immediately obvious. Sorbents and/or booms stored on-site could be rapidly deployed to contain and mop up the bulk of the contamination.

Some perspective on regulatory requirements for two- or four-foot separation to the water table may be useful. It is a common regulatory requirement that the distance between the bottom of a septic system leachfield and the top of the seasonal high water table must be at least four feet.

The reason for this requirement is that wastewater percolating downward from leachfields needs to receive aerobic (i.e. oxygenated) subsurface treatment in the unsaturated zone between the bottom of the leachfield and the low-oxygen saturated sediments below the water table in order to treat and removed certain compounds and microorganisms from the wastewater. Such logic does not apply to gravel pits where no wastewater treatment occurs.

Part of Kpac's proposed revision to ordinances is that, in order to make wider and taller surrounding berms (10 ft high rather than 6 feet high) and simultaneously preserve the economic viability of extracting aggregate resources, excavation below the water table should be considered along with appropriate protective measures.

A consequence of extracting sand and gravel below the water table is that the total footprint of gravel pits in any given area may be reduced. This could occur because if there is a fixed market demand for aggregate the aggregate has to come from somewhere. If pits were able to extract an additional 17 vertical feet (two feet above and 15 feet below the water table) of aggregate resources from part of their operation, then it follows that fewer net acres of land surface would need to be disturbed to meet the market demand.

One useful protective measure for water table excavation would be the prohibited distance to surrounding water wells or even potential water well locations on nearby undeveloped property. A gravel pit should not "shadow" a potential well location on a nearby property such that the property is undevelopable using a well and a septic system. A large public water-supply well, for example, must be sited more than 200 feet from certain potential sources of contamination, and that distance should be considered as suitably applicable for private well distances from gravel pit ponds, as well.

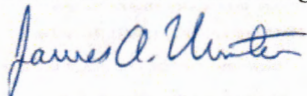
Another potential contaminant source from excavating below the water table is fine silt or clay that could become entrained in groundwater and travel some distance towards a well. Again, a protective distance to surrounding wells, especially if groundwater flow directions can be determined, would likely be the most practical way of reducing risk from entrained silt or clay in groundwater.

The concept of requiring the bottom of an excavation to be 15 feet above nearby private well intake openings is only marginally protective. This is because, if a contaminant plume should develop in groundwater, lateral and vertical dispersion (i.e. spreading) of the plume could readily exceed this amount. Also, the construction details of nearby wells are not always known.

Should you have any questions, please call me at 907-345-0165 or 907-727-6310 (cell).

Sincerely,

J. A. Munter Consulting, Inc.



James A. Munter, CPG

Certified Ground Water Professional No. 119481

Alaska Licensed Professional Geologist No. 568

Comments on KPB materials site revisions

Page 4 of 4

January 6, 2022

Turner, Michele

Subject: FW: <EXTERNAL-SENDER>Fw: DEC Drinking Water regulations related to gravel extraction
Attachments: image001.png

From: Kpac Association <kpacassociation@yahoo.com>
Sent: Thursday, January 20, 2022 2:08 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Fw: DEC Drinking Water regulations related to gravel extraction

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Hi Johni,
Please forward to the assembly.
Ed Martin III
President
KPACA
252-2554

----- Forwarded Message -----

From: Palmer, Charley (DEC) <charley.palmer@alaska.gov>
To: kpacassociation@yahoo.com <kpacassociation@yahoo.com>
Cc: Rypkema, James (DEC) <james.rypkema@alaska.gov>; Miller, Christopher C (DEC) <chris.miller@alaska.gov>
Sent: Monday, January 10, 2022, 10:06:57 AM GMT-9
Subject: DEC Drinking Water regulations related to gravel extraction

Hi Ed Martin,

As mentioned before, we have little authority with respect to land use activities near a public water system in our current regulations, 18 AAC 80. For that reason, we did work with the Division of Water to update a Best Management Practices document found at <https://dec.alaska.gov/water/wastewater/stormwater/gravel/>, to include consideration of nearby public water systems. I've cc'd Jim Rypkema in case he has anything to add regarding the BMP document. I've also cc'd my supervisor, Chris Miller, just so he's aware of our communication.

As requested, below are relevant regulations that could apply:

18 AAC 80.015. Well protection, source water protection, and well decommissioning.

(a) A person may not

(1) cause pollution or contamination to enter a public water system; or

(2) create or maintain a condition that has a significant potential to cause or allow the pollution or contamination of a public water system.

(d) A person who owns or is responsible for a well, hole, or excavation into a water supply source or potential water supply source for a public water system shall use appropriate methods as follows to protect the water supply source as required under (a) of this section:

(1) if the well, hole, or excavation is either active or temporarily inactive, the person shall maintain the well, hole, or excavation using appropriate methods, including methods set out in (b) of this section;

(2) if the well, hole, or excavation is permanently inactive or abandoned, the person shall protect, seal, or fill the well, hole, or excavation using appropriate methods approved by the department as set out in (e) of this section;

(3) in this subsection “wells, holes, or excavations” include

(A) a well that may or may not be used for potable water;

(B) a hole drilled, augured, or jetted for the purpose of subsurface exploration or sampling;

(C) a cathodic protection well; or

(D) another form of excavation that might contaminate a public water supply source.

18 AAC 80.020. Minimum separation distances.

(a) A person may not construct, install, maintain, or operate a public water system unless the minimum separation distances in Table A, in this subsection, are maintained between a potential source of contamination and a drinking water source for the public water system.

TABLE A.
Minimum Separation Distances^a Between Drinking
Water Sources and Potential Sources of Contamination
(Measured horizontally in feet)

Type of Drinking Water System	
Potential Sources of Contamination	Community Water Systems, Non-transient Non-Community Water Systems, and Transient Non-Community Water Systems
Wastewater treatment works, ^b wastewater disposal system, ^b pit privy, ^b sewer manhole, lift station, cleanout	200
Community sewer line, holding tank, ^b other potential sources of contamination ^c	200
Private sewer line, petroleum lines and storage tanks, ^d drinking water treatment waste ^e	100

Notes to Table A:

^a These minimum distances will be expanded, or additional monitoring will be required under 18 AAC 80.020(b) and (e)(2).

^b Distance to a drinking water source is measured from the nearest edge of the drinking water source to the nearest edge of the potential source of contamination.

^c Other potential sources of contamination include [but are not limited to] sanitary landfills, domestic animal and agricultural waste, and industrial discharge lines.

^d The minimum separation distances for petroleum storage tanks do not apply to tanks that contain propane, or to above-ground storage tanks or drums that, in the aggregate, have a storage capacity of less than 500 gallons of petroleum products, and that store only petroleum products necessary for the operation and maintenance of pumps, power generation systems, or heating systems associated with a potable water source.

^e Drinking water treatment wastes include the backwash water from filters and water softeners, and the reject water from reverse osmosis units.

(b) The department will require a greater separation distance than that required by Table A in (a) of this section if the department determines that additional distance is necessary to protect surface water, groundwater, or a drinking water source. The department will make this decision after considering soil classifications, groundwater conditions, surface topography, geology, past experience, or other factors relevant to protection of surface water, groundwater, or drinking water.

Regards,



Charley Palmer

Hydrologist 3

FAA Certified sUAS (drone) Pilot

DEC-EH | Drinking Water Program

Drinking Water Source Protection

PHONE 907-269-0292

charley.palmer@alaska.gov

555 CORDOVA STREET

ANCHORAGE, AK 99501

Turner, Michele

Subject: FW: <EXTERNAL-SENDER>Fw: Gravel pits with waterbodies

From: Kpac Association <kpacassociation@yahoo.com>
Sent: Thursday, January 20, 2022 2:11 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Fw: Gravel pits with waterbodies

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Hi Johni,
Please forward to the assembly as comment on 2021-41
Ed Martin III
President
KPACA
252-2554

----- Forwarded Message -----

From: Peterson, Ryan E (DEC) <ryan.peterson@alaska.gov>
To: Kpac Association <kpacassociation@yahoo.com>
Cc: Wilfong, David L (DEC) <david.wilfong@alaska.gov>; Bear, Tonya (DEC) <tonya.bear@alaska.gov>
Sent: Friday, January 7, 2022, 01:34:23 PM GMT-9
Subject: RE: Gravel pits with waterbodies

Good Afternoon Ed,

Thank you so much for the inquiry. In regards to your question of what applicable regulations of the wastewater disposal regulations 18 AAC 72 could apply during the development of a materials site resulting in the creation of surface water and/or steep slopes, the sections that come to mind are:

18 AAC 72.020(b) which goes over separation distances from a wastewater disposal system to surface water sources; and

18 AAC 72.035(9) which goes over separation distances from a conventional onsite system to a ground surface slope greater than 25 percent with a drop in the surface height greater than 10 feet.

These will cover most private residential systems. If the nearby property or development is a commercial facility, additional restrictions based on site specific considerations may apply.

Please let me know or the Soldotna wastewater review engineer Dave Wilfong, 262-3405, david.wilfong@alaska.gov, know if you have any additional questions. Thank you!

Ryan Peterson
Dept of Environmental Conservation / Division of Water
Engineering Support and Plan Review Section
43335 Kalifornsky Beach Road, STE 11 Soldotna AK 99669
ryan.peterson@alaska.gov
Phone: 907-262-3402 Fax: 907-262-2294
septic.alaska.gov

-----Original Message-----

From: Kpac Association <kpacassociation@yahoo.com>

Sent: Friday, January 7, 2022 7:24 AM
To: Peterson, Ryan E (DEC) <ryan.peterson@alaska.gov>
Subject: Gravel pits with waterbodies

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Hi Ryan. Per our conversation yesterday, could you write me back something referring to the DEC waste water divisions regulations regarding waterbodies and slopes that could occur in the development of a material site? Thanks, Ed.

Sent from my iPhone

02021-41

Turner, Michele

Subject: FW: <EXTERNAL-SENDER>Fw: [External Email]Info on gravel pit habitat
Attachments: Gravel Pit Ponds as Habitat Enhancement for Juvenile Coho Salmon pnw_gtr212.pdf;
Guidelines for Gravel-Pit Wetland Creation 0653-Prange.pdf; Nancy St Article.pdf; Nancy
St As-Built-lowres (002).pdf

From: Kpac Association <kpacassociation@yahoo.com>
Sent: Thursday, January 20, 2022 2:03 PM
To: G_Notify_AssemblyClerk <G_Notify_AssemblyClerk@kpb.us>
Subject: <EXTERNAL-SENDER>Fw: [External Email]Info on gravel pit habitat

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Hi Johni,

Could you send this to the assembly for comment on 2021-41? It is from the forest service about some amazing uses they have done with old gravel pits that have been excavated into the water table. Reclamation benefits and options.

Ed Martin III
President
KPACA
252-2554

----- Forwarded Message -----

From: Cross, Adam -FS <adam.cross@usda.gov>
To: Kpac Association <kpacassociation@yahoo.com>
Sent: Thursday, January 13, 2022, 02:40:43 PM GMT-9
Subject: RE: [External Email]Info on gravel pit habitat

Good Afternoon Ed,

I wanted to share some of the literature my co-workers located. Some of it is a bit older but still relevant. Unfortunately, the FS has not published much if anything about the work of transitioning gravel ponds into salmon habitat or even recreational areas in Portage Valley. The area is a great "show me" example for folks who may be interested.

I hope the attached will be helpful.

Best Regards,
Adam

Adam Cross
KPZ Aquatics Program Manager
Forest Service
Chugach National Forest, Kenai Peninsula Zone
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f: 907-288-5111
adam.cross@usda.gov
33599 Ranger Station Spur
Seward, AK 99664
www.fs.fed.us

Caring for the land and serving people

-----Original Message-----

From: Kpac Association <kpacassociation@yahoo.com>
Sent: Thursday, January 6, 2022 10:52 AM
To: Cross, Adam -FS <adam.cross@usda.gov>
Subject: [External Email]Info on gravel pit habitat

[External Email]

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Great conversation with you today! Any info you have on any pits converted to habitat would be appreciated. A simple letter explaining your success in that area would be excellent to start a discussion in the presentation I'm producing for the KPB. Thank you so much! Ed Martin. 252-2554.

Sent from my iPhone

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Research Station

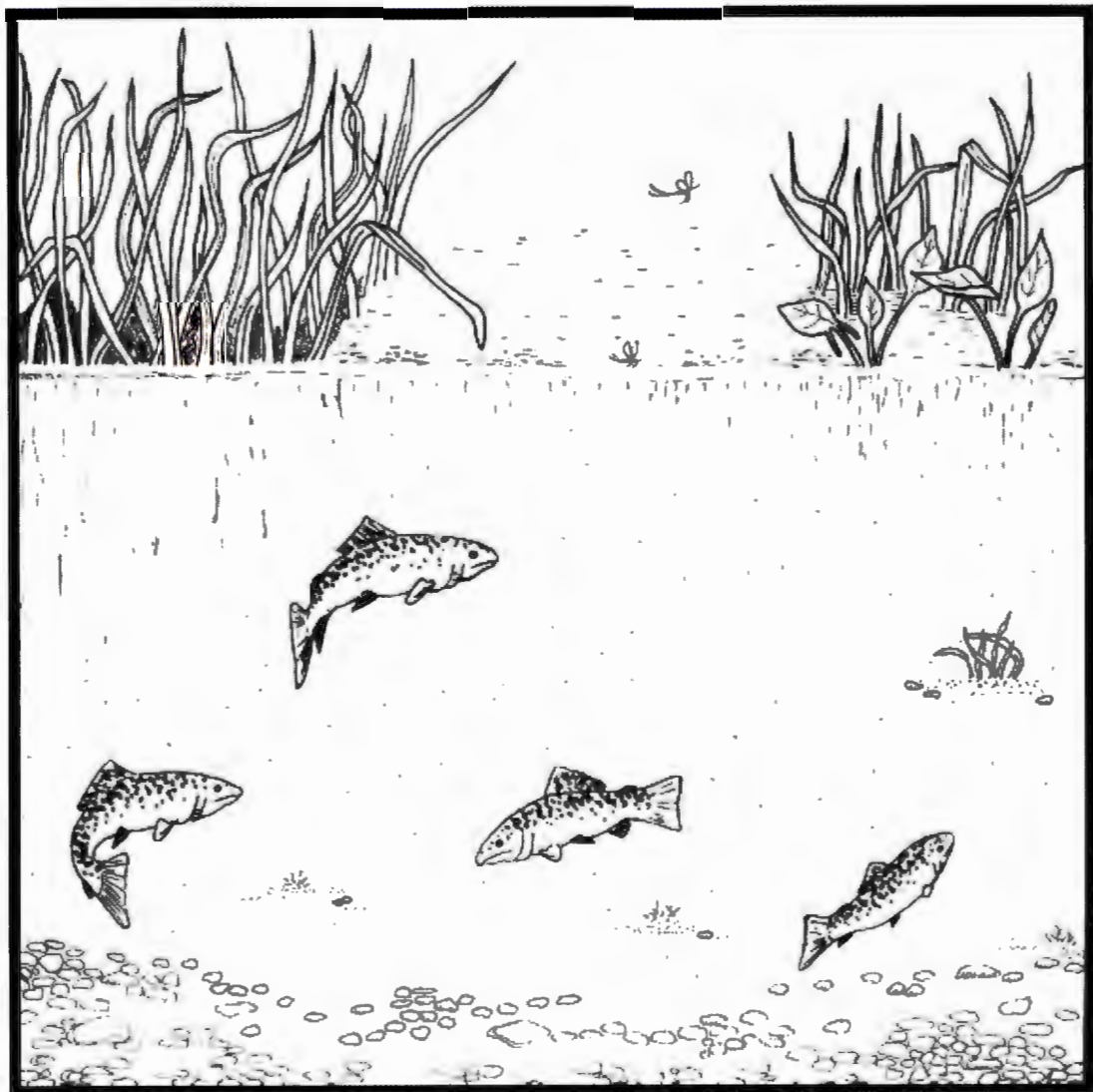
General Technical
Report

PNW-GTR-212



Gravel Pit Ponds as Habitat Enhancement for Juvenile Coho Salmon

Mason D. Bryant



Author

MASON D. BRYANT is a research fishery biologist, Forestry Science Laboratory, P.O. Box 20909, Juneau, Alaska 99802.

Abstract

Bryant, Mason D. 1988. Gravel pit ponds as habitat enhancement for juvenile coho salmon. General Technical Report PNW-GTR-212. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 10 p.

Gravel pits built during road construction in the early 1970's near Yakutat, Alaska, filled with water and were connected to nearby rivers to allow juvenile salmonids to enter. Seasonal changes in population size, length and weight, and length frequencies of the coho salmon population were evaluated over a 2-year period. Numbers of coho salmon fluctuated, but two of the ponds supported high populations, more than 2,000 fish, throughout the study. These ponds appeared to support coho salmon throughout the winter. The range of physical measurements of the ponds did not seem to account for differences in numbers of salmon, but low concentrations of dissolved oxygen were detected in all ponds near the bottom. Aquatic vegetation, water exchange rate, and access may have affected the number of coho salmon in the less-productive ponds.

Keywords: Fish habitat, salmonids, stream habitat management, southeast Alaska, Alaska (southeast).

Contents

1	Introduction
1	Methods
2	Results
8	Discussion
10	Literature Cited

Introduction

Road construction and forest development are commonly associated with detrimental effects on salmonid habitat; with proper planning, however, such effects can be avoided. In this paper, I discuss a method to improve salmonid production in conjunction with road construction.

Juvenile coho salmon (*Oncorhynchus kitsuch*) are aggressive, invasive, and mobile (Allee 1974, Chapman 1962, Skeesick 1970). Sheridan¹ suggested that the gravel pits, created during road construction on the glacial outwash of the Yakutat forelands (Alaska Department of Fish and Game 1984), would be exploited by juvenile coho salmon if the ponds were connected to river systems containing coho salmon. Several gravel pits that had filled with water were connected by artificial channels to nearby rivers during the 1970's. Coho salmon fry were observed in the ponds, but no systematic effort was undertaken to estimate the number of fish in the ponds or to evaluate their effectiveness as rearing habitat.

The purpose of this study was to determine if these ponds were suitable rearing habitat for juvenile coho salmon. Numbers of juvenile coho in four ponds were estimated over several seasons. Size and ages were determined. Selected chemical and physical measurements were taken on the ponds to identify factors that could account for differences in salmon populations.

Although ponds are not generally associated with coho salmon habitat, beaver ponds and riverine ponds have been identified as productive coho habitat in Alaska and in Washington in recent years² (Bryant 1984, Peterson 1982). Russell and Schramek (1984) found about 2,500 coho salmon fry and 500 fingerlings in a gravel pit associated with a beaver pond during the summer of 1977. They did not follow the populations through the winter, however. Both Peterson (1982) and Russell and Schramek (1984) reported seasonal migrations to and from the ponds. Although most of these studies were on natural ponds, their results indicate that ponds created by gravel borrow pits can support juvenile coho salmon; such ponds may be an inexpensive method to increase coho salmon production.

Methods

Four ponds-Nine-Mile, Green, Twenty-Two-Mile, and Beanbelly-were sampled monthly from July through October 1983 and during spring or early summer and autumn in 1984 and 1985. Minnow traps (mesh size = 6.3 mm) were baited with salmon eggs and distributed along the edge of the ponds, usually within a few meters of the bank, 1 to 2 m deep. A few were placed in the middle of the ponds. Between 26 and 30 traps were sufficient to sample each of the ponds. In 1984, Twenty-Two-Mile Pond was not sampled because of low coho salmon populations. Green Pond was not sampled in 1985 for the same reason. Traps were allowed to fish for 1 hour, long enough to capture a sufficient sample. Longer periods occasionally resulted in high mortalities. Mortalities incurred during handling were identified and removed from the experiment.

All fish were identified and measured (total length). Scales and weights were taken from a subsample of the salmonid population. Salmonids were marked by punching a hole in the caudal fin. In the fall of 1984, salmonids were marked by freeze branding (Bryant and Walkotten 1980).

¹ Sheridan, W.L. 1970. Coho salmon habitat improvement-on glacial outwash plains. U.S. Department of Agriculture, Forest Service, Region 10. Unpublished.

² Sanders, G.H. Movement and territoriality in juvenile coho salmon (*Oncorhynchus kisutch*) in a southeast Alaska pond. Alaska Department of Fish and Game, Juneau, AK. Unpublished report.

Population size was estimated either with the Schnabel multiple mark and recapture method or the Bailey modification of the Peterson estimate (Ricker 1975). The Schnabel method was used in all the 1983 samples. The method varied in later samples because of limited sampling time. The multiple mark and recapture experiments were conducted over a period of 5 days or less. Emigration and immigration were negligible during the summer. During of the summer sampling periods, water levels were low and streams into and out of the ponds were either not running or had small flows. Increased rainfall in the autumn resulted in higher flows, but mark and recapture samples were done over a period of 2 or 3 days to minimize the effect of fish moving into or out of the ponds.

All four ponds were surveyed to determine surface area. Depth profiles were not made, but maximum depths were determined during secchi disk and oxygen measurements. Temperature and oxygen were measured with a YSI³ oxygen meter in 1983 and 1984. Oxygen measurements in June 1985 were made with the Alsterburg modification of the Winkler method (U.S. Environmental Protection Agency 1974).

Results

The number of coho salmon in Nine-Mile and Beanbelly Ponds increased from July to October in 1983. Each pond supported more than 3,500 coho salmon in the fall of 1983 (fig. 1). Green and Twenty-Two-Mile Ponds were not sampled after October 1983 because few fish were captured. The number of coho salmon in Green Pond declined from an estimated 2,700 in August to a point where no estimate was possible in October (fig. 1). The number of coho salmon in Twenty-Two-Mile Pond was consistently low.

³ Use of trade names is for the information and convenience of the reader. Such use does not imply endorsement by the U.S. Department of Agriculture of any product or service to the exclusion of others that may be suitable.

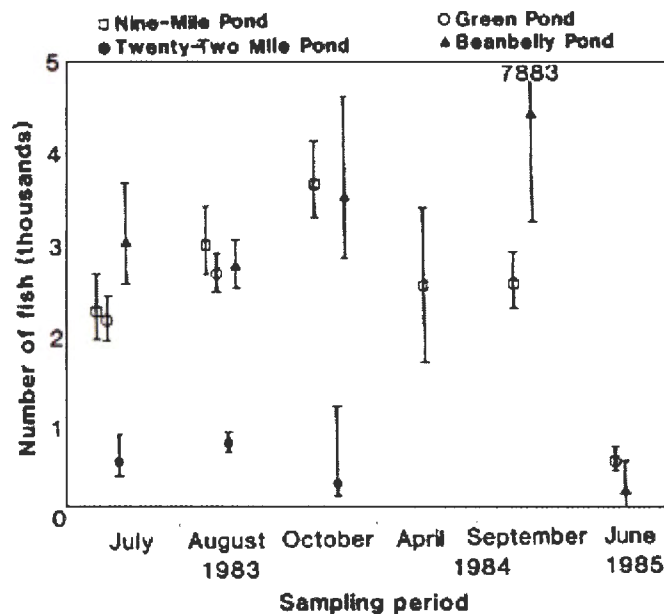


Figure 1—Population estimates of coho salmon captured in Nine-Mile, Green, Twenty-Two-Mile, and Beanbelly Ponds from 1983 to 1985.

Population estimates in Nine-Mile and Beanbelly Ponds were made October 1983, April 1984, September 1984, and June 1985 to assess overwinter use of the ponds. Beanbelly Pond was not sampled in April, 1984 because snow on the road made it inaccessible. In Nine-Mile Pond, the number of juvenile coho salmon decreased from 3,666 to 2,547 between October 1983 and April 1984. Fin punches applied in October were observed in the April sample; therefore, coho salmon overwintered in the pond, but emigration and immigration likely occurred between the sample periods. Because of heavy snow, the ponds were not sampled until the 1st week in June 1985. The low populations in both ponds in June may be attributed to smolt migration. Comparison of length frequencies in September 1984 and June 1985 in Beanbelly Pond corroborate this migration (fig. 2). In September 1984, the median length of coho salmon in Beanbelly Pond was 88 mm (total length), and more than 10 percent of the total catch was longer than 100 mm; in June 1985, the median length was 82 mm, and less than 2 percent of the total catch was longer than 100 mm.

A few coho salmon marked with freeze brands in September 1984 were recovered from both ponds in June 1985, but they numbered less than 1 percent of the total catch; therefore, overwinter survival cannot be estimated. Recovery of marked fish in June 1985 and the persistence in the ponds of coho salmon that were at least 1 year old in the spring and early summer of 1984 and 1985 indicate that the ponds are used over the winter.

Recruitment to the ponds appears to be the result of upstream migration of juvenile coho, except in Beanbelly Pond which is fed by a stream with spawnable habitat. Recruitment of fry into the ponds appears to begin in June. During May 1984, fewer than 5 percent of the coho salmon caught in Nine-Mile Pond were smaller than 62 mm (total length); by September, more than 16 percent were smaller than 62 mm (fig. 3). Between July and September, the percentage of smaller coho salmon increased slightly in Nine-Mile Pond, indicating that fry moved into the pond. In Beanbelly Pond, the percentage of smaller coho salmon decreased slightly from July to September in 1983, suggesting that smaller fish did not move into the pond and that the difference in size was the result of growth.

Significant differences occurred among the length-weight regressions computed for the coho salmon captured in the four ponds in July and August 1983 (table 1). Throughout the analysis, Nine-Mile Pond shows a consistently higher slope than the other ponds, indicating more robust fish and better growth. In September 1983, large differences appear in the slope of the regression for Twenty-Two-Mile Pond (2.2) compared to those of Nine-Mile and Beanbelly Ponds (2.8 and 2.7). The lack of significance in September 1983 may result from the smaller sample size in Twenty-Two-Mile Pond compared to that in the other two ponds.

Although depths of each pond varied, each had a relatively uniform profile tapering from a deep end to a shallow end with steep sides. The least productive pond, Twenty-Two-Mile, was also the shallowest. Green Pond and Nine-Mile Pond were similar in depth and shape (table 2); both are connected to the Situk River. Beanbelly, the largest and deepest of the four ponds, has an irregular shape and is more like a natural pond. It is fed by a perennial stream.

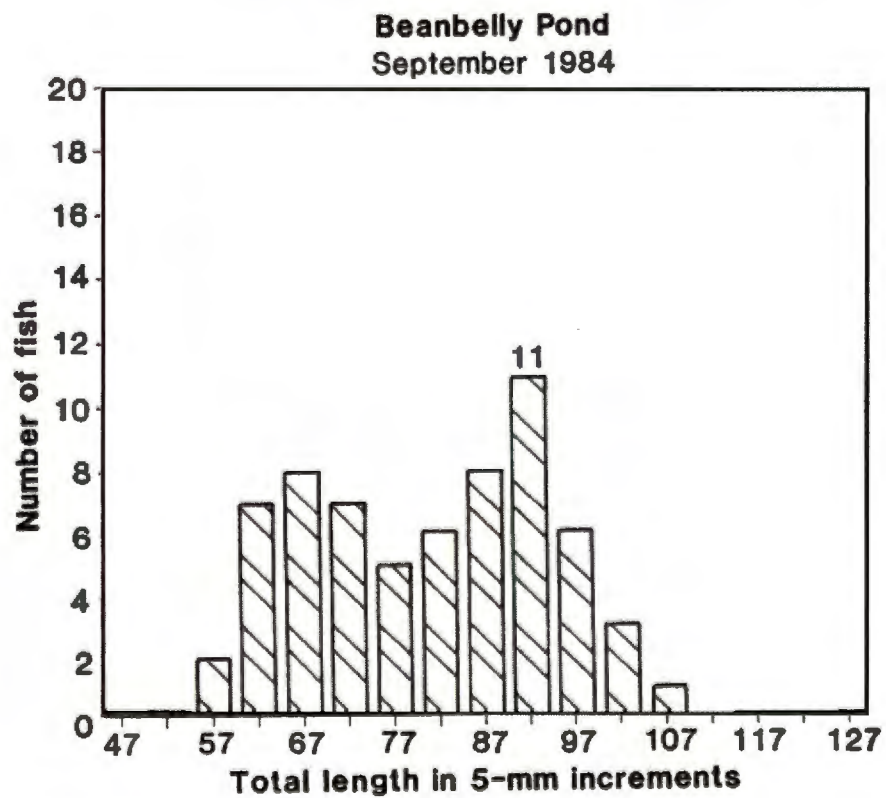
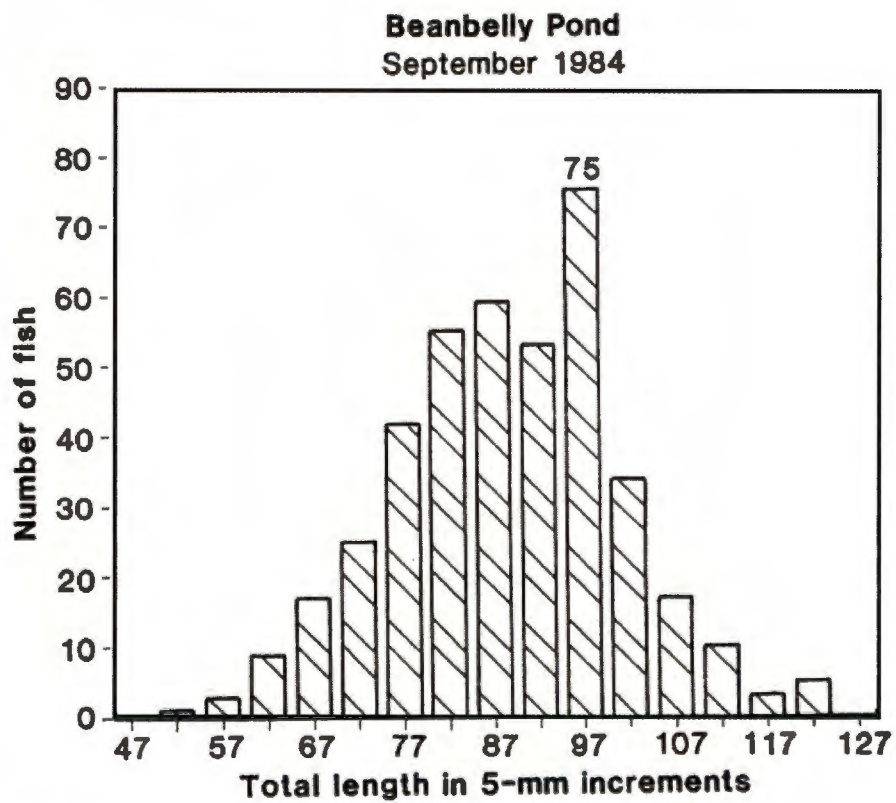


Figure 2—Length frequency distribution of coho salmon captured in Beanbelly Pond in September 1984 and June 1985.

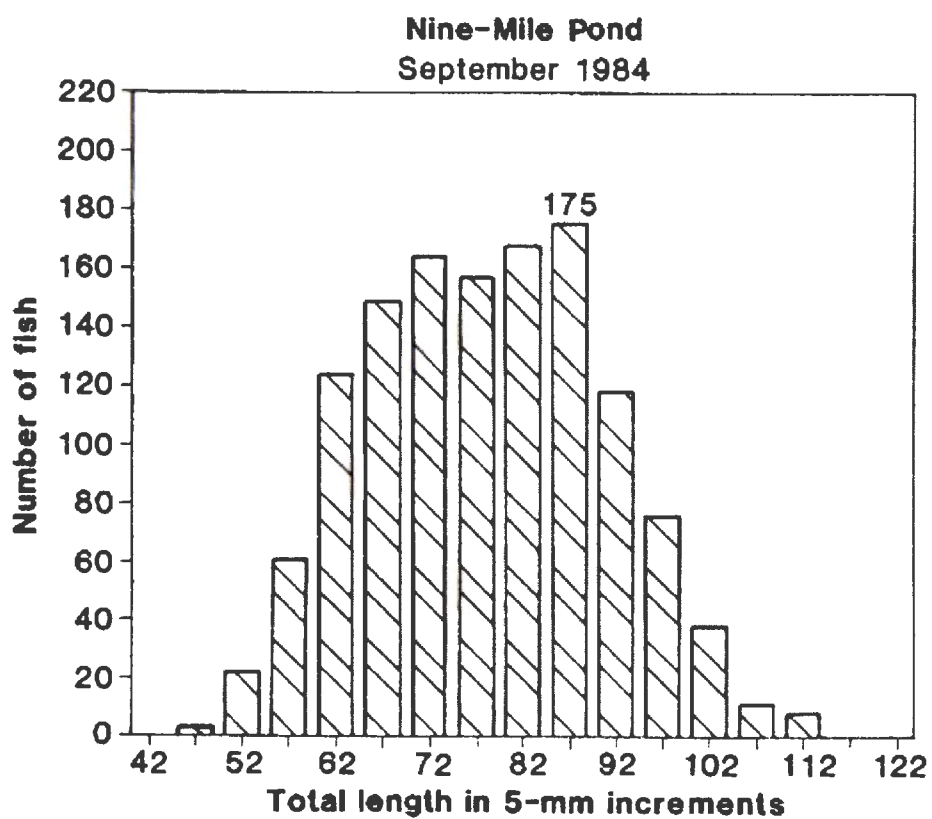
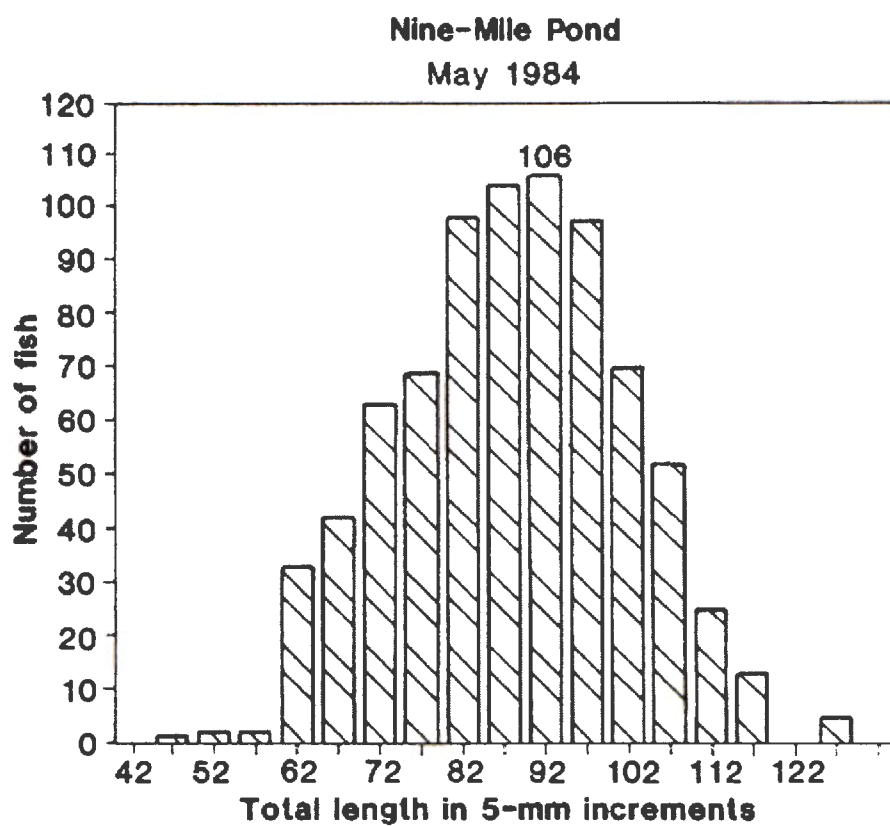


Figure 3—Length frequency distribution of coho salmon captured in Nine-Mile Pond in May and September 1984.

Table 1-Differences among ponds in length-weight regressions

Date and pond	Intercept	Slope	Significance	
	a	b	Level	Slope
July 1983:				
Nine-Mile	-5.3683	3.157		
Green	-4.0452	2.482	≤ .05	≥ .05
Twenty-Two-Mile	-4.1865	2.5663		
Beanbelly	-3.9622	2.4281		
August 1983:				
Nine-Mile	-5.1244	3.0233		
Green	-4.153	2.5325	≤ .05	≥ .05
Twenty-Two-mile	-4.844	2.867		
Beanbelly	-5.1789	3.0326		
Sept. 1983				
Nine-Mile	-4.783	2.8378		
Green	—	—		
Twenty-Two-Mile	-3.6585	2.2101	≤ .05	≥ .20 (NS)
Beanbelly	-4.5538	2.7266		
April 1984				
Nine-Mile	-5.1337	2.9813		
Green	-4.6439	2.7453	≤ .05	≥ .05
Twenty-Two-Mile	—	—		
Beanbelly	—	—		

— = no data: NS = not significant

Table 2—Yakutat gravel pit ponds morphology

	Area	Volume ^a	Maximum depth	Average depth ^b
	<u>Square meters</u>	<u>Cubic meters</u>	<u>-----Meters-----</u>	
Green	7,644	9,500	2.5	1.25
Nine-Mile	10,010	12,513	2.5	1.25
Twenty-Two-Mile	27,972	27,513	2.0	1.0
Beanbelly	34,954	61,170	3.5	1.75

^a Volume = area times average depth.

^b Average depth = maximum depth divided by 2

Temperature and oxygen were slightly stratified in all ponds during the summer and winter. The ponds were isothermal in the spring and fall (fig. 4). Oxygen supply depends partly on the water-exchange rate in each of the ponds during periodic thaws throughout the winter. Oxygen levels near the bottom of the ponds were lowest during December but were above 5 p/m at the surface in all four ponds. The dissolved oxygen supply may have become critically low later in the winter after a thick layer of ice formed.

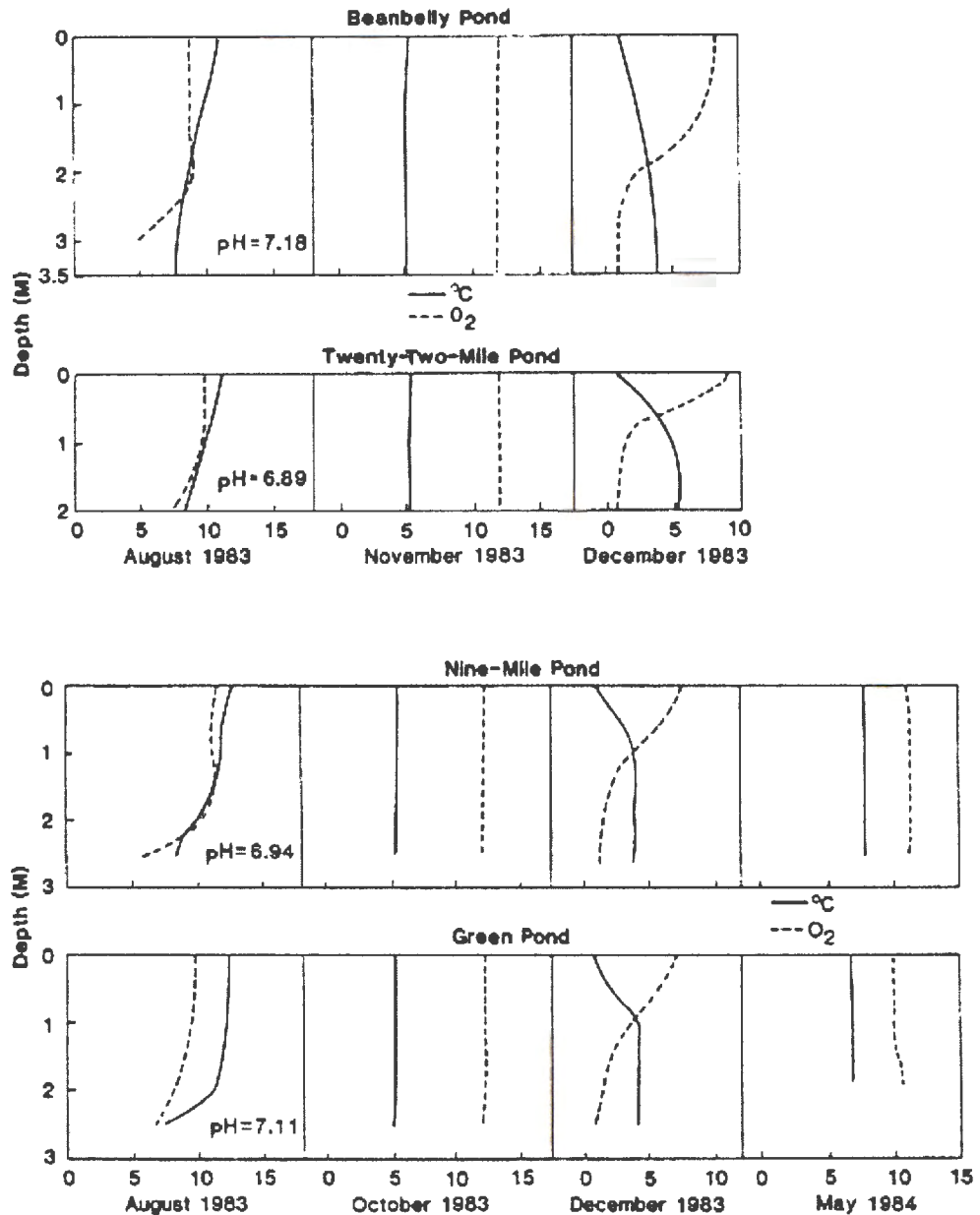


Figure 4—Seasonal temperature and oxygen profiles for Green, Nine-Mile, Twenty- Two-Mile, and Beanbelly Ponds.

Discussion

All four ponds were used to a greater or lesser extent by juvenile coho salmon during the study. Even over the short period of this study, populations fluctuated from year to year. In Green Pond, the salmonid population virtually disappeared after the fall of 1983. The population at Twenty-Two-Mile Pond was consistently low. Beanbelly and Nine-Mile Ponds consistently supported the highest populations of coho salmon.

None of the morphological or chemical features measured during the study appear to account for the differences and changes in the coho salmon population in the ponds. A more likely explanation may be the connection between the ponds and the river. Both Nine-Mile Pond and Beanbelly Pond had well-defined channels between the ponds and the river. The outlet to Twenty-Two-Mile Pond was poorly defined. Neither Twenty-Two-Mile Pond nor Green Pond had a defined inlet channel. Although ground water is an important source of water for the ponds, flow of surface water into and out of the ponds may be an important factor determining the water quality of the ponds as habitat for juvenile coho salmon.

Because all juvenile coho salmon immigrated into the ponds, the channel between the river and the ponds is critical to their use by coho salmon. All ponds were apparently accessible at high-flow periods (spring and fall) to juvenile coho salmon in the adjacent rivers, but the less well-defined channels connecting Twenty-Two-Mile Pond and Green Pond may have contributed to the low populations in these ponds. A poorly defined channel has lower velocity and is less likely to be found by the fish. Once found, it may not offer a clear path to the pond.

The coho salmon in the less productive ponds appeared to be less robust than those in the other two ponds. Where significant differences among length-weight regressions occurred, the lower values were associated with the ponds that had fewer coho salmon; therefore, factors other than access may be affecting productivity in the ponds. Among possible factors that were observed but not evaluated in this study are food and competition. Food may be a limiting factor and the differences in length-weight ratios may reflect fewer aquatic organisms available for food in these ponds. Large populations of threespine sticklebacks (*Gasterosteus aculeatus*) were observed in all the ponds. Beanbelly, Nine-Mile, and Twenty-Two-Mile Ponds had a dense cover of aquatic plants, and the bottom of Green Pond was covered with a dense mat of algae. The dense cover of aquatic vegetation would contribute to a large stickleback population by providing excellent habitat for reproduction and cover for newly hatched sticklebacks. The effect of competition for space and food between sticklebacks and coho salmon was not studied. Aquatic plants and algal growth would also contribute to low concentrations of benthic dissolved oxygen during fall and winter as the vegetation died and began to decompose. In addition, sticklebacks may be able to tolerate lower dissolved oxygen concentration than coho salmon.

Timber along the bank was apparently not a factor in any of the ponds. Twenty-Two-Mile Pond was the only one with large trees along the bank. These trees did not appear to influence the pond. Willow (*Salix* sp.) and alder (*Alnus* sp.) were the dominant vegetation along the banks of the other ponds. Based on observations of numbers of coho salmon captured near vegetation in the water, coho salmon do not appear to prefer brush habitat associated with these ponds. Nevertheless, shrubs along the bank may provide cover and a source of terrestrial insects to coho salmon.

Although the results of this study show differences among the ponds, specific factors controlling numbers of coho salmon in the ponds were not identified. The range of morphological and chemical differences measured in the ponds did not appear to affect numbers of coho salmon. The ponds apparently provide habitat for juvenile coho salmon although low dissolved oxygen sometimes may increase mortality. Coho salmon apparently remain in the ponds through winter.

The design of artificial ponds for juvenile coho salmon habitat should include several important morphological features. Adequate water quality is necessary throughout the year, particularly during the winter. A perennial flow of surface water into the pond may satisfy this requirement. The second requirement is access. An effective method for providing both these features is to construct an upstream inlet from the stream to the pond and a downstream outlet from the pond to the stream. Other favorable features include an average depth greater than 2 meters and bank vegetation for shade and cover.

Additional study on the effects of competitive interaction between salmonids and other species such as sticklebacks, the role of aquatic vegetation as cover and its effect on water quality, and the effects of pond morphology and water exchange rates could improve the design of artificial ponds. As projects are effectively evaluated, design criteria will be improved to increase the effectiveness of similar ponds. Ponds have not been extensively used as an enhancement tool for increasing coho salmon production, but they offer a promising and often low-cost enhancement method.

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Gravel pits built during road construction in the early 1970's near Yakutat, Alaska, filled with water and were connected to nearby rivers to allow juvenile salmonids to enter. Seasonal changes in population size, length and weight, and length frequencies of the coho salmon population were evaluated over a 2-year period. Numbers of coho salmon fluctuated, but two of the ponds supported high populations, more than 2,000 fish, throughout the study. These ponds appeared to support coho salmon throughout the winter. The range of physical measurements of the ponds did not seem to account for differences in numbers of salmon, but low concentrations of dissolved oxygen were detected in all ponds near the bottom. Aquatic vegetation, water exchange rate, and access may have affected the number of coho salmon in the less-productive ponds.

Keywords: Fish habitat, salmonids, stream habitat management, southeast Alaska, Alaska (southeast).

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Recycled Soils Enhance Wetland Habitat in Juneau, Alaska

by Michele Elfers

IN disturbed ecosystems needing reclamation, excess materials from development projects offer new opportunities for wildlife habitat enhancement. The Nancy Street Wetland Enhancement Project pioneered a creative strategy to partner the development needs of a fill disposal site with desirable conservation goals. The project utilized clean native soils generated by a high school construction project in the Mendenhall Valley of Juneau, Alaska, to reclaim a 1950s era gravel pit into a functional wetland. Clean fill material was deposited and shaped to create mixed wetland topography, including a stream channel, deep and shallow water areas, and small islands. Plantings of emergent wetland, riparian, and upland vegetation improved habitat for fish and wildlife and water quality in what is part of a state designated impaired waterbody.

Located along Duck Creek in the Mendenhall Valley, the enhancement of the Nancy Street gravel pit was identified as a priority project in the Duck Creek Watershed Management Plan (National Marine Fisheries Service, 1999). Intense residential development over the past forty years in the Mendenhall Valley has impacted Duck Creek significantly. The increase of nonpoint source pollution, channelization, and above-grade stream crossings has degraded water quality and habitat. In 2002, the Alaska Biological Monitoring and Water Quality Assessment Program Report rated Duck Creek the lowest for habitat variables of all

streams studied in Southeast Alaska (Alaska Department of Environmental Conservation, 2003). Poor habitat quality has reduced anadromous fish populations such as coho and chum salmon, and has impacted habitat for the large number of mallards and other waterfowl that use these wetlands as refuge from nearby popular hunting zones.

In the 1950s and 1960s, gravel extraction created three adjacent, open water pits on the East Fork of Duck Creek. The most downstream pit is located at Nancy Street. Groundwater flowing into the pit carries dissolved iron from soil strata, which reacts with atmospheric oxygen upon reaching the surface. The resulting formation of iron oxide precipitate (iron "floc") decreases the concentration of dissolved oxygen in the water column, impacting aquatic inverte-

brates and fish. While not inherently toxic, iron floc also settles into the substrate, clogging gravel beds that might

The gravel pit at Nancy Street is located less than one mile from the high school construction site, and the enhancement project opportunity required a substantial amount of fill that had previously not been available.

otherwise provide good spawning habitat for fish.

The Engineering Department at the



Emergent wetlands are created along the perimeter of a deep water pool for juvenile coho salmon habitat.

City and Borough of Juneau (CBJ) initiated the wetland enhancement project in 2005 when designs for a new high school indicated a large amount of excess soil would be generated during construction. Transport of the fill for disposal would have required a three mile drive to a privately owned waste site. The gravel pit at Nancy Street is located less than one mile

Using the Nancy Street pit as a fill disposal site, the CBJ Engineering Department charged the high school construction contractor a lower rate for fill disposal and used the revenue to recover a portion of the land purchase cost.

from the high school construction site, and the enhancement project opportunity required a substantial amount of fill that had previously not been available. CBJ



The construction of a new high school contributed 64,000 cubic yards of clean fill to the wetland enhancement of the former gravel pit.

began coordinating with the U.S. Fish and Wildlife Service (USFWS) and the Natural Resources Conservation Service (NRCS) to use the clean native soil for wetland enhancement at the Nancy Street pit.

Consolidation of land ownership was the first step toward reclaiming the pit. CBJ owned most of the seven acre site, but a large parcel encompassing both open water wetland and upland areas was privately owned. The parcel was purchased for \$137,000. Using the Nancy Street pit as a fill disposal site, the CBJ Engineering Department charged the high

school construction contractor a lower rate for fill disposal and used the revenue to recover a portion of the land purchase cost. The cost to the CBJ of filling the Nancy Street site, including the land purchase, was \$319,000. The cost of the typical market alternative was \$572,000. By undertaking the wetland enhancement project partially funded by USFWS and NRCS cost share programs, the CBJ saved \$253,000 on the cost of the high school construction.

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and wetland enhancement project, the CBJ contracted the engineering firms Toner-Nordling Associates for the initial fill design and R&M Engineering, Inc. for the design development of the filling process. Glacier State Contractors, Inc. executed the design. To maintain flow through Duck Creek, a stream channel at a minimum of four feet deep was designed to meander through the wetland. From the perimeter of the wetland, shallow platforms, or marsh "fingers", were filled to allow for the planting of emergent marsh vegetation for fish and wildlife foraging and protective habitat. During construction, the fingers provided functional benefit by allowing access for dump trucks to the center of the wetland for filling. At each end of the wetland, two deep water areas were left in place to provide overwintering habitat for juvenile coho. After nine months of filling in 2005, 64,000 cubic yards were placed to create the wetland, resulting in increased savings for the CBJ.

An earthen dam was constructed to control water levels at the project site and in the two upstream pits. This occurred



AmeriCorps workers, with a local youth agency, SAGA, transplanted over 5,000 native plants from nearby wetlands into the former gravel pit.

after the filling and revegetation phase to create more stable and drier conditions during construction and planting. A meandering outlet stream was excavated

to allow fish passage through the earthen dam. Both the dam and the outlet stream were constructed using an impermeable liner to prevent water loss. Layers of

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became an important component in gaining public approval and support of the project. Adjacent landowners initially viewed the enhancement project as disruptive, but through the process of filling, planting and trail construction, many neighbors and community members have expressed that the enhancement is an improvement to the neighborhood. It offers recreational opportunities for a neighborhood composed of streets and private property, and provides access to a successional landscape with a fantastic view of the Mendenhall Glacier.

To encourage neighborhood use of the site, CBJ and Trail Mix Inc, constructed a six foot wide gravel trail, and a deck was sited at the south end to capture a remarkable view across the wetland of the Mendenhall Glacier. The decking on the observation deck and boardwalk, railings, and benches were built with recycled plastic lumber. An island at the north end is accessed by a bridge and boardwalk and offers a bench and viewing point south. The 70' bridge is a steel gangway recycled from a CBJ Docks and Harbors improvement project.

Throughout the construction process, volunteers donated time, materials and money to the project. Neighbors began appearing during the summer construction to comment on how excited they were about the project. The CBJ Ports and Harbors Department donated the bridge and benches and the U.S. Coast Guard Engineering Division volunteered to construct the observation deck.

As a result of the success of this project, a similar process is planned for the Allison Pond upstream of the Nancy Street Wetland. The process will be improved based on the lessons learned and applied to the Allison Pond site needs. The strategy and process developed by the Engineering Department at the CBJ has saved the taxpayer's money by pioneering this alternative option to fill disposal. The support of resource agencies, local organizations, and citizen volunteers has enhanced habitat for fish and wildlife and reclaimed a valuable community resource. **LBW**

For more information contact Michele Elfers, City & Borough of Juneau, Alaska, (907)586-0931, e-mail: michele_elfers@ci.juneau.ak.us.

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Land and Water

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cobbles and gravel for spawning were placed on top of the stream channel liner to create riffles and shallow pools.

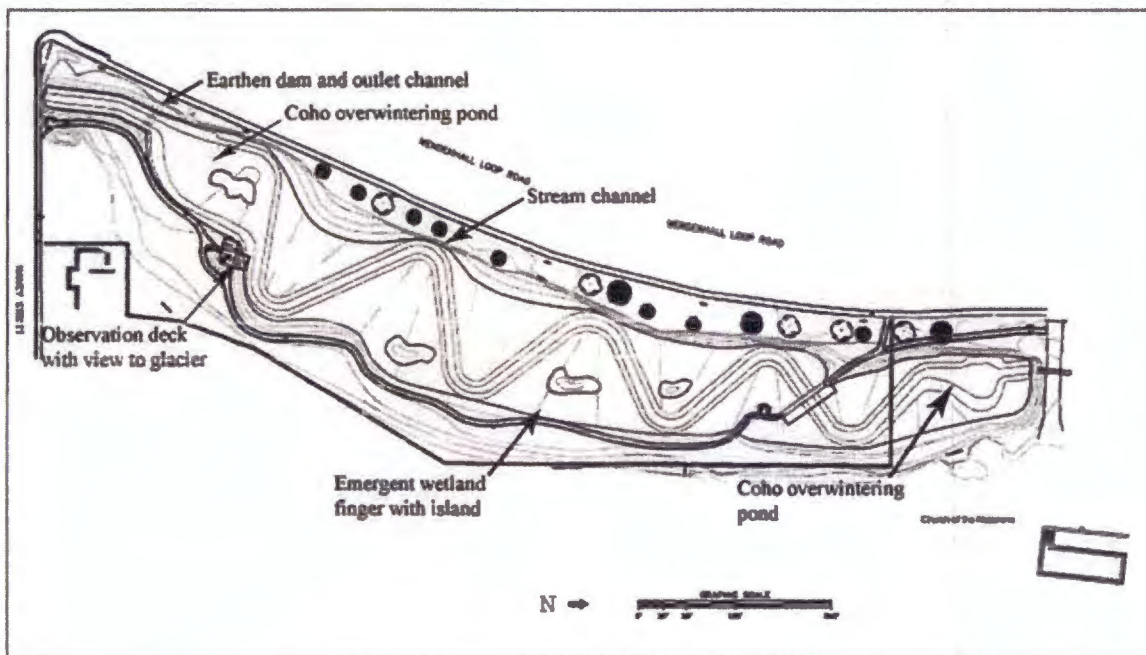
The site design and implementation plans of the filling process determined both habitat improvement and operational efficiency. By filling and completing

tric zones based on the depth of water in which they grow. Although the Nancy Street Wetland is primarily ground water fed, precipitation and surface runoff influence the water level and will therefore affect the survival and composition of the site's wetland plant community.

Alaska and British Columbia. All planting work was done by hand using shovel bulb planters, and pulaskis.

Lessons Learned:

To improve the revegetation process for future projects, better planning for irrigation should be in place prior to transplanting. As mentioned earlier, the dam was constructed after the completion of the planting of the emergent vegetation. Revegetation occurred between the months of April and August when Juneau received thirty inches of rain. However, a two-week period of unusually warm, sunny weather desiccated the high marsh area. Watering was necessary, but difficult to accomplish on such a large site. Crews used buckets and a garden quality



each "finger" and section of the wetland individually, greater variety and attention to each landform was introduced. Initially the option of filling the entire site and then returning to dredge the stream channel had been considered, but would have resulted in less diversity of habitat and less attention to the design details. The chosen approach facilitated meeting the design elevations to within 3 inches to provide necessary habitat for emergent wetland plants—a difficult task on a large project where over 60,000 cubic yards of fill are being placed.

Revegetation planning began in early 2006 by researching and evaluating three locally constructed wetlands and interviewing local naturalists experienced in reclamation and revegetation projects. There was no previously documented information on constructed wetlands in Southeast Alaska, so this project is being carefully monitored to provide baseline information that can be used for development of future wetland enhancement projects. For the purpose of planting design, plants were divided into concen-

During the planting season of 2006, volunteers from the community and Americorps workers funded by USFWS planted over 5,000 emergent plugs and cuttings, and 150 lbs of grass and forb seeds. As there are no native plant nurseries in Juneau or Southeast Alaska, the workers transplanted plugs and cuttings from local wetlands to maintain native gene stock and minimize the possibility of importing invasive plants. Seeds were purchased or donated from sources in

gasoline-powered water pump to irrigate the wetland. Some plant mortality occurred, and it is likely that a prolonged period of hot, dry weather would have significantly impacted plant survival. To prevent this from happening on future projects, fill and topsoil with a higher organic content than what was used in this project would help retain moisture. Other strategies include controlling water levels to keep soil saturated while planting, or the delaying of planting until July when precipitation is more reliable and frequent in Juneau.

There is some concern that the water level is higher than the designed level. However, the rainfall was higher than average in 2006, so it is difficult to tell the water levels in the wetland will drop. For this reason, designing a dam with adjustability to account for the discrepancy in water level would improve the function and success of the project.

Recreational Use of the Site:

The design and development of a community trail through the wetland

There was no previously documented information on constructed wetlands in Southeast Alaska, so this project is being carefully monitored to provide baseline information that can be used for development of future wetland enhancement projects.

Guidelines for Gravel-Pit Wetland Creation

by

Bonnie Baldwin Prange

Abstract. The frequent colonization of the margins of abandoned and unreclaimed wet sand and gravel pits by typical marsh vegetation indicates the feasibility of a created wetlands component in gravel/sand reclamation planning. Using the natural pit wetlands as models and examining the pertinent literature, guidelines were developed for: (1) selecting promising sites, (2) planning with a regional perspective, and (3) construction and monitoring. Key concepts are: hydrological stability and adjacent land uses that will not have an adverse impact; consideration given to how a pit wetland will interact with adjacent ecosystems on a regional level; grading of pit perimeters to produce irregular contours and no more than a 0.6 m change of elevation within the proposed wetland; a combination of limited deliberate planting along with natural colonization whenever the reclamation permit can be adjusted to allow the 3 to 4 years commonly necessary for such colonization; the establishment of self-perpetuating marsh vegetation confirmed over a 3-year period of observation as a minimum requirement for determining permit compliance. Longer term monitoring of pits reclaimed under these guidelines could provide information that would increase and refine post-mining land-use options for wet sites. Research projects could focus on learning more about development of wetland functions within created systems, eventually providing standards for evaluation on a functional level.

Introduction

Wetland creation is still in its infancy as an applied science and is not yet capable of producing predictable results. It is, consequently, a subject of considerable controversy. To some it appears to be a relatively simple, repeatable process; to others a minefield of assumptions regarding ecosystem structure and function. The experimental nature of wetland-creation has made it less attractive for mine reclamation proposals, resulting in very little effort made to purposefully create gravel-pit wetlands, even where conditions are very favorable. The vast majority of wetlands and waterbodies on mined lands nationwide exist not because they were planned for, but by accident as a result of the mining of gravel for highway and other construction projects (Brooks, 1990). As examples

of natural regeneration, these sites can provide valuable information regarding the species composition, life-support functions, and long-term persistence that might be expected in future "successful" wetland creations.

Without substantial scientific evidence, which we do not have, there is no reason to assume that these volunteer wetlands function on the same level or provide the benefits of the long-established ecosystems which have been filled-in and lost to agriculture and development. It seems likely, however, that even disturbed and degraded wetland sites may have unknown value. Increasingly, studies indicate that these sites may be very significant for rare species, migratory birds, and regional hydrological functions (Josselyn and others, 1990). "Sites presumed to have little value may provide vital

refuge for species during storm events or support rare and endangered species due to lower interspecific competition within these marginal habitats" (Josselyn and others, 1990).

Scientists have now begun to study wetland creation and restoration in an effort to manage and accelerate processes which may take generations to occur naturally. From these experimental studies will come information which may ultimately allow true replacement of lost or damaged ecosystems. More research is needed, and sand/gravel pits are in many instances ideal as test sites. Excavations that expose the water table commonly create the hydrological features necessary for a wetland, and they eliminate the need for diking and high-maintenance pumping and drainage systems.

The gradual colonization of numerous abandoned wet pits by wetland species indicates both their suitability for subsequent use as a planned wetland and the potential to add to the wetland resource base. Innovative reclamation could supply valuable habitat, contribute to regional hydrological resources, and provide research opportunities to improve our understanding of artificial wetlands. Sand/gravel-pit wetlands offer benefits to society with which mining companies could be pleased to be associated and identified.

Minimum Site Requirements

Hydrology

Hydrology is the key to long-term functioning of wetland ecosystems (Kusler and Kentula, 1990). Since establishment of hydrophytic vegetation will depend on both the predictability and controlled fluctuation of water levels, wetland creation should be restricted to those sites for which seasonal water-level elevations have been determined and where some manipulation is possible. Freshwater gravel-pit wetlands not in river or stream beds will be dependent on ground water and variable surface water flows.

Ground water and surface runoff do not always provide dependable water sources, but in most situations they will satisfy the requirements of a wetland project (Van Egmond and Green, 1992).

Assessing the reclamation potential of sand or gravel excavations as wetlands should involve monitoring test pits for annual water-level fluctuations. The amount of fluctuation depends on the nature of the aquifer and on how much water mining operations and nearby users consume. Ranges of 2 meters per year are not uncommon in porous sand and gravel aquifers with local recharge zones (Michalski and others, 1987). Some gravel-pit sites may not be suitable for wetland development due to extreme variations of the water table. Suitability can not be determined until the expected range of the water-table elevation has been established with statistically sound data. Since a successful wetland design incorporates many site-specific variables, it is not possible to generalize acceptable range maximums or periodicity. A decision must be based on project goals and the requirements and tolerances of the wetland-plant communities that project designers want to establish (T. S. Miller, King County Services, oral commun., 1992). The widely varying flooding tolerances among wetland species can be used to advantage in increasing wetland creation options for a particular site. A flexible plan that can accommodate unexpected changes in plant community composition will have a greater chance of success, especially where ground water flows are seasonally unstable.

Potential Land-Use Conflicts

Social considerations may be just as important determinants of site suitability as physical ones. "Adjacent land use . . . could detrimentally impact functioning of wetlands or the wetlands may have detrimental impacts on current or planned uses of neighboring lands" (Hammer, 1992). Intensive agriculture or heavy industry adjacent to the site might produce sediment or chemical-loaded runoff that would prevent wetland establishment.

Wetlands themselves can be unwelcome neighbors. Although some new housing developments and office complexes are planned around preserved sections of wetlands, residents of established communities may well object when wetland alternatives are proposed. Neighborhood opposition often focuses on the prospect of public use, with fears of noise, traffic, and vandalism paramount. Several mining companies have shelved plans to donate lands to the public when faced with organized community opposition (Morris, 1982).

Planning Pit-to-Wetland Conversions

Pre-planning for Realistic Goals

Wetland conversion plans should be "integrated with mining operations and reclamation at the beginning of any project" (Brooks, 1990). This ideal should not preclude adding wetlands to an existing reclamation plan. Wetland creation could be added to a previously permitted proposal for a post-mining open-water pond, for instance, assuming the hydrologic conditions to support the pond had already been established. Reclamation designed around an aquatic ecosystem goal provides direction in the early planning stages, but the decision to attempt creation of specific wetland functions might best be left until mining is nearly complete. At that point the altered hydrology of the site could be re-evaluated, and objectives could be based on several seasons of hydrological data-gathering plus assessment of regional land-use trends over the same time-span. When objectives have been established, they should be clearly described and recorded, along with any subsequent amendments, because on-site modifications during construction and planting are commonly necessary (Hammer, 1992).

Michalski and others (1987) recommend detailed studies to determine surficial characteristics of the site before, during, and after extraction. If pumping of ground water is part of the extraction process, the output could be monitored to estimate in-flow rates and the potential

area of ground-water influence after mining (Michalski and others, 1987). Pre-mining planning could include provisions for hydrological monitoring and record-keeping at various stages over the life of the mine. This provides the database from which to determine the most feasible final configuration. The information would be useful for establishing other reclamation endpoints if it did not ultimately support the proposed wetland goal.

Regional Reference Wetlands as Guidelines

The most fundamental goal, regardless of the specific chosen objectives, is to develop self-maintaining systems that mimic natural ones in as many ways as possible. The study of local natural wetlands is important because artificial wetlands must closely imitate natural systems adapted to the region if a creation project is to succeed without continual operating and maintenance costs (Hammer, 1992). This means that design parameters must be appropriate to local hydrology, climate, and soil conditions. Measurements of elements of wetland structure at a natural site within the region or watershed that shares these conditions will provide insights into what is obtainable and how to evaluate progress at the constructed site (Hammer, 1992). In the context of comparisons of natural to artificial, the objectives for a created wetland must encompass "only a very early successional stage if the evaluation period is short (less than 10 years for a marsh)" (Hammer, 1992).

Landscape Considerations

Even if the physical parameters of a site are favorable for reclamation as wetland, the result will be counterproductive if it conflicts with regional land-use priorities or overall ecological balance. "Land managers need to establish their mitigation policies in the context of what changes are occurring in wetland types throughout a given physiographic region, not just on a particular mine site" (Brooks, 1990). Assessing these trends to determine regional need for specific wetland types requires coordination among

federal and state agencies. Cooperating agencies must then see that this information is transferred to those who will be planning wetland construction, including the mining industry (Brooks and others, 1988).

Constructing a Gravel-pit Wetland

Site-specific Considerations and Grading Plans

Since each site presents a particular combination of hydrology, topography, and substrate, only generalized instructions can be provided. There are no exact guidelines yet accepted in the very young science of wetland creation. Given favorable site hydrology, however, it is possible to proceed with assurance that the creation of gentle slopes at pit perimeters plus restoration of topsoil, or even moderately amended subsoil, will result in establishment of wetland vegetation. Many abandoned wet pits have, over time, acquired typical wetland vegetational characteristics with far less encouragement.

Although many mine reclamation plans are submitted in the initial permitting process, it may not be practical to plan the specifics of a post-mining pit wetland until the extraction is nearly complete. At that point it should be possible to draw up a detailed site grading plan which will take the site variables into account. The final hydrological parameters, in particular, may not be fully anticipated or understood until the alterations that mining imposes have actually been realized. The site grading plan is an essential element in engineering the site for wetlands because it will determine basin morphometry, which in turn determines vegetational composition (Garbisch, 1986). Because many wetland plants are sensitive to water depths within a low range of tolerance, the most useful plan would have contours of 1 foot or less at a scale of 1 inch equals 20 to 50 feet (Miller, 1987).

The precision grading required to bring the site to the final grade within the established tolerances may not be possible if water cannot

be excluded from the pit (Garbisch, 1986). In these instances, "the site grading plan should reflect this . . . and specify the scattered mounding of fill materials in order to diversify the wetland habitat" (Garbisch, 1986).

Shorelines and Slopes

A common recommendation for sand-or-gravel-mine wetland construction is to increase the area of the pit basin by creating an irregular shoreline. Bays, inlets, coves, peninsulas, and islands increase topographic heterogeneity and habitat diversity and provide more "edge" by increasing percentage of shoreline per unit area (Crawford and Rossiter, 1982). Pit floors should also have an irregular topography with mounds and depressions (Norman and Lingley, 1992; Van Egmond and Green, 1992; Michalski and others, 1987). Dumping overburden in irregularly spaced piles will create rough bottom contours and perimeter landforms (Van Egmond and Green, 1992).

Construction of some of these landforms can take place during mining to simplify post-mining reclamation. Overburden and waste materials (including boulders and tree debris) can be graded into landforms above and below the water line (Michalski and others, 1987). Islands for protection of waterfowl and general ecosystem diversity can be developed in undrained pits during operations (Michalski and others, 1987). They should be separated from the shore by a permanent water depth of 1-to-2 m and a width of 4-or-5 m, with tops at least 1 m above the estimated highwater mark (Van Egmond and Green, 1992).

Slopes for a true marsh community need to be almost flat — no more than a 0.6-m change of elevation between the deep and shallow marsh (Miller, 1987). Shallow slopes maximize flooding and minimize erosion (Kruczynski, 1990). Brooks (1990) and Crawford and Rossiter (1982) recommend gentle slopes at 10H:1V or 20H:1V; Kruczynski (1990) suggests that a range of 5H:1V to 15H:1V is acceptable. Since it is unlikely that efficient mining will be possible at

these angles, the cut-and-fill method can be used to create recommended slopes (Norman and Lingley, 1992).

Unless slopes have been left ungraded and unstabilized, gravel-pit waterbodies typically have two distinct habitats: the shoreline wetland and open water. Grading plans will determine how much area will be allotted for each. Fifty percent open water to 50% marsh or swamp is often cited as optimal for fish and wildlife habitat (Van Egmond and Green, 1992; Crawford and Rossiter, 1982). Norman and Lingley (1992) suggest 25% of the waterbody in shallow water less than 0.6 m deep, 25% in shallow water 0.6-2 m deep, and 50% in water greater than 3 m as a general guideline for use by fish and waterfowl. If wetland communities are the objective, however, "the higher percentage of shallow areas the better" (Norman and Lingley, 1992).

Water Level Adjustment

Gravel and sand pit-wetland creations are primarily ground water-fed and therefore may not require elaborate water-control mechanisms. According to Van Egmond and Green (1992), "natural cycles of drought and wet spells will sometimes provide adequate changes in water levels." An outlet with a controllable weir will increase management options, however, and will enable periodic partial drainage which helps re-establish wetland vegetation. Van Egmond and Green (1992) recommend that a water-level drawdown should occur every 3 to 10 years. Boule (1988) emphasizes the importance of simple systems which are more likely to be self-regulating and self-maintaining. He advocates relatively inexpensive weirs or other similar devices which are unlikely to fail and disrupt the entire system. Outlets should be identified on-site and recorded in plans so that they can be periodically inspected and protected from erosion (Norman and Lingley 1992).

Branch (1985) reported successful vegetation establishment on a 5-ha portion of an abandoned sand and gravel mine in Maryland using a

device with a removable weir plate which controlled the top 0.3 m of water in the basin. Removal of the weir plate exposed perimeter areas for planting; once this was complete, the plate was reinstalled to restore the project design water levels. Garbisch (1986) suggests that incorporation of an adjustable weir in the project design may compensate for less-than-precise grading.

Although periodic "drawdowns" are important for waterbodies that function as waterfowl habitat, many pit ponds lack surface drainage and "cannot be drawn down using standard dikes and weirs" (Michalski and others, 1987). For landlocked ponds receiving supplemental water from surface runoff, a partial drawdown can be engineered by periodically diverting this surface flow (Michalski and others, 1987). Unless there are concerns about contaminants in the surface water, it can be directed toward the pit-pond impoundments (Van Egmond and Green, 1992). The drainage channels "should have a natural sinuosity and gradient", should be stabilized with riprap or vegetation, and should be directed through upland "vegetated areas to slow runoffs and aid in water filtration" (Norman and Lingley, 1992).

Sealing and Lining

Since "most natural wetlands are perched above an impervious layer that reduces or prevents water loss", Hammer (1992) believes that there are few situations in which a basin can sustain a wetlands ecosystem without an impermeable lining. Brooks (1990), on the other hand, states that "basins constructed below the water table rarely need to be sealed." Wet pits have an advantage as wetland creation sites not only because they are filled primarily by ground water flow, but also because natural sealing is common. The material left behind after gravel mining usually has a fairly high percentage of clay or silt, especially if aggregate was washed on site (Bradshaw and Chadwick, 1980). These "fines" will contribute to the blocking of water movement, and over time additional fine sediments will be eroded or carried into the pit lake

with surface runoff (Evoy and Holland, 1989). The extent of this natural sealing will vary from site to site depending on the shape of the pit, bank materials, perimeter vegetation and water turbidity (Durbec and others, 1987). It seems likely, however, that even a partial lining of sediments within the pit would be beneficial from a wetland creation perspective.

Soils

An appropriate substrate for plant establishment can be created by placing topsoil on banks, islands, and submerged areas that have the recommended shallow grade. Norman and Lingley (1992) recommend a 15-to-20 cm layer of topsoil over a thicker layer of subsoil; Hammer (1992) suggests a 40-to-60 cm total soil layer (topsoil and subsoil) will be needed to provide adequate substrate for root growth. This soil layer should be placed on islands and down to 1.5 m below the expected highwater mark for the wetland perimeter (Van Egmond and Green, 1992). If grading-plan configurations are to remain accurate, the pre-final grades will have to be made lower than the final design elevations to allow room for the topsoil (Miller, 1987).

Stripping and stockpiling of topsoil before mining will reduce reclamation costs later on. To maximize efficient use of on-site materials, clean process-waste fines can be used to augment salvaged topsoil (Hart and Keammerer, 1992). Structural damage can be minimized if soil stripping and replacement is limited to dry periods and if proper machinery (e.g., wide-track crawler bulldozers) is used in re-application (Norman and Lingley, 1992). Any sort of unnecessary equipment movement over the soil should be avoided.

There are varied estimations of appropriate topsoil storage periods. Brooks (1990) specifies a maximum of 3 months. Garbisch (1986) says stockpile duration must be less than 4 weeks. Segmental reclamation is the only procedure that will be compatible with these storage times,

because it allows transfer of topsoil directly from an active mining segment to another segment which is in the process of being reclaimed. This reclamation approach is ideal for larger sites and long-term operations, but it is not always an option where deposit heterogeneity and market fluctuations prevent continual movement of the operation from one segment to the next (Norman and Lingley, 1992). Where longer storage periods are necessary, Michalski and others (1987) suggest seeding of the piles as a way to reduce loss of quality.

For mined sites that have no salvaged topsoil available, the partially weathered subsoil may be an acceptable substitute (Michalski and others, 1987). Garbisch (1986) goes so far as to say that most clean (uncontaminated) inorganic borrow and dredged fill materials will be satisfactory substrates for wetland establishment. Hammer (1992) agrees that "most common substrates are suitable for wetland establishment" and that "wetland plants thrive in a broad range of soil types", but adds that topsoil replacement may eliminate the need for soil amendments.

If subsoil or overburden material is the only planting medium available, then a controlled time-release fertilizer that performs in saturated soils should be put into the substrate together with the transplant (Garbisch, 1986). If the planting is occurring underwater, Garbisch (1986) suggests placing the fertilizer in burlap sacks underneath the transplant. Fertilizers should never be broadcast or spread on the soil surface of wetlands (Shapiro and Associates, 1991). The cost and additional labor necessary to apply these fertilizers would seem to argue for on-site salvaging or site-to-site transfer of topsoil whenever possible.

Straw or hay mulch is another option to consider for any reclaimed site where the substrate lacks organic matter (Brooks, 1990) and could be an inexpensive adjunct or alternative to commercial fertilizer for wetland applications. Street (1982) recommends 1 kg straw mulch per square meter.

Wetland Vegetation

For wetland creations, there are only two basic reasons for choosing managed revegetation over natural colonization: timing and species composition (Josselyn and others, 1990). Composition, especially, is a factor in many mitigation proposals. Revegetation by artificial means may be required, for example, if a specific wetland plant community is necessary to replace habitat for wildlife species that are losing habitat elsewhere. In these situations it may be advisable to salvage plants from wetland sites that are being destroyed and transfer them to a new site where their genetic diversity is likely to be preserved.

Managed revegetation programs are also generally more successful in controlling exotic species which commonly invade disturbed areas and become established first (Josselyn and others, 1990). These exotics usually have a competitive edge over native marsh species and may form extensive monotypic or low diversity stands that decrease the wildlife habitat or nutrient processing functions of the wetlands they take over. Reed canarygrass (*Phalaris arundinacea*) and purple loosestrife (*Lythrum salicaria*) are notorious local examples in freshwater wetlands.

There are also a few ubiquitous native wetland plants which may be considered undesirable due to their aggressive, weedy characteristics. Many wetland ecologists would advise control of dominants such as common cattail (*Typha latifolia*), willow (*Salix* spp.), and cottonwood (*Populus* spp.) because of their tendency to reduce system diversity and crowd out plants more valuable to wildlife (Hammer, 1992; Odum, 1988; Erwin and Best, 1985). These pioneer colonizers are adapted to invade disturbed sites, and "creation projects often behave like disturbed wetlands" (Odum, 1988). Nonetheless, dominant natives such as cattail, willows and cottonwoods remain popular components of revegetation projects and are found on many lists of suggested species for wetland plantings. As naturally occurring features on most disturbed

freshwater wetland sites, they would seem to be far preferable to weedy exotics and perhaps not worth great effort and expense to control unless their establishment would conflict with project goals.

If a natural seed source is nearby, or if the substrate contains a seedbank from another location, periodic manipulation of water levels in the constructed wetland basin can be sufficient to start germination and retard growth of terrestrial species. Miller (1987) suggests that a seed source can be obtained from mud removed from shorelines of existing ponds and marshes and spread in the shallows (water depth less than 10 cm) of the created site. Brooks (1990) mentions the possible transfer of seed-bearing hydric soils from wetlands scheduled to be altered or filled-in for development. The removal of plants or soil can be justified only when the destruction of the natural wetland is a legally sanctioned certainty and all relevant government regulations have been followed. If these conditions are met, salvaging of plants and hydric soils from nearby development sites or during segmental reclamation should be encouraged as a means of preserving what would otherwise be lost.

A post-reclamation study comparing treatments in a central Florida marshland reclaimed from a phosphate mine provides support for the use of relocated hydric soils. The study determined that topsoiling with a 2-to-10cm-thick layer of "mulch" containing seed and root material obtained from a wetland borrow site showed "distinct advantages over natural revegetation of overburden" (Erwin and Best, 1985). After two full growing seasons, the mulched areas had higher species diversity and more complete vegetative cover than the untreated overburden areas. More importantly, this topsoiling method "appears to encourage the accelerated establishment of late successional plants in sufficient quantities to compete with aggressive weedy species" (Erwin and Best, 1985).

Natural hydric soil seedbanks thus obtained should not be stockpiled for longer than 1 month to avoid desiccation and possible re-oxidation of

metals (Brooks, 1990). Hammer (1992) advises that any wetlands soil reserved for later use should be stored underwater to prevent release of bound metals.

If a legally and ecologically acceptable donor site is available, Hammer (1992) recommends an alternative to digging out and spreading a layer of wetland soils. This method involves collecting cores of wetland soil (10-12 cm diameter and 15-25 cm long) and inserting them in the substrate at the reclamation site. The cores contain seeds as well as roots, tubers and rhizomes and can rapidly develop into a complex wetland community. They are also a reservoir of propagules that may produce additional plant growth for several years after they are installed at the new site. Disadvantages center around labor costs involved in collecting, transporting, and installing the cumbersome and somewhat fragile cores.

If species composition for a particular mitigation purpose is not a concern, and if establishment within a limited time frame and budget is the priority, then a combination of natural colonization and deliberate planting may be the most effective way to establish vegetation on gravel-pit wetlands. Natural regeneration, while not "manageable" enough for situations where precise control over outcome is important (Garbisch, 1986), may provide the best long-term results because the plants will grow where they are best adapted (Clewell and Lea, 1990). The availability of natural seed sources adjacent to the project site or the possibility of seed transport into the site via flood waters needs to be evaluated if natural revegetation is part of the reclamation plan (Clewell and Lea, 1990). The amount of hand planting undertaken should depend on the proximity or reliability of a seed source, labor and materials costs, and time allotted to complete the project.

For those pit wetlands that can or must be hand planted, the best guide for species selection will be found in the vegetative composition of similar nearby wetlands (Hammer, 1992). Local native-plant nurseries, a few of which specialize in wetland vegetation, are sources of advice on

what species combinations will produce the most natural plant communities. The objectives of the reclamation plan, which might include wildlife habitat, aesthetic enhancement, and/or storm-water detention and purification, will also help determine appropriate plant species (McMullen, 1988). The limiting factors, however, will be the physical conditions at the site and the environmental tolerances of available nursery stock.

The type of plant stock chosen will influence timing of planting and vice versa. Spring is usually the best time to plant, with fall the next best choice (McMullen, 1988). Propagules planted in late spring may be less susceptible to wildlife damage due to the shorter time to be expected between planting and germination. These timing recommendations generally apply to the seeds, rhizomes, corms, and tubers of herbaceous species, as well as to the whole plants. Woody vegetation such as trees and shrubs should be planted in the dormant state which generally extends from November through March in the Pacific Northwest (Norman and Lingley, 1992).

A biologist familiar with local wetlands should review the proposed planting design. "The number of each plant species to be used will be based on the type of community, the plant's position in the community, and the required spacing between plants" (Miller, 1987). Miller (1987) generally recommends that trees planted on 4.6-to-7.6-m centers, shrubs on 0.9-to-2.4-m centers and groundcovers on 1.0-m centers would be appropriate for the emergent shorelines of created freshwater wetlands. Marshes created in standing water deeper than 10 cm are most easily established using sprigs (culms), tubers, or rhizomes (Miller, 1987). These propagules are pushed into the mud/mulch substrate on 0.3-to-1.5-meter centers (Brooks, 1990). Plantings should be irregularly spaced in clumps to mimic natural spacing as closely as possible.

The cost of managed revegetation with nursery stock and labor intensive hand planting can be substantial (Brooks and others, 1988). Miller (1987) estimates that approximately 27,000

transplants per hectare will be necessary to establish a created marsh wetland. Costs can be greatly reduced if time expectations and reclamation objectives allow at least partial natural colonization. If the hydrological aspects of a site are favorable to begin with, precise grading and substrate preparation should be enough to assure emergence of at least a few native and/or naturalized wetland species. On sites being created as a diversity-enhancing feature of a mine reclamation plan and not as mitigations for specific wetland losses, this may be all that is needed.

Buffer areas consisting of native upland vegetation and at least 30 meters wide will increase habitat diversity and protect the shoreline and should be planted/seeded on the higher ground surrounding the pit impoundment and created perimeter wetland (Norman and Lingley, 1992). According to Munro (1991), vegetated areas should be provided as buffers between wetlands and adjacent developed land or as transition zones between wetlands and adjacent natural areas even if not required by regulations.

Post-construction Monitoring

Evaluating Success

The construction process, if carefully planned and well executed, should produce a site on which the altered hydrologic conditions favor wetland development. The introduction of wetland plant species, whether by natural colonization or managed revegetation, is only the first step in that development. Wetland functions for which the project was designed might not develop for decades, if at all. According to Hammer (1992), it is "grossly unrealistic to expect to create even the simplest type of natural wetlands systems" within 2 or 3 years after construction. This makes it very difficult for regulators to determine whether a wetland reclamation has been "successful", particularly if the site is part of a mitigation effort to replace the functions of natural wetlands sacrificed to development.

The time limits for completion of revegetation that are specified by many surface-mine regulatory programs are inadequate for the evaluation of created wetlands. Washington State allows 2 years or "such later date as may be authorized by the department" (Chapter 332-18-050 WAC). The literature on wetland creation and restoration indicates that 2 years is not sufficient time for stabilization of new emergent marsh ecosystems. Boule (1988) suggests that establishment and natural perpetuation of plants in marsh and shrub-swamp systems would require 3 to 5 years. Brooks (1990) states that "there is some scientific evidence for the stabilization of emergent marsh systems after three years." Josselyn and others (1990) report their observations that many San Francisco Bay area wetland restoration projects which had been considered revegetation failures became fully vegetated when allowed a 3-to-4-year period of natural regeneration.

Past experience with restored or created wetlands also indicates that revegetation over 1 or 2 years is "no guarantee that the area will continue to function over time" (Kusler and Kentula, 1990). Active monitoring, with periodic review by qualified personnel, would provide some perspective on the direction that site development is following and would allow for timely mid-course corrections if necessary. Reports, submitted within 90 days following sampling, should document any vegetation changes including percent survival and cover of planted and/or volunteer species (Erwin, 1990). Monitoring reports should also document issues related to water levels, water quality, and sedimentation and discuss recommendations for improving the degree of success observed (Erwin, 1990).

Short-term vs. Long-term Monitoring

The evidence regarding the establishment of marsh vegetation seems to indicate a minimum 3-year monitoring program for wetland creation projects. Brooks (1990) suggests that expenses for a 3-year monitoring period be included in the cost projections for any mine reclamation plan

with a wetlands component. This allows for assessing of varying conditions over three growing seasons and should not result in unbearable economic burdens on the permittee (Brooks, 1990). Boule (1988) feels that annual monitoring of wetland creations over a 3-year period is the minimum acceptable term; 5 years would be more appropriate for some complex projects. Erwin (1990) agrees that post-construction monitoring should be conducted over a 5-year period, with a minimum of 3 years, and with annual inspections at the end of each wet season.

The short-term monitoring proposed here will not be sufficient for scientific research and data collection, and it will not help redirect evaluations toward establishment of wetland functions rather than appearance. Success in a 3-year time-frame may have to be measured in terms of survival and growth of plant species characteristic of a wetland community with no consideration of functional attributes.

Long-term research projects that will enhance our ability to predict the outcomes of mitigation policy should be encouraged and carried out whenever possible. These projects can focus on learning more about development of wetland functions within created systems and may eventually provide standards for evaluating function. Until such standards exist, personnel responsible for judging compliance with permit requirements will have to rely on the tools at hand. For wetlands created outside a mitigation context the establishment of self-perpetuating marsh vegetation, confirmed over a 3-year period of observation, seems a realistic and appropriately flexible reclamation objective.

Correcting Problems

In addition to verifying compliance with reclamation plan requirements, monitoring programs can also identify problems which might eventually lead to failure. Miller (1987)

and Garbisch (1986) list several reasons for poor results at some wetland creation projects: improper final grade, invasion or deliberate planting of nonnative plant species, poor planting techniques, inadequate water levels, vandalism, and wildlife predation. Mid-course corrections can often mitigate these problems before the project becomes a lost cause, but corrective measures are best determined by professionals qualified in fields such as wetland science or restoration ecology.

Some created wetlands need long-term management to survive and function as they were intended. This "may include water level manipulation, control of exotics, controlled burns, predator control, and periodic sediment removal" (Kusler and Kentula, 1990). Management of this type beyond a 3-to-5-year program coordinated with annual monitoring is probably not feasible for most reclaimed pit sites. Once the mine operator is released from further obligations under the reclamation permit, the site will have to be self-sustaining. This means that problems that are not correctable within the proposed 3-year monitoring period will continue to have a detrimental influence, perhaps a regional one.

This further emphasizes the importance of site-specific project designs developed from data gathered both before and during the mining operation. Although each site is an experiment within which complete control is never possible, development of a practical, self-sustaining design that uses knowledge of site characteristics is the best defense against the unexpected. Larson (1988) suggests that minimum data requirements for freshwater wetland creation projects include a baseline of information on land-use history, macrotopography, general surficial geology, streamflow, lake hydraulics, and ground water levels and quality. Hart and Keammerer (1992) stress the importance of accurate historical project records documenting the techniques used, including a detailed photographic record. "This information is of paramount importance relative to understanding successes or failures" (Hart and Keammerer, 1992).

Conclusions

The sand and gravel industry, increasingly under public scrutiny as its operations are encroached upon by suburban development, must now focus on the long-term regional implications of post-mining land-use decisions. It has been proven that worked-out pits lend themselves to a wide range of subsequent uses, but the majority of these uses have come about by accident rather than intent through planning. The natural regeneration that has occurred at many abandoned wet-pit sites indicates tremendous potential for increasing the nation's freshwater aquatic ecosystem resources, but this potential is not being fully used. Wetlands, in particular, have been neglected or overlooked in sand-and-gravel-mine reclamation planning.

Opportunities to balance use of an essential non-renewable resource with development of new resources may in time prove more valuable than the materials which have been extracted. Wetlands are in short supply and increasingly threatened. While creations are not a substitute for mature natural systems, they have the potential to initiate functional wetlands for future generations. For the immediate future, they can add to regional ecosystem diversity and provide habitat for many species of plants and animals. The hydrology of worked-out sand and gravel pits is typically ideal for wetland creation projects. What is needed is industry commitment, cooperation among government agencies, and support from an informed public.

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Nancy Street Wetland Enhancement: Assessment of Design and Construction

Prepared by the City and Borough of Juneau
Engineering Department
2006

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I. Introduction and Site Description

The Nancy Street Reclamation Project pioneers a creative strategy to partner development needs of a fill disposal site with conservation needs of wetland habitat and water quality enhancement. Six acres of wetlands along an impaired anadromous salmon stream became the site of fill disposal for a high school construction project in the Mendenhall Valley in Juneau, Alaska. The filling was designed to provide a platform for wetland emergent plantings and a meandering stream with riffles and deep water pools for juvenile salmon. For the City and Borough of Juneau (CBJ), the purchase of this parcel from a private landowner meant \$137,000 dollars to provide a disposal site only one mile from the construction site. Otherwise, the transport of the fill would require a three mile drive to Lemon Creek. The CBJ Engineering Department charged the contractor a lower rate for fill disposal and used this revenue to partially recover the cost of the land purchase (Appendix 3).

From the conservation perspective, this strategy met goals of a ten year old community watershed plan and the Juneau Wetland Management Plan to improve the habitat and water quality of the Nancy Street Wetland. In the 1950s and 1960s, the land was dredged to extract gravel deposits. The pit filled with groundwater that was high in iron and low in dissolved oxygen. The water from this system enters the Duck Creek system and ultimately flows into the valuable Mendenhall Wetlands. By filling to create an emergent wetland, the plants act as water filters and improve salmon and bird habitat.

The integration of a community participation component to the project raised support and enthusiasm for the creation of the wetland. Local volunteers planted willow and cottonwood in the wetland and various community groups donated time and money to the revegetation and the construction of a trail. Since the construction of the trail, nearby property owners have expressed approval and gratitude for the wetland reclamation.

This document summarizes the planning, design, and construction of the Nancy Street Wetland Reclamation Project. The site description presents the history and ecological problems found in the former gravel pit. Then the design and process of filling, revegetation and trail creation is discussed. Finally, a plan for monitoring and maintenance is proposed in order to measure the functionality and the success of the design and construction. Future plans to fill the Allison Pond as a wetland depend on the economic and ecological success of the reclamation as well as the public perception of the project. This document provides a guide to measure this success.

Site Description

The Nancy Street Wetland is located in the East Mendenhall Valley along Duck Creek, ten miles south of downtown Juneau. As part of a glacial valley, the land has been in flux for centuries, the most prominent example of this being glacial rebound. Only in the past century have people been continuously inhabiting this land. Juneau, as a gold rush town, formed in the late 19th century around two mines located near the downtown area. Prior to the arrival of the gold miners in Juneau, the Tlingit people had established a summer village a few miles north of the Mendenhall Valley. It is believed that the Tlingit only visited the valley occasionally. In 1885, the first record of land use in the valley identifies Daniel Foster as a homesteader. He raised animals and farmed the land at the mouth of the valley (Koski and Lorenz, 1999).

In the next 40 years, development of the valley occurred rapidly. A road was built to access a hydroelectric plant constructed near the glacier. Fox and mink farms, common in this part of Alaska in the 1920s, occupied much of the flat valley land. Salmon harvested from Duck Creek fed the animals. In the mid-1900s the Juneau airport was constructed on the land where Duck Creek flowed into the ocean. The creek was diverted to empty into the Mendenhall River. Along the creek bed, gravel pits were dug and homes, schools, and commercial areas were developed (Koski and Lorenz, 1999).

In the 1950s and 1960s the current Nancy Street wetland including land to the north and south of the site were dug for gravel extraction to support the rapid development of the city. After the mining was completed, the holes were left to fill with water. The pond then supported a stump dump and the neighborhood dumping of yard waste and many other household items. A private owner of the Nancy Street site sold the land to the City and Borough of Juneau to be used as a fill disposal site and reclaimed wetland. The northern portion of the site is still owned by the Church of the Nazarene

Photo from Koski and Lorenz, 1999.
Duck Creek, early 1900s



who has agreed to allow city access to the wetland for the reclamation project. From this early industrial history of the landscape, the only visible remnants are piles of gravel mining waste along the southern end of the Nancy Street Pond.

Currently, the Nancy Street Wetland is surrounded by dense suburban development with supporting infrastructure such as roads, schools, churches, and a commercial center. According to a study done by the Department of Parks and Recreation



Photo taken by Michele Elfers.

Nancy Street Pond 2005, prior to reclamation, Thunder Mountain is seen on the right

in Juneau, 11,000 people live in the East Mendenhall Valley with a higher than average density of 5 to 18 residential units per acre (1996). Immediately surrounding the Nancy Street Wetland is a church to the north, single family home developments to the east and south, and the collector road through the valley to the west that separates the wetland from a mobile home community. The dense development limits access to off street recreation for residents. It is difficult to move through this part of the valley without crossing streets or private property.

The Nancy Street Wetland site is seven acres of wetlands and uplands located on the East Fork of Duck Creek in the Mendenhall Valley in Juneau, Alaska. The East Fork drains 266 acres of land into the mainstem of Duck Creek. The entire Duck Creek Watershed drains 1.7 square miles of land into the Mendenhall River just upstream of the largest tidal wetland in Southeast Alaska. As part of this larger system, the water quality and habitat resources of this stream are vitally important to the ecosystem of Southeast Alaska. The Duck Creek Watershed has been recognized for its valuable habitat for salmon and its poor water quality. It is classified by the state as anadromous fish waters (Alaska Department of Fish and Game Catalog No. 111-50- 10500-2002) for its run of coho salmon. It is also designated an impaired water body by the Alaska 303(d) list of Impaired Waters, Alaska Department of Environmental Conservation. These two factors have motivated the city of Juneau and federal agencies to focus on the improvement of the stream system.

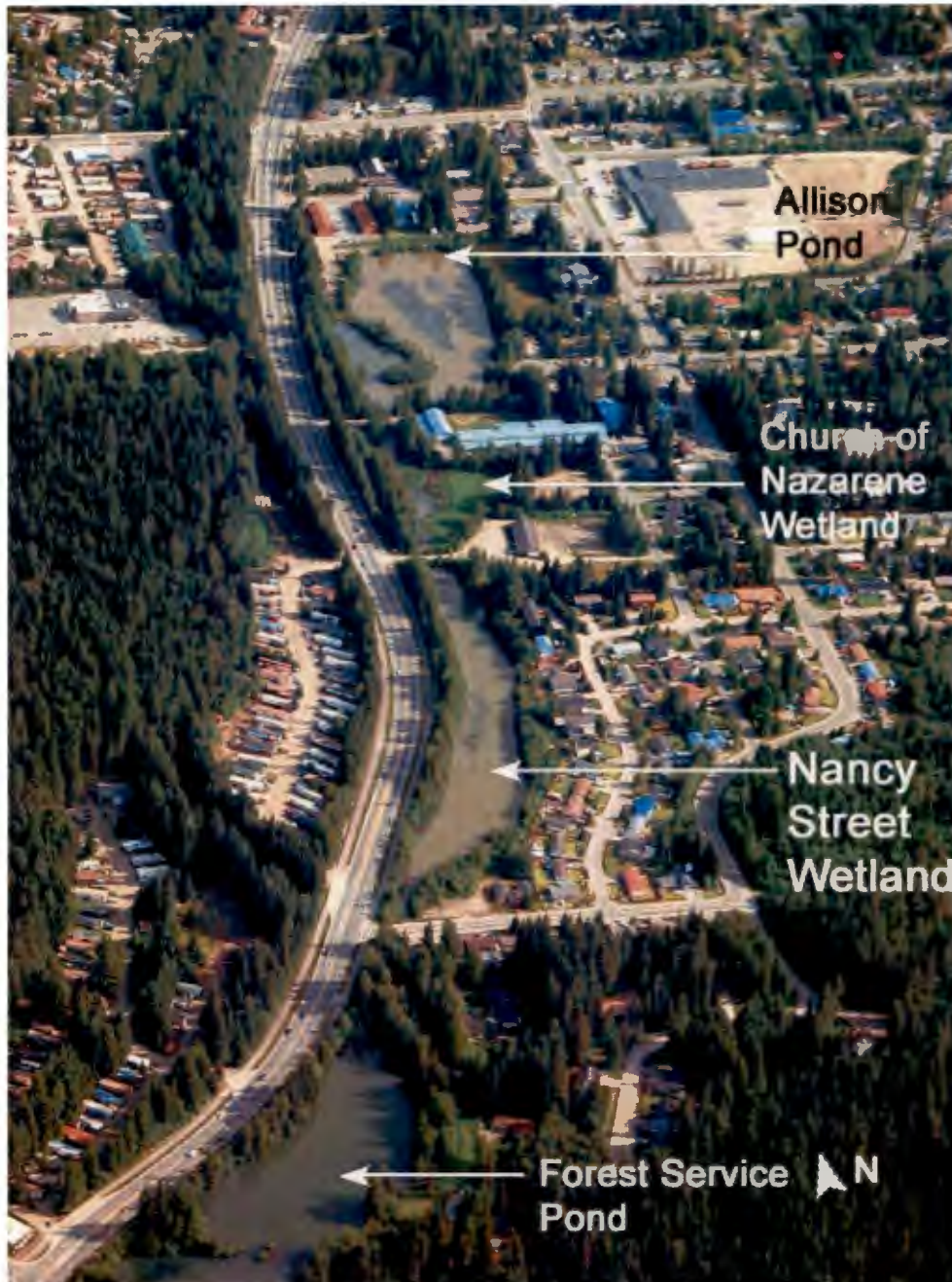


Photo from Koski and Lorenz, 1999.

The East Fork of Duck Creek flows through a chain of ponds and wetlands that were once gravel mines. Currently dense development crowds the ponds and wetlands into a narrow corridor along the main commuter road through the Mendenhall Valley.



Throughout its 250 year history as a watershed, the topography, stream flow and vegetation have massively changed due to glacial rebound, glacial succession and human influence. In its current state, the densely populated residential areas surrounding the wetland contribute to problems of turbidity, heavy metals, iron floc, fecal coliform and low dissolved oxygen rates within the watershed (Koski and Lorenz, 1999). However, many of the current water quality problems result from the geologic and cultural history within the Mendenhall Valley.

The known geologic history began during the Pleistocene Era 18,000 years ago. Metamorphosed igneous and sedimentary rock composed the Mesozoic bedrock under what is now the Mendenhall Valley. Glaciers advanced and covered the land with 4000-5000 feet of ice. When the glacier retreated, it carved out the depression that is now called the Mendenhall Valley. The glacial moraine deposited marine sediments, sand, gravel and organic materials in the valley. The most recent glacial advance in this valley began 700 years ago during the Wisconsin Age. The glacier advanced until 1750, and covered at least half of the current Duck Creek watershed. As the glacier retreated, Duck Creek gushed from the face and created an outwash plain as it flowed to the ocean. Several terminal moraines were deposited throughout the current watershed. As the glacier continued to melt, however, it formed a basin and a lake. The melt water from the glacier filled what is now Mendenhall Lake and spilled out into the Mendenhall River, cutting off the flow to Duck Creek. Today, groundwater is the primary source of the Duck Creek stream flow.

Since the retreat of the glacier, isostatic rebound has significantly impacted the landscape. In 1965, Hicks and Shofnos reported the rates of .05 feet/year uplift of land between 1936 and 1962. They believed the deglaciation of the land caused this uplift. The water table lowered relative to the surface of the land as a result of this process. Currently, low stream flow levels pose problems for fish habitat in Duck Creek. There is speculation that the isostatic rebound may contribute to this problem (Host and Neal, 2004).

In addition to isostatic rebound, the highly permeable soils in this area contribute to low flow. The soils characteristics of this flat landscape are common to alluvial plains and stream valleys: well to excessively well draining. The USDA, Soil Conservation Service, surveyed the soils in 1974 in the Juneau area and found along Duck Creek primarily soils in the He and Be series.

The He series of soils are composed of silty and sandy sediments that are generally waterlaid. For this reason, the soil is stratified. The stratification is generally 40 inches to 6 feet deep and is composed of silt, very fine sand, fine sand, deposits of organic matter, and coarse sand and pebbles. The depth to water table is usually greater than 4 feet, but can be less at times. HeA is the specific soil type in this series found along Duck Creek; this signifies slopes of 0 to 3 percent and a texture of Fine Sandy Loam.

The second series found in the Duck Creek watershed, the Be series, is also common on alluvial plains and terraces as well as hilly moraine landscapes. The gravelly sandy soils indicate an excessively well drained substrate. The first layer of the soil is very gravelly sand. The material 10 inches below the surface is 50 to 75 percent gravel and cobblestone by volume. Some large stones and boulders will be present. The water table, like the He series, is greater than 4 feet, but in some areas may be close to the surface. Flooding is rare in these soils; however, close to streams flooding may occur (Schoephorster and Furbush, 1974). Field testing close to the Nancy Street Wetland revealed a layer of approximately twenty inches of fine silt underlain by five feet of sand (Beilharz, 1998). This type of soil is highly permeable and contributes to the loss of stream flow to groundwater. In some reaches of Duck Creek, the stream goes dry or becomes puddles of standing water. Low flow destroys aquatic habitat and prevents aquatic life from moving through the stream.

The geologic conditions that create low flow in Duck Creek are compounded by the suburban land use within the watershed. The upper reaches of the stream flow through residential neighborhoods of primarily single family houses, while the lower sections abut commercial centers and the Juneau airport. According to studies done in the 1980s and 1990s, residential land use covers 540 acres of the watershed, commercial/industrial uses cover 282 acres, transportation 83 acres, and recreation/wetland cover 175 acres (TMDL, 2000). In 1969, the watershed was mapped to be 3.42 square miles. In 1988, it was estimated at 1.7 square miles. Riparian buffers and wetland areas have decreased as a result of the development (Koski and Lorenz, 1999). There is speculation that the moving of stream segments as a result of development may have moved the stream onto more permeable substrates. Stream flow is lost to groundwater when this occurs.

The water quality problems of turbidity, heavy metals, fecal coliform and low dissolved oxygen rates within the watershed in Duck Creek are largely caused by the suburbanization of the valley. Approximately 36 percent of the land cover is impervious surface and in 1997, there were a total of 39 road crossings over the creek. Stormwater runoff from the

impervious surface carries sediment, metals, oils and fluids from vehicles, and de-icing agents into the creek (Koski and Lorenz, 1999).

Within the Nancy Street Wetland, one of the most detrimental results of the gravel extraction is the increase in groundwater that is high in iron content seeping into the Nancy Street Pond and the other ponds along Duck Creek. Iron is commonly found in glacial outwash plains. While underground, it remains in a soluble form of Fe(II) because of the lack of oxygen in groundwater. When groundwater carries the iron to the surface, iron oxidizing bacteria are believed to oxidize the iron and create Fe(III). This oxidized form of iron is insoluble and settles on the ground surface as orange sediment known as iron floc (Megonigal, 2001). The process of conversion of Fe(II) to Fe(III) is detrimental to the Nancy Street Wetland because it robs the water of dissolved oxygen. Fish, macro invertebrates, and other animals require high levels of dissolved oxygen for survival. Additionally, the iron floc is small sediment that clogs interstitial spaces between gravel on the floor of the stream and prevents salmon eggs from accessing the oxygen and water flow they need to develop.

Wetland vegetation promotes the conversion of Fe(II) to Fe(III) and retains the iron floc in the roots of the plants. The roots of wetland plants leak oxygen into the soil. This zone surrounding the roots that contains oxygen is called the rhizosphere. Within the rhizosphere, Fe(II) is converted to Fe(III) by oxidizing bacteria. The Fe(III) precipitates to form a solid that sticks to the plant roots, called iron plaque (Megonigal, 2001). This characteristic of wetland plants creates the iron sink in the Church of Nazarene wetland. However, there may be some problems with this strategy in the long term. Wetland plants have been found to have high root turnover rates. Root turnover is the dying off of root hairs as part of a regular cycle of plant nutrient cycling and growth. Wetland plants are estimated to have 55% of their fine roots turnover annually (Gill and Jackson, 2000). If these roots are dislodged and carried downstream, the iron plaque may also be carried downstream, thereby negating the effects of the iron sink. Additionally, iron is known to diminish the uptake by plants of other metals or organic compounds. The iron plaque covers the root hairs, reduces oxygen in the rhizosphere, and minimizes the ability of microbes to interact with chemicals excreted by root hairs. This prevents the roots from uptaking other metals or organic compounds and reduces the phytoremediative effect of wetlands. The presence of iron could negate any other degradation of pollutants (Lanza lecture, 2005).

Historically, the Duck Creek Watershed was a rich habitat for coho, chum, and pink salmon. In its current state it provides limited habitat for coho spawning and overwintering as well as some habitat for birds and waterfowl (Koski and Lorenz, 1999). The Alaska Biological Monitoring and Water Quality Assessment Program Report rated Duck Creek the lowest of all streams studied in Southeast Alaska for habitat variables in 2003. The study measured dissolved oxygen, Ph, conductivity, temperature, taxa richness and stream structure characteristics. The mean habitat assessment value for urban streams was 157 and Duck Creek scored 96. Poor quality habitat resulting from an urban watershed with high erosion and low canopy cover combined with the geologic history have degraded habitat for the fish that once used the stream system.



Iron seepage in the Nancy Street Pond

The iron itself does not seem to harm fish and wildlife. However, the conversion process of Fe(II) to Fe(III) removes dissolved oxygen from the water. The photo is taken at Nancy Street Pond in July 2005.



Photos taken by Michele Elfers.

II. Design and Layout of Earthwork

The impetus for this partnership formed around the need for a waste disposal site for material extracted from the Mendenhall Valley high school construction project at Dimond Park. The initial design completed by Toner-Nordling Associates estimated the placement of 52,000 cubic yards of silty fill in the Nancy Street Pond. The proximity of the Nancy Street disposal site to Dimond Park ensured that this would be a cost effective fill site.

In 2004, Toner-Nordling worked with CBJ and the U.S. Fish & Wildlife Service to design the fill placement to achieve hydrologic, habitat and operational needs (See Figure 1 and 2). As part of a long-term plan to convert the upstream Allison Pond to a wetland through a similar filling process, this pond and the Church of the Nazarene water levels were designed to be controlled by an earthen dam at the southern end of the Nancy Street Wetland. The design of the Nancy Street fill and dam elevations were critical to the success of these three waterbodies. Additionally, the fill design determined habitat diversity. Low marsh and high marsh areas supported wetland emergent plants, deep water holes and the stream channel allowed for water flow and fish habitat, and the edge of the marsh maintained upland habitat. The need for efficient hauling of material required a haul road along the edge of the wetland and protruding fingers that would allow trucks access to the middle of the wetland to dump material. These access fingers became the low and high marsh habitat zones. The filling elevations below water surface elevation will be discussed in Chapter IV, Design and Layout of Vegetation.

In 2005, the design was revised by CBJ Engineering staff to enhance habitat and maximize fill placement (See Figure 3-7). As a former mining site, the extraction of gravel resulted in steep slopes at the edges of the pit. By modifying the design to increase the fill at the edges of the wetland, the slopes would be reduced to improve habitat and safety, as well as provide economic benefit through the disposal of fill. The modification reduced slopes on average from 30 to 60 percent to 7 to 15 percent throughout most of the wetland. Steep slopes were maintained where the stream channel curves at the edge of the pond to allow for overhanging vegetation that provides thermal protection for the water. The revegetation section discusses the variety of plant communities that are able to grow on the moderate slopes. The increase in fill along the slopes provided incentive for the expansion of the coho overwintering ponds by reducing the amount of fill added to these areas. The larger deep water areas benefit the juvenile coho salmon as well as providing more open water habitat for macro invertebrates.

To maintain the necessary water levels and provide a diversity of habitat, the U.S. Fish & Wildlife Service worked with R&M Engineering to design an earthen dam and outlet channel. The design of the dam called for an impermeable liner to wrap around the upstream side of the dam and fold back. The outlet stream design also included this liner to prevent water loss in the stream channel. The channel included a meander and two riffle sections for aeration. A combination of cobbles and gravel for spawning formed the streambed.

As an urban wetland, the heavy construction at the site required public meetings and compromises with adjacent property owners. The Church of Nazarene owns the northern portion of the wetland as well as the driveway needed to access the haul road (See Figure 1). To gain access to the wetland for filling, CBJ paved the Church's driveway and constructed the extension of their parking lot after construction along the northeast edge of the wetland. The property owners along the east edge of the wetland requested that the tree buffer be preserved along the Mendenhall Loop Road. For this reason, the haul road was built on the east edge of the wetland.

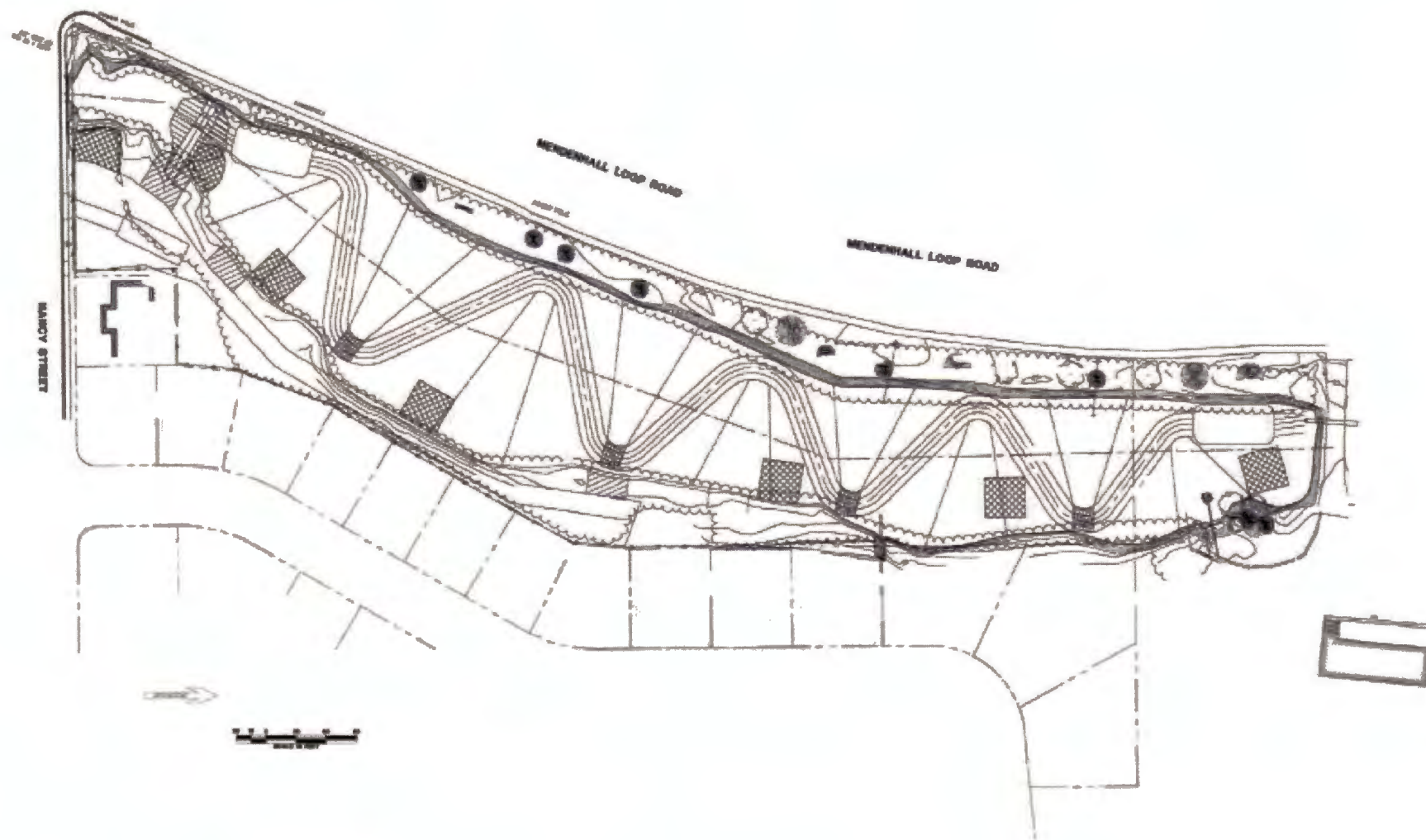


Figure 2. Initial Design for the Nancy Street Wetland Enhancement Project

R&M Engineering and Toner Nordling Associates worked with the U.S. Fish & Wildlife Service, the Natural Resource Conservation Service, and The Nature Conservancy to design the wetland enhancement. A meandering stream channel 4' deep flows from the North to the South through shallow marsh.

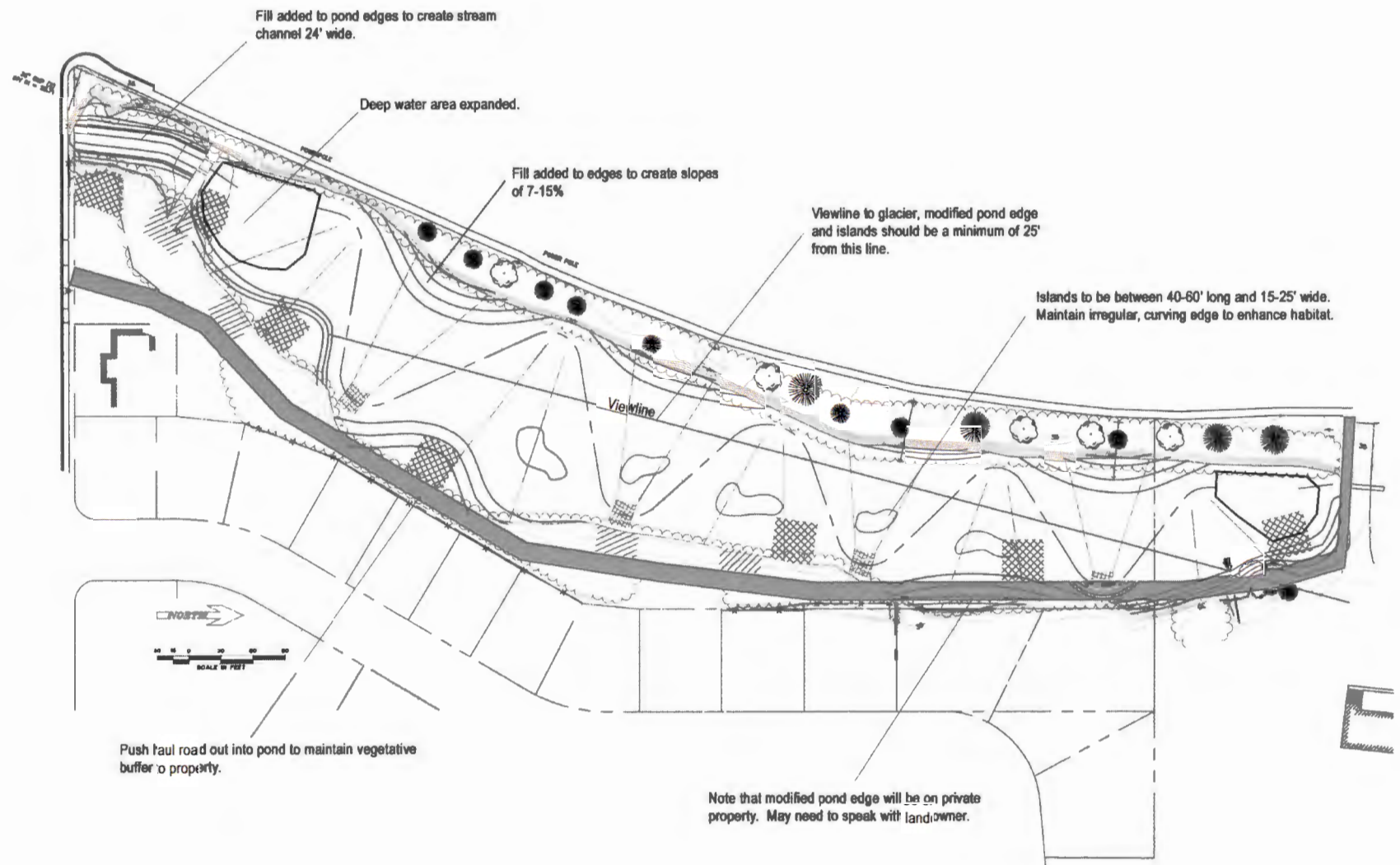


Figure 3. Modifications to the Nancy Street Wetland Design

In the summer of 2005, changes to the grading plan were proposed by CBJ to improve habitat by reducing the grade of the edges of the wetland. In anticipation of developing a trail plan, the islands were moved to allow for a view of the glacier.



Figure 4. Cross Section of the Coho Salmon Overwintering Pond

Fill is added to modify the steep wetland edge and cut is removed to allow the truck hauling road for the construction phase.



Figure 5. Cross Section of the Stream Channel, Marsh, and Island

Fill is added to create wetland emergent plant zones. The upland island will create protected bird nesting habitat.



Figure 6. Cross Section of the High marsh, Low Marsh, and Stream Channel

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Figure 7. Cross Section of the Outlet Stream Channel

Fill and gravel is added to create a stream channel with salmon spawning habitat.

III. Earthmoving Process and Commentary

Based upon discussions among Glacier State, R&M Engineering, CBJ, and the U.S. Fish & Wildlife Service, the process of filling was undertaken by shaping the fingers around the stream channel without filling in the stream channel or coho overwintering ponds. The alternative, to fill the entire pond and then dig out the stream channel and deep ponds would result in much less habitat diversity and variety in landform.

Glacier State began hauling and placing fill in September, 2005 and placed 64,000 cubic yards of fill by May. Ten cubic yard capacity dump trucks were used requiring approximately 6400 trips. One excavator operator worked filling and spreading the material. The material excavated from the highschool site varied from silty, to rocky mineral soil, to sandy depending on the area of excavation. At the Nancy Street pond, the excavator operator completed the filling by section, working and finishing one finger at a time. For this reason, the type of fill varies by section. After the completion of each finger, a 6-8" lift of topsoil was added for re-vegetation purposes. The unscreened topsoil came from Stabler's Quarry and was delivered at no cost to the project as part of an EPA mitigation penalty to a local company. The topsoil quality was low in organic content and high in cobble rock and woody debris content.

At the time of filling, the dam was not constructed. The fingers were filled to approximately 1-4 inches above the summer water level. The heavy rainfall received during the summer helped to compact the fingers. Usually within two weeks of shaping a finger, it would compact and solidify enough to walk easily on it. In many areas, the rocky silty fill would compact with the rains, dry out and harden to a cement like substance.

The dam and outlet channel construction began in early July, 2006 and required approximately 1-2 weeks of work. Fill was placed through the entire area where the stream channel would be located except for a narrow channel along the west edge of the wetland. This channel maintained water flow from the wetland to the culverts. After filling the area, the stream channel was excavated according to survey markers placed by Toner-Nordling Associates. The liner was secured in place under the streambed and the cobbles placed on top of it. The dam was shaped with fill, but the liner was never folded across the upstream face of the dam. It was determined by the Glacier State Contracting, R&M Engineering, CBJ, and the U.S. Fish & Wildlife Service that the fill was stable enough to maintain its integrity. The water flow in the wetland is minimal and so erosion is not a concern.

After completion of the initial dam and outlet structures, the area was given two weeks to rest. After this period, it was observed that the liner in the stream channel was surfacing due to upwelling of air and water from the substrate. Also, the established dam elevation was determined to be high relative to the elevations of the fingers. This resulted in high water levels in the wetland emergent area which could affect plant growth.

Glacier State Contracting went back into the wetland, lowered the dam level by removing fill from under the liner, re-layed the liner, added more cobbles and gravel to settle it, and reworked the stream channel meandering form. After this second effort, the liner is less visible and the effect is much more aesthetically pleasing. Due to high precipitation levels, it is unknown if the lowering of the dam will result in lowered water surface elevation.

Early stages of filling in November, 2005.
Logs are used to support machinery as the
fill the fingers.

Photo taken by Neil Stichert.



Early stages of filling in November, 2005. Photo looks south at the filling of the fingers.
Photo taken by Alan Steffert.



Photos taken in April, 2006 by Michele Elfers.

Hay bales and silt fence used to control sediment at downstream end of wetland.



In May, 2006 the channel sinuosity begins to take shape.

Photos taken by Michele Elfers.





Digging of outlet stream channel, laying of impermeable fabric and initial stream shaping in July 2006.



Glacier State returned to the outlet channel and dam 2 weeks after initial construction and added more cobble, lowered the dam elevation, and reshaped the channel.

Photos taken by Michele Elfers.

IV. Design and Layout of Vegetation

To plan for the process of revegetation, native plant communities that will thrive in the conditions at the Nancy Street Wetland must be understood. There is little to no documentation or literature on the revegetation of wetland reclamation projects in Southeast Alaska. Interviews and qualitative evaluations of three constructed wetlands during the summer of 2005 form the foundation for the planning of the revegetation process. The Church of the Nazarene Wetland, the Floyd Dryden Middle School Wetland, and Kingfisher Pond are studied to understand the successes and failures of native species and transplants within constructed wetlands. The results are applied to the planning for the revegetation of the Nancy Street Wetland.

1. Church of the Nazarene (CoN) Wetland, Mendenhall Valley

The Church of the Nazarene Wetland is located immediately upstream of the Nancy Street Wetland. The two wetlands are separated by a culvert. Similar to the Nancy Street Wetland, most of the water comes from groundwater seepages which carry iron into the surface water. The soils, geologic and human use are the same for both wetlands. The Church of the Nazarene wetland was part of the gravel pit and then filled in 1997 as part of a wetland reclamation project headed by K Koski of the Duck Creek Advisory Group. The reclamation utilized 20,000 cubic yards of fill composed mostly

Church of the Nazarene Wetland

Photo taken by Michele Elfers.



of sand and gravel from a stormwater improvement project in the floodplain of Duck Creek. Approximately 1000 cubic yards of peat were placed on top of the fill in a 6-10 inch lift. To accomplish the filling and planting, the water level in the pond was lowered using pumps. The fill was then added to allow for a stream channel 2-4 feet below the water surface elevation that covered 20 percent of the wetland. The remainder of the wetland was graded to allow for three different levels: 50 percent of the wetland is high marsh at 0-3 inches below water surface elevation, 15 percent of the wetland is mid-level marsh at 0-6 inches below water surface elevation, and 15 percent of the wetland is low marsh at 6-18 inches below water surface elevation. Plants were chosen for revegetation based on the established elevations.

Low Marsh 6-18" water depth

Nuphar luteum,
Yellow Pond Lily
Potamogeton gramineus,
Grass-Leaved Pondweed
Sparganium emersum,
Narrow-Leaved Burrweed

Mid-Level Marsh 0-6" water depth

Carex aquatilis,
Water sedge
Equisetum fluviatile,
Swamp Horsetail
Caltha palustris,
Yellow Marsh Marigold
Menyanthes trifoliata,
Buckbean
Beckmania syzigachne,
American Slough Grass

High Marsh 0-3" water depth

Carex aquatilis,
Water Sedge
Equisetum fluviatile,
Swamp Horsetail
Caltha palustris,
Yellow Marsh Marigold
Menyanthes trifoliata,
Buckbean
Beckmania syzigachne,
American Slough Grass
Carex sitchensis,
Sitka sedge
Calamagrostis canadensis,
Bluejoint Reed Grass

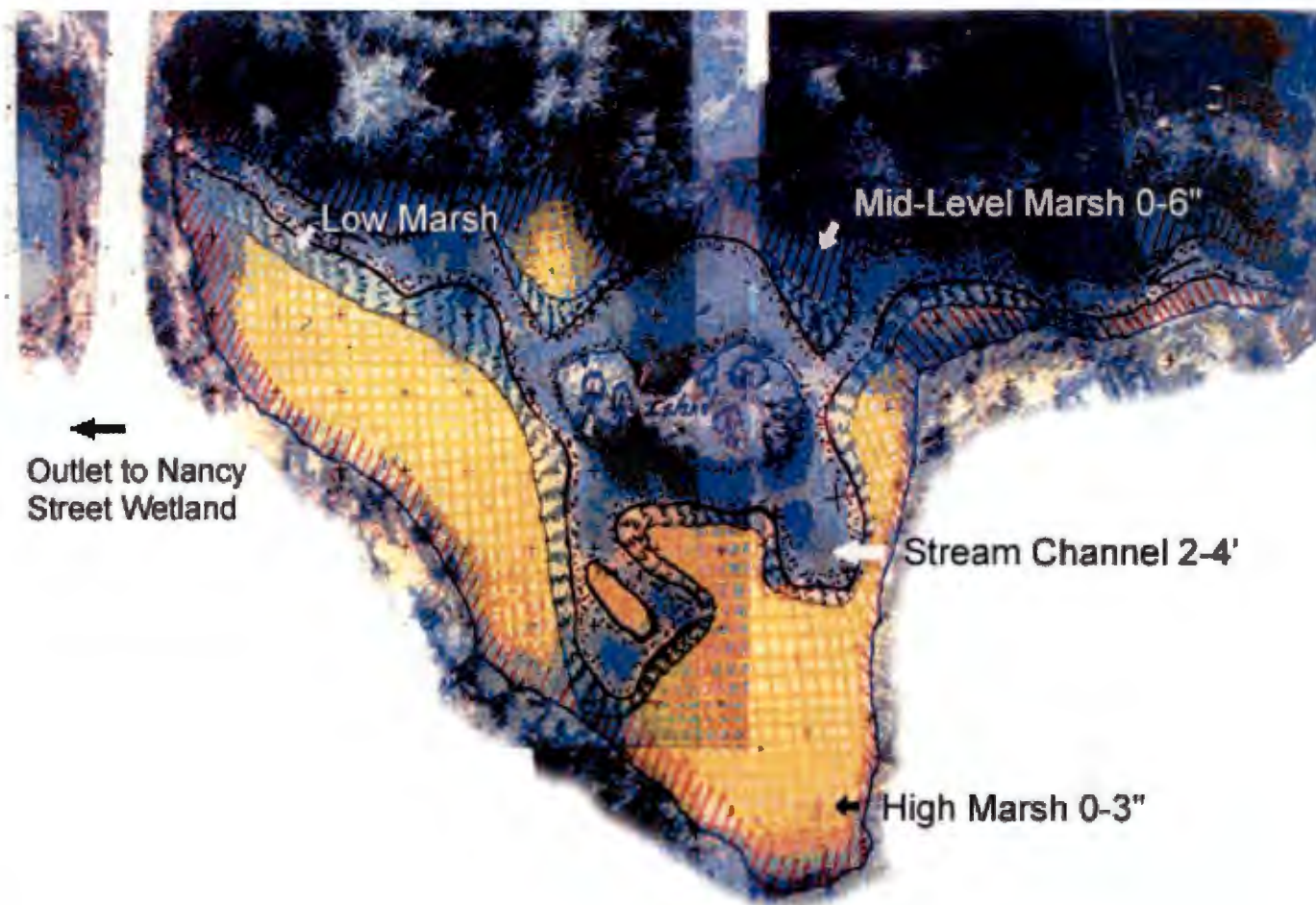


Figure 8. Church of the Nazarene Plan
Plan by K Koski.

The Wetland Enhancement Project for the Church of Nazarene Pond shows a grading plan that was developed to accomodate different plant communities. A meandering stream channel provides water to the marsh areas.

Table 1. Church of the Nazarene Plant Evaluation

site	water depth (cm)	% cover	live stems	description of quadrant	plant species
1a	7.5	90	57	saturated mud	horsetail, sitka sedge
1b	4	60	104	saturated mud	horsetail, sitka sedge
1c	3	95	14	saturated mud	horsetail, sitka sedge, blue joint grass
1d	14.5	35	17	standing water, iron oxide	horsetail, yellow marsh marigold
2a	5	75	50	saturated mud	horsetail, sitka sedge
2b	10.5	75	50	standing water	horsetail, sitka sedge
2c	6.5	35	37	saturated mud	horsetail, sitka sedge, western black willow, moss
2d	37.5	90	116	standing water, iron oxide	horsetail
3a	15	50	69	standing water	horsetail, sitka sedge, blue joint grass, bullrush
3b	35.5	95	89	standing water	horsetail, sitka sedge
3c	47.5	30	48	standing water	horsetail
3d	15.5	80	78	standing water	horsetail, sitka sedge
3e	12	20	9	standing water	sitka sedge
4a	13.5	40	90	standing water	carex, merten's sedge
4b	21.5	80	76	standing water	horsetail, sitka sedge
4c	22	40	32	standing water	horsetail

Table from "Inventory of Created Wetland and Baseline Data for Future Wetland Creation Sites". Hoferkamp, Lisa. Prepared for United States Fish and Wildlife Service, 2004-2005.

A combination of seeding, transplanting and planting of container grown stock were used for revegetation. During the transplanting, the plants that were dug from nearby wetlands were based more on availability and less on the planned species list. The plants were planted in rows four feet apart and with a spacing of two feet. Additionally, a local nursery planted upland species from container stock on a bank of the wetland (notes and plans from K Koski, 2005). Salix and Alder species were planted but did not survive. The wetland vegetation was counted and evaluated in 2004 by Lisa Hoferkamp, an assistant professor and a student at the University of Alaska, Southeast as part of a study of the water quality in the constructed wetland. Sixteen quadrants of .5 square meters were delineated within the saturated zone. Estimates of vegetative cover and an analysis of dominant species cover were performed.

The report estimates overall vegetative coverage of the wetland at 30-95 percent in 2004. This is an increase from an estimated 1 percent coverage in 1997 when it was first planted. The current plant community in the Church of Nazarene Wetland is dominated by Horsetail and Sitka Sedge with a few other species growing. According to the report by Lisa Hoferkamp, it is functioning as an iron sink and so the lack of diversity may not be a problem for this objective.

From the perspective that Nancy Street Wetland is part of ongoing experimentation and research into constructed wetlands in Southeast Alaska, expanding the diversity of the plant community may be beneficial to learn which types of plants colonize rapidly and if there are species that retain iron more efficiently. Species of Horsetail have long, thin root systems that may not be the most effective option for the trapping and retention of iron. Sedges, with dense fibrous root systems may be a better choice. Also, increasing the diversity of the plant community will allow for increased forage and habitat options for various species of birds and macro invertebrates.

2. Floyd Dryden Middle School Wetland, Mendenhall Valley

The Floyd Dryden Wetland is located north of the Nancy Street Wetland in the Mendenhall Valley. It occupies the post-glacial landscape but it does not have the same gravel extraction history. The constructed wetland is on school grounds and has been a wet area since the creation of the school. Surrounded by playfields and a building, it has become a detention



Photo taken by Michele Elfers.
View of the Floyd Dryden Wetland in July 2005

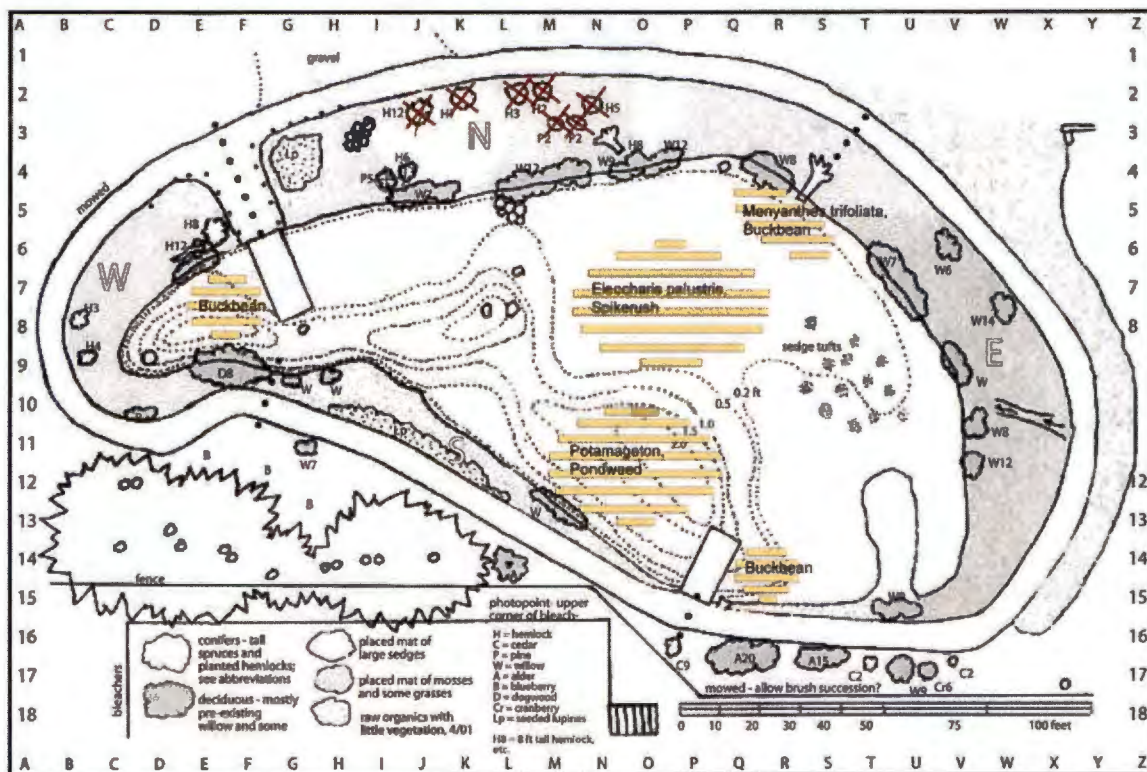


Figure 9. Floyd Dryden Pond

Original plan from Richard Carstensen of Discovery Southeast.

Observation of major species colonization in July 2005 shows that the Hemlocks and Pines did not survive, the Sedge, Spikerush, Buckbean, and Pondweed did very well.

area for stormwater. Between 1999 and 2001 the current wetland was graded and planted. The deepest area is roughly 450 square feet at a depth of 2 feet below water surface elevation and the grade rises to approximately 2.5 inches below water surface elevation within a large area of the wetland.

Richard Carstensen of Discovery Southeast, a nature education organization in Juneau, developed a vegetation plan for the wetland. Hemlock, Cedar, Pine, Willow, Alder, Blueberry, Dogwood, Cranberry, mats of Sedges, mats of Moss and Grasses, and Lupine seeds were used for the revegetation. Observation in August of 2005 showed that within the saturated zone the plants that are thriving are species of *Carex* (Sedge), *Equisetum* (Horsetail), *Eleocharis palustris* (Spikerush), *Menyanthes trifoliata* (Buckbean), and species of *Juncus* (Rush). Moving out of the saturated zone into the uplands, Willows, Alders, and Dogwood are thriving. The Hemlocks and Pines are either dying or are very small plants and there are very few Lupine plants. There is little open water in the wetland and a species of *Potamogeton* densely covers a significant amount of surface area in the deeper water areas.

The failure of the Hemlock and Pine trees may be due to the lack of adequate soil conditions. Hemlock requires a soil with a high organic content that is rare in the recently deglaciated Mendenhall Valley. Native Pine trees only grow in peat bogs in this part of Southeast Alaska. Sedges, Spikerush and Buckbean have thrived in this wetland at water depths of 2-6 inches for the Spikerush and Sedges and 2.5 inches for the Buckbean. These species are potential candidates for the Nancy Street Wetland.

It is important to note in this wetland that the deepest water is 2 feet and that there is little open water without vegetation. Potamogeton as well as other aquatic species such as Nuphar polysepalum are able to grow in 2 feet of water. In order to diversify habitat at Nancy Street and encourage the macro invertebrate population, open water is desired and the deep water levels must be greater than 2 feet deep. A study by Nelson, Roline, et al. shows that in constructed wetlands for wastewater treatment, the most productive habitat for invertebrates is open water with oxygen producing submerged plants. The least productive habitat is open water that has a continuous cover of duckweed and low dissolved oxygen levels (2000).

3. Kingfisher Pond at the Juneau Police Department, Lemon Creek

Kingfisher Pond at the Juneau Police Department is located at the mouth of a glacial valley, Lemon Creek. The primary source of water is groundwater supplemented by runoff as well as a small amount of brackish tidal water that enters through a faulty control structure at the outlet of the pond. As a reclaimed gravel pit, iron seepage is a problem in this wetland as well as pre-reclamation dumping of oil and other contaminants.



Photo taken by Michele Elfers.
View of Kingfisher Pond in July 2005

Between 2002 and 2003, the pond was filled and shaped to create a wetland and then planted with seeds, vegetative mats, and limited container stock plants. A section of the saturated zone was delineated to study the success of the seeding and the colonization of plants. The evaluation of the twelve study plots is recorded in Table 2. The evaluation is taken from observation in July 2005 of the plants growing compared to a seeding plan done at the time of revegetation. In the uplands area, Alder dominates, in some areas it is growing in dense thickets. There is also some Lupine, Dogwood, and

Highbush Cranberry in the upland areas. Both Tufted Hairgrass and Merten's Sedge have spread from saturated lowlands into well-draining upland areas. In the saturated areas to standing water, Small Leaf Bulrush, and Mare's Tail have colonized.

Table 2.
Kingfisher Pond
Plant Evaluation

Plot	Conditions	Seeded in 2000	Growing in 2005	Plot	Conditions	Seeded in 2000	Growing in 2005
1	Saturated	Merten's Rush	Merten's Rush	7	Moist ground, upslope	Hardtack Steeplebush	Merten's Sedge
			Merten's Sedge			Goat's Beard	Tufted Hairgrass
			Tufted Hairgrass				Lupine Alder
2	Saturated	Merten's Rush	Merten's Rush	8	Moist ground, upslope	Hardtack Steeplebush	Merten's Sedge
		Small Leaf Bulrush	Merten's Sedge				Tufted Hairgrass
			Tufted Hairgrass				Lupine Alder
3	Saturated	Control, no seeding	Merten's Rush	9	Moist ground, upslope	Control, no seeding	Merten's Sedge
			Merten's Sedge				Tufted Hairgrass
			Tufted Hairgrass				Lupine Alder
4	Saturated, beginning of upslope	Sawbeak Sedge	Merten's Sedge	10	Well-drained, upland	Tufted Hairgrass	Tufted Hairgrass
			Tufted Hairgrass				
5	Saturated, beginning of upslope	Control, no seeding	Merten's Sedge	11	Well-drained, upland	Tufted Hairgrass	Tufted Hairgrass
			Tufted Hairgrass			Meadow Barley	Meadow Barley
			Sawbeak Sedge				
6	Saturated, beginning of upslope	Merten's Sedge	Merten's Sedge	12	Well-drained, upland	Control, no seeding	Lupine
		Sawbeak Sedge					Alder

Data from observation in July 2005 and a Seeding Plan provided by the U.S. Fish & Wildlife Service.

A few species did not survive and many showed only one or two plants. *Spiraea douglasii*, or Hardtack Steeplebush was seeded but not growing on the site. This plant grows in southern Southeast Alaska, but it is not native to the northern part of the region. It will grow only in certain microclimates in this area and is therefore not hardy enough for a reclamation project. Meadow Barley, although native in this area, did not colonize successfully. The seeds may not have been viable, or the ground may have been too wet for the plants. This plant will not be recommended for revegetation of Nancy Street Wetland as literature suggests it is most successful in maritime areas (Pojar and Mackinnon, 1994). Sawbeak Sedge was only found in one area and may not be hardy enough to start from seed in a reclamation project.

By documenting the evaluation of these three constructed wetlands, interviews with local naturalists experienced in reclamation and revegetation projects, and literature pertinent to Southeast Alaskan plant communities, a table was created to document the successes, failures and potential for freshwater wetland species in reclamation wetlands. (See Appendix 1).

At the Nancy Street Wetland, plants have been selected based on the assessment and evaluation of their success in constructed wetlands in the region, experience of local naturalists, their ability to be transplanted or seeded, and their potential for the phytoremediation of iron. For the purpose of a planting design the plants were divided into zones based on the depth of water in which they grow. (See Table 3). The Nancy Street Wetland is designed with a water surface elevation of 28 feet. Although the Nancy Street Wetland is primarily ground water fed, runoff has been observed to affect water levels significantly in different seasons. However, the water level will fluctuate throughout the season with the rise and fall of precipitation rates. Rainfall increases between July and November and decreases between January and April. For this reason, the communities and water depths are general and meant as guidelines only. The zones are delineated on the wetland planting plan in Figures 10 and 11.

The deep water zone consists of the stream channel that flows from the inlet culvert to the outlet culvert as well as two deep pools at either end. This zone covers 55,000 square feet and is 28 percent of the total area to be revegetated. However, less than 5 percent of this area will be planted. Water will be 4 feet deep through most of this area with greater depths in each deep pool. This zone will be planted with *Potamogeton natans* (Floating Pondweed), *Sparganium angustifolium* (Narrow Leaved Burreed) , and *Nuphar polysepalum* (Yellow Pond Lily). The first two species were observed growing in the Nancy Street Pond prior to filling. Both are present upstream in the Church of the Nazarene



Figure 10. Planting Communities

The revegetation plan for the Nancy Street Wetland incorporates different plant communities based on elevation above the water surface. This revegetation plan was developed prior to the completion of the trail design.

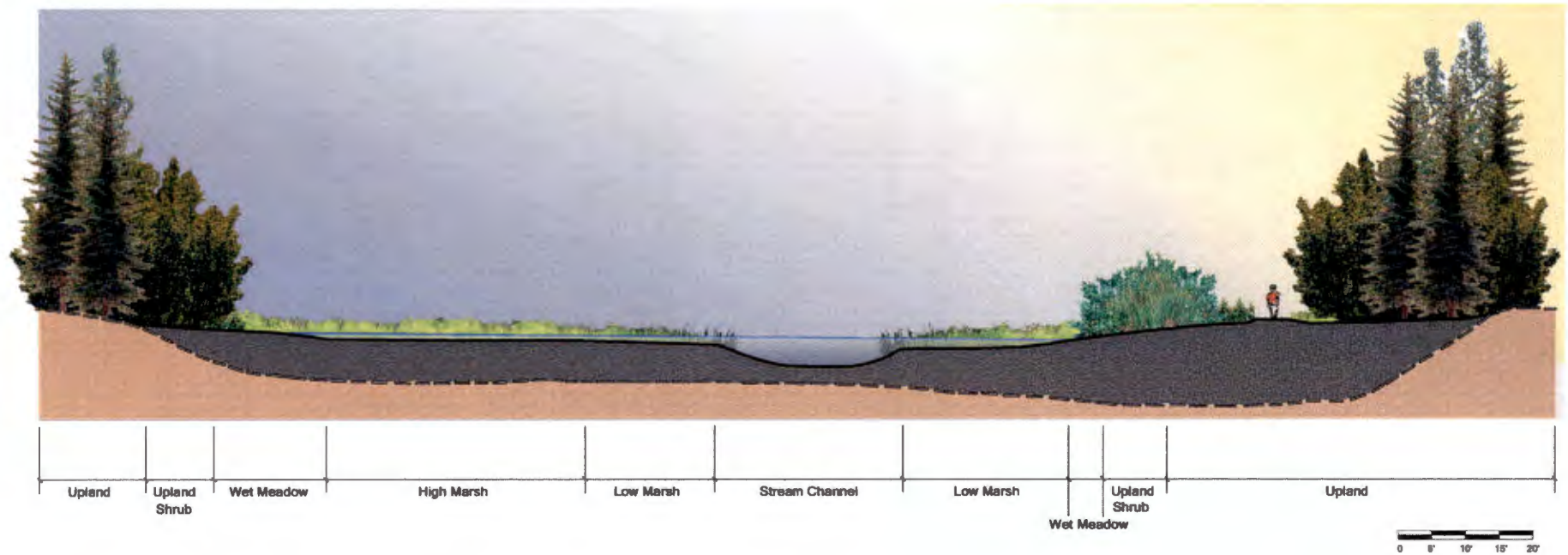


Figure 11. Typical Planting Zone Elevation

The revegetation plan for the Nancy Street Wetland is based on the elevation of the land above or below the water surface.

Pond. *Sparganium* is known to be a local food for muskrat. *Nuphar polysepalum* is found in a nearby pond downstream of the Nancy Street Wetland.

The low marsh zone covers 30,000 square feet and comprises 15 percent of the total area to be revegetated. The land between the stream channel and the high marsh ‘fingers’ is designed to the elevation of 27 feet to 27.5 feet. The plants in this zone include *Carex sitchensis* (Sitka Sedge), *Eleocharis palustris* (Spikerush), *Juncus mertensianus* (Merten’s Rush), and *Scirpus microcarpus* (Small Leaf Bulrush). All of these plants have been successful at colonizing constructed wetlands in Juneau and can be transplanted or started by seed. *Carex sitchensis* is one of the two dominant plants in the Church of the Nazarene Wetland. The dense root system of this plant may be capable of retaining large amounts of iron.

The stream channel winds around fingers of high marsh zone areas at an elevation of 27.5 feet to 28 feet. The high marsh zone encompasses 35,000 square feet and covers 18 percent of the total area to be revegetated. *Carex sitchensis* and *Eleocharis palustris* have exhibited the ability to survive in a variety of water levels. They will transition the communities from low marsh to high marsh zones. Other plants in this zone include *Carex mertensii* (Merten’s Sedge), *Juncus effusus* (Common Rush), *Lysichiton americanum* (Skunk Cabbage), *Deschampsia cespitosa* (Tufted Hairgrass), and *Menyanthes trifoliata* (Buckbean). All of these plants have been grown successfully in the constructed wetlands in Juneau. The *Lysichiton americanum* grows throughout Juneau in shaded wetland edges or stream banks. In the early spring it ‘blooms’ with a yellow spadex that is very attractive and provides food for animals. It has been transplanted successfully by naturalists in the region.

At the edge of the standing water zones is the transition zone of wet meadow. This zone is at an elevation of 28 feet to 29 feet and will be saturated most of the time and may flood during parts of the year. The wet meadow covers 12,000 square feet and comprises 6 percent of the total area to be revegetated. Many plants that can tolerate different water levels and periodic flooding are planted here. *Carex mertensii*, *Deschampsia cespitosa* ssp. *beringensis*, and *Juncus effusus* will all do well closer to the water’s edge. Moving up through this zone, grasses and flowering plants that do well in wet meadows are planted. *Calamagrostis canadensis* (Bluejoint Reedgrass), *Festuca rubra* (Red Fescue), *Viola palustris* (Marsh Violet), *Frittilaria camschatcensis* (Chocolate Lily), *Iris setosa* (Wild Flag), *Lupinus nootkatensis* (Lupine), and *Aquilegia formosa* (Columbine) thrive in saturated soils and provide color during the summer season.

The wet meadow zone and the upland shrub zone will be indistinguishable in many areas as many of these plants thrive in saturated to moist soils. The upland shrub zone is delineated from 29 feet to 30 feet and covers 11,500 square feet. It comprises 6 percent of the total area to be revegetated. Many grasses and flowering plants including *Deschampsia cespitosa* (Tufted Hairgrass), *Calamagrostis canadensis* (Bluejoint Reedgrass), *Festuca rubra* (Red Fescue), *Aquilegia Formosa* (Columbine), and *Lupinus nootkatensis* (Lupine) will form the transition from wet meadow to upland shrub. Also in this zone will be *Cornus stolonifera* (Dogwood), *Salix barclayii* (Barclay's Willow), *Salix sitchensis* (Sitka Willow), *Alnus viridus* (Sitka Alder), *Aruncus dioicus* (Goat's Beard), *Rubus spectabilis* (Salmonberry), and *Viburnum edule* (Highbush Cranberry). The *Salix*, *Alnus*, *Aruncus* and *Viburnum* species were all observed on this site prior to filling.

Above 30 feet elevation is the well-drained upland zone. The uplands to be revegetated cover 52,500 square feet and 27 percent of the total area to be revegetated. The plants include many of the shrubs from the upland shrub zone: *Aruncus dioicus*, *Cornus stolonifera*, *Rubus spectabilis*, *Viburnum edule*, *Alnus viridus*, *Salix barclayi*, and *Salix sitchensis*. Additional trees to be planted that exist elsewhere on the site are *Populus balsamifera* (Cottonwood), *Alnus rubra* (Red Alder) and *Picea sitchensis* (Sitka Spruce). An understory of grasses and herbaceous perennials include *Festuca rubra*, *Calamagrostis canadensis* and *Aquilegia formosa*.

From this general planting zone plan in Figure 10, a detailed planting design for the uplands and upland shrub zones was created. This allows for numbers of each species needed for transplant, purchase or seeding. The design strives to create diversity in plantings to allow for habitat diversity while also considering the experience of the visitor along the trail, and the relationship of the adjacent private property owners to the wetland and the trail. For example, Detail 5 in Appendix 5 shows clusters of *Rubus spectabilis*, *Cornus stolonifera*, and *Viburnum edule*. These shrubs fruit from mid summer into fall and provide food into the winter for birds and small animals. Also, a combination of *Picea sitchensis* groupings as well as deciduous trees of *Alnus* and *Populus balsamifera* allow for varied habitat for birds. Detail 3 in Appendix 3 shows a narrow buffer between the adjacent property owners and the trail and wetland. The large cluster of *Alnus* and *Picea* is in front of homes with fencing. This choice of trees will further separate the homes from the wetland and trail.

The diverse planting communities represent the ideal revegetation plan. However, the objective of using only native plants limits the availability and spectrum of species that can be obtained and planted in the wetland. Native plant

nurseries and native seed sources do not exist in Southeast Alaska. Small amounts of native seeds are available in the area from individuals who collect seed seasonally. A few native species of grasses are sold commercially in the northern part of Alaska. The best solution to the reclamation of wetlands in Juneau is to gather wetland seed in the years prior to the reclamation of the wetland and then start them in greenhouses based on the specific needs of the plants. This process works well if the reclamation of the wetland is planned at the time of the surface mining or land disturbance. However, the circumstances of the Nancy Street Enhancement Project do not allow for the gathering and starting of seed. Therefore, transplanting of plugs will be the major source of revegetation, with some hardwood cuttings and seeding.

V. Vegetation Process and Commentary

The planning and design of the revegetation process provided a guide for the actual implementation. However, the decision by the resource agencies to focus on transplanting of local plants to preserve local gene stock and minimize the purchase of plants largely determined the revegetation process. For a 6 acre revegetation, transplanting is feasible, but for a freshwater emergent wetland that is much larger, the limitations of transplanting may warrant a different strategy.

For the Nancy Street Wetland revegetation, the availability, accessibility, and diversity of source wetlands determined the process (See Tables 3,4). Source wetlands were selected in the Mendenhall Valley and Lemon Creek to minimize cost and driving time to Nancy Street. Additionally, only wetlands that were accessible for a crew with a vehicle were considered. The ownership of the wetlands ranged from CBJ land, U.S. Coast Guard land to private land. In all cases, permission for access and transplanting was granted. Another consideration in choosing source wetlands was the size of plant population present for the targeted species. The population had to be large enough to be able to remove a sizable quantity without decimating or affecting the source wetland population.

With all of these limitations, it was difficult to find appropriate wetlands to source plants. The majority of the Nancy Street wetland is freshwater marsh with emergent species, however in Juneau there is much more forested wetland habitat than emergent wetland. The revegetation of an emergent wetland much larger than Nancy Street would be very difficult using only transplants. The source wetlands used for Nancy Street should not be used again for at least two years and finding adequate populations of emergent species may be difficult. A potential source that exists for this type of wetland is along Department of Transportation (DOT) Right of Ways. There are many drainage ditches along Glacier Highway, particularly between Fred Meyer's and McDonald's in the Valley that are sedge and bulrush emergent wetlands. DOT utilizes SAGA crews for maintenance of Right of Ways to prune and remove shrubs and trees. An opportunity exists for a partnership to be formed with DOT where SAGA crews maintain and transplant simultaneously on future reclamation projects.

In addition to the transplanting of emergent wetland species, the revegetation included cuttings of willow and cottonwood, transplanting of berry shrubs and alder, and seeding. To accomplish these tasks, various sources of labor were used over a period of five months. Volunteers cut stakes in April and planted in June, paid SAGA workers transplanted emergent species and seeded in June and July, and paid Trail Mix workers transplanted trees and shrubs in August (See Table 4).

While the volunteers only worked for two days, their work in taking cuttings of willow, cottonwood and high bush cranberry was very important to the revegetation of the upland shrub and upland zones. Also, the involvement of community volunteers raised enthusiasm and support for the project. The volunteers were members of Full Circle Farms, a farm and distributor of organic produce in Juneau. The farm solicited volunteers through emails and donated \$5000 to the project. The cuttings were taken on April 8 with twenty volunteers. The group divided in three and went to sites near Back Loop Road. With pruners, 1000 Barclay's Willow stakes, 200 High Bush Cranberry stakes, and 75 Black Cottonwood stakes were cut. Full Circle Farms donated the use of their cold storage facility in Lemon Creek to hold the cuttings until planting. On June 7, fifteen volunteers planted the cuttings at Nancy Street. Many of the stakes were cut in half or thirds. Steel rods with mallets or sharp pointed shovels were used to plant single stakes or bouquets of 3-5 stakes. The High Bush Cranberry stakes all died in storage, however many of the willow and cottonwoods sent out roots and shoots.

For the next phase in planting, the U.S. Fish & Wildlife Service contracted a SAGA crew for 4 weeks. In 13 days, the crew worked approximately 650 labor hours. They accomplished 70% of the revegetation process by planting 3600 plugs, shrubs and small trees and seeding portions of the wetland. The crew developed efficient methods for transplanting and solved problems effectively throughout the four weeks. Each day, two workers stayed at the wetland and used an augur to dig holes in the soil for planting. The other six crew members went to the source wetland. To extract plants they found that a sharp shovel was most effective. Often they would take small mats and then cut them into plugs using a knife or sharp shovel. They suggested using a hand held shovel to cut the mats in the future. They found that bulb planters were time consuming and difficult to use in gravel or dense mud. To remove shrubs, pulaskis were the most efficient and shovels were used for trees. Despite the efficient work of the crew, the lack of proper gear and equipment at the start of the project slowed down progress. The crew needed shoulder length waterproof gloves, hip waders, rubber boots, and five gallon buckets for transporting plants. Additionally, throughout the four weeks, the augur would break down and slow progress. Better preparation and support for the crew is needed in the future.

SAGA accomplished most of the remaining revegetation work; however the grading and shaping of the outlet channel, earthen dam, and trail were not completed in time to finish the planting. Trail Mix crews transplanted alders and berry bushes into the upland and upland shrub areas and a small amount of sedges along the boardwalk and earthen dam using similar techniques as SAGA. Additionally, CBJ staff purchased and planted *Cornus stolonifera* plugs along the steep

northeast slope on the Church of the Nazarene property. These plants were purchased because of the significant benefit to the project and the lack of an appropriate population from which to take cuttings in Juneau. They grow rapidly in the Juneau climate, provide berries for birds, and control erosion with spreading rhizomes. CBJ also purchased and spread seed throughout the five month period of revegetation for erosion control and habitat enhancement.

To improve on the revegetation process for future projects, better planning for irrigation should be in place prior to transplanting. This summer in Juneau was very rainy with only a few periods of sunny dry weather. However, for two weeks in June, the sun came out and dried the high marsh area. During the revegetation period, the water level was approximately 1-3 inches below the high marsh elevation. The rocky and sandy topsoil combined with the silty fill dried in sunny conditions to form a cement like consistency. Watering was necessary to keep the plants alive during this period. SAGA crews used buckets and a garden quality gasoline powered water pump to irrigate the wetland. If the dry sunny weather persisted, these methods would not be able to keep the plants alive. To prevent this from happening on future projects a soil with a higher organic content would help to retain moisture better in dry conditions. Also, working with the Department of Public Works to obtain a permit for fire hydrant access would allow for an appropriate water source. Other strategies include the control of water levels to keep soil saturated while planting or the delay of planting until July when precipitation is more frequent.

Table 3: Recommended Plant Species

Actual Planted Species

Low and High Marsh		Low and High Marsh	
<i>Species</i>	<i>Common Name</i>	<i>Species</i>	<i>Common Name</i>
<i>Caltha palustris</i>	Marsh Marigold	<i>Caltha palustris</i>	Marsh Marigold
<i>Carex sitchensis</i>	Sitka Sedge	<i>Carex sitchensis</i>	Sitka Sedge
<i>Eleocharis palustris</i>	Spike Rush	<i>Eleocharis palustris</i>	Spike Rush
<i>Scirpus microcarpus</i>	Small Leaved Bulrush	<i>Scirpus microcarpus</i>	Small Leaved Bulrush
<i>Juncus mertensianus</i>	Merten's Rush	<i>Carex lyngbae</i>	Lyngby's Sedge
<i>Lysichiton americanum</i>	Skunk Cabbage		
<i>Menyanthes trifoliata</i>	Buckbean		
<i>Carex mertensii</i>	Merten's Sedge		
<i>Calamagrostis canadensis</i>	Blujoint Reedgrass		
<i>Deschampsia cespitosa</i>	Tufted Hairgrass		
Wet Meadow		Wet Meadow	
<i>Aquilegia formosa</i>	Western Columbine	<i>Aquilegia formosa</i>	Western Columbine
<i>Calamagrostis canadensis</i>	Bluejoint Reedgrass	<i>Calamagrostis canadensis</i>	Bluejoint Reedgrass
<i>Deschampsia cespitosa</i>	Tufted Hairgrass	<i>Deschampsia cespitosa</i>	Tufted Hairgrass
<i>Fritillaria camschatcensis</i>	Chocolate Lily	<i>Fritillaria camschatcensis</i>	Chocolate Lily
<i>Iris setosa</i>	Iris	<i>Iris setosa</i>	Iris
<i>Aconitum delphinifolium</i>	Monkshood	<i>Lupinus nootkatensis</i>	Lupine
<i>Dodecatheon pulchellum</i>	Shooting Star	<i>Hierchloe odoratum</i>	Sweet Grass
<i>Eriophorum angustifolium</i>	Cottongrass		
<i>Viola palustris</i>	Marsh Violet		
Upland Shrub		Upland Shrub	
<i>Alnus viridus</i>	Sitka Alder	<i>Alnus viridus</i>	Sitka Alder
<i>Aruncus dioicus</i>	Goat's Beard	<i>Aruncus dioicus</i>	Goat's Beard
<i>Cornus stolonifera</i>	Red Twig Dogwood	<i>Cornus stolonifera</i>	Red Twig Dogwood
<i>Rubus spectabilis</i>	Salmonberry	<i>Rubus spectabilis</i>	Salmonberry
<i>Salix barclayi</i>	Barclay's Willow	<i>Salix barclayi</i>	Barclay's Willow
<i>Salix sitchensis</i>	Sitka Willow	<i>Festuca rubra</i>	Red Fescue
<i>Viburnum edule</i>	High Bush Cranberry	<i>Rubus parviflorus</i>	Thimbleberry
		<i>Alnus rubra</i>	Red Alder
Upland		Upland	
<i>Alnus rubra</i>	Red Alder	<i>Alnus rubra</i>	Red Alder
<i>Alnus viridus</i>	Sitka Alder	<i>Alnus viridus</i>	Sitka Alder
<i>Cornus stolonifera</i>	Red Twig Dogwood	<i>Cornus stolonifera</i>	Red Twig Dogwood
<i>Picea sitchensis</i>	Sitka Spruce	<i>Picea sitchensis</i>	Sitka Spruce
<i>Populus balsamifera</i>	Black Cottonwood	<i>Populus balsamifera</i>	Black Cottonwood
<i>Rubus spectabilis</i>	Salmonberry	<i>Rubus spectabilis</i>	Salmonberry
<i>Salix barclayi</i>	Barclay's Willow	<i>Salix barclayi</i>	Barclay's Willow
<i>Salix sitchensis</i>	Sitka Sedge	<i>Rubus parviflorus</i>	Thimbleberry
<i>Viburnum edule</i>	High Bush Cranberry	<i>Festuca rubra</i>	Red Fescue

Table 4: Record of Planting Quantity, Source and Labor

Date	Species	Type	Quantity	Source	Labor
18-Apr	<i>Festuca rubra</i>	seed	10 lbs	Alaska Mill and Feed	USFWS
7-Jun	<i>Salix barclayi</i>	cutting	1500	Wren Drive/Back Loop Road	volunteer
7-Jun	<i>Populus balsamifera</i>	cutting	150	Behind Community Gardens	volunteer
13-Jun	<i>Carex lyngbae</i>	plug	130	Coast Guard Wetland	SAGA
14-Jun	<i>Carex sitchensis</i>	plug	450	Duck Creek by Superbear	SAGA
14-Jun	<i>Caltha palustris</i>	plug	40	Duck Creek by Superbear	SAGA
15-Jun	<i>Carex</i>	plug	300	Coast Guard Wetland	SAGA
15-Jun	<i>Carex sitchensis</i>	plug	375	Church of Nazarene Wetland	SAGA
15-Jun	<i>Carex sitchensis</i>	plug	200	Church of Nazarene Wetland	SAGA
19-Jun	<i>Calamagrostis/ Deschampsia</i>	plug	164	Lemon Creek Wetland	SAGA
19-Jun	<i>Fritillaria camschatensis</i>	plug	34	Lemon Creek Wetland	SAGA
19-Jun	<i>Hierchloe odoratum</i>	plug	31	Lemon Creek Wetland	SAGA
19-Jun	<i>Iris nootkatensis</i>	plug	31	Lemon Creek Wetland	SAGA
20-Jun	<i>Calamagrostis/Deschampsia</i>	plug	276	Lemon Creek Wetland	SAGA
20-Jun	<i>Fritillaria camschatensis</i>	plug	83	Lemon Creek Wetland	SAGA
20-Jun	<i>Hierchloe odoratum</i>	plug	49	Lemon Creek Wetland	SAGA
20-Jun	<i>Iris nootkatensis</i>	plug	60	Lemon Creek Wetland	SAGA
21-Jun	<i>Rubus spectabilis</i>	transplant	200	Duck Creek by Superbear	SAGA
22-Jun	<i>Carex sitchensis</i>	plug	20	Duck Creek by Superbear	SAGA
22-Jun	<i>Picea sitchensis</i>	transplant	8	DOT ROW Loop Rd	SAGA
23-Jun	<i>Lupinus nootkatensis</i>	seed	unweighed	US Forest Service, Ketchikan	NRCS
26-Jun	<i>Eleocharis palustris</i>	plug	100	Coast Guard Wetland	SAGA
26-Jun	<i>Scirpus microcarpus</i>	plug	100	Lemon Creek Wetland	SAGA
27-Jun	Thimbleberry	transplant	55	DOT land on channel by GCI	SAGA
27-Jun	<i>Rubus spectabilis</i>	transplant	35	Duck Creek by Superbear	SAGA
29-Jun	<i>Carex</i>	plug	175	DOT ROW north of SE Vet	SAGA
29-Jun	<i>Festuca rubra</i>	seed	20 lbs	Alaska Mill and Feed	SAGA
29-Jun	<i>Calamagrostis canadensis</i>	seed	10 lbs	Alaska Mill and Feed	SAGA
29-Jun	<i>Deschampsia cespitosa</i>	seed	10 lbs	Alaska Mill and Feed	SAGA
30-Jun	<i>Cornus sericea</i>	plug	216	Nat's Nursery, BC	CBJ
30-Jun	<i>Festuca rubra</i>	seed	10 lbs	Alaska Mill and Feed	CBJ
30-Jun	<i>Calamagrostis canadensis</i>	seed	10 lbs	Alaska Mill and Feed	CBJ
30-Jun	<i>Deschampsia cespitosa</i>	seed	8 lbs	Alaska Mill and Feed	CBJ
5-Jul	<i>Carex</i>	plug	490	DOT ROW north of SE Vet	SAGA
6-Jul	<i>Carex</i>	plug	245	DOT ROW north of SE Vet	SAGA
20-Jul	<i>Picea sitchensis</i>	transplant	?	DOT ROW Loop Rd	CBJ
20-Jul	<i>Festuca rubra</i>	seed	20 lbs	Alaska Mill and Feed	CBJ
20-Jul	<i>Calamagrostis canadensis</i>	seed	5 lbs	Alaska Mill and Feed	CBJ

cont. Table 4: Record of Planting Quantity, Source and Labor

Date	Species	Type	Quantity	Source	Labor
20-Jul	<i>Deschampsia cespitosa</i>	seed	5 lbs	Alaska Mill and Feed	CBJ
24-Jul	<i>Cornus stolonifera</i>	transplant	17	old Fred Meyer landscape	CBJ
26-Jul	<i>Rubus spectabilis</i>	transplant	24	Duck Creek by Superbear	Trail Mix
7-Aug	<i>Carex sitchensis</i>	plug	50	Church of Nazarene Wetland	Trail Mix
8-Aug	<i>Alnus</i>	transplant	100	Duck Creek by Superbear	Trail Mix
9-Aug	<i>Rubus spectabilis</i>	transplant	60	Duck Creek by Superbear	Trail Mix
15-Aug	<i>Festuca rubra</i>	seed	40 lbs	Alaska Mill and Feed	CBJ
15-Aug	<i>Deschampsia cespitosa</i>	seed	10 lbs	Alaska Mill and Feed	CBJ
		Total Quantity	4993		



Above: Volunteer planting of willow and cottonwood cuttings in June. Right: Cuttings send out leaves in August.



Above: SAGA extracts sedges from a wetland in Lemon Creek. Right: Transport of sedges and marsh marigold in buckets.



Above: SAGA plants wet meadow grasses.
Right: Low marsh and high marsh sedges
and bulrushes.



Left: Alders transplanted along
stream channel.

Photos taken by Michele Elfers.

VI. Trail Design and Construction

The design and development of a community trail through the wetland has become an important component to gaining public approval and support of the project. Adjacent landowners initially viewed the reclamation project as disruptive, but through the process of filling, planting and trail construction, many neighbors and community members have expressed that the reclamation is an improvement to the neighborhood. It offers recreational opportunities for a neighborhood of streets and private property and it allows access to a successional landscape with a fantastic view of the Mendenhall Glacier (See Figure 12-14).

CBJ applied for a Recreational Trails Grant through the Department of Natural Resources, Division of Parks and Outdoor Recreation. To administer the grant funds, the CBJ Engineering Department, the CBJ Department of Parks and Recreation, and Trail Mix formed a partnership to accomplish the administration, construction and management of the trail. The Engineering Department was responsible for the design, permitting and construction oversight, the Department of Parks and Recreation provided equipment, design review, and maintenance and management of the completed trail, and Trail Mix constructed the trail and administered the grant.

The trail construction began in July 2006 and continued through August. A few details will be completed in late fall and early spring such as the installation of trash cans and interpretive signage. Silty gravel forms a compact base for the six foot wide trail. A deck is sited at the south end to capture a remarkable view across the wetland of the Mendenhall Glacier. An island at the north end is accessed by a bridge and boardwalk and offers a bench and viewing point south. Eight steel pilings and a frame of treated lumber support the observation deck. The decking on the observation deck and boardwalk, railings, and benches are recycled plastic lumber. The 70' bridge is a steel gangway removed over the summer from a CBJ Ports and Harbors project.

Many of the materials and labor were donated to allow completion of the trail with only grant funding. The bridge and benches were donated by CBJ Ports and Harbors, the rough grading and shot rock placement on the trail was donated by Glacier State Contractors, and the construction of the observation deck was done by the U.S. Coast Guard Engineers in Juneau.



Figure 12. Trail Master Plan

The trail design includes the extension north of the trail to the Church of Nazarene Wetland. This extension was not constructed. Currently, the trail connects to the Mendenhall Bike Loop Path.

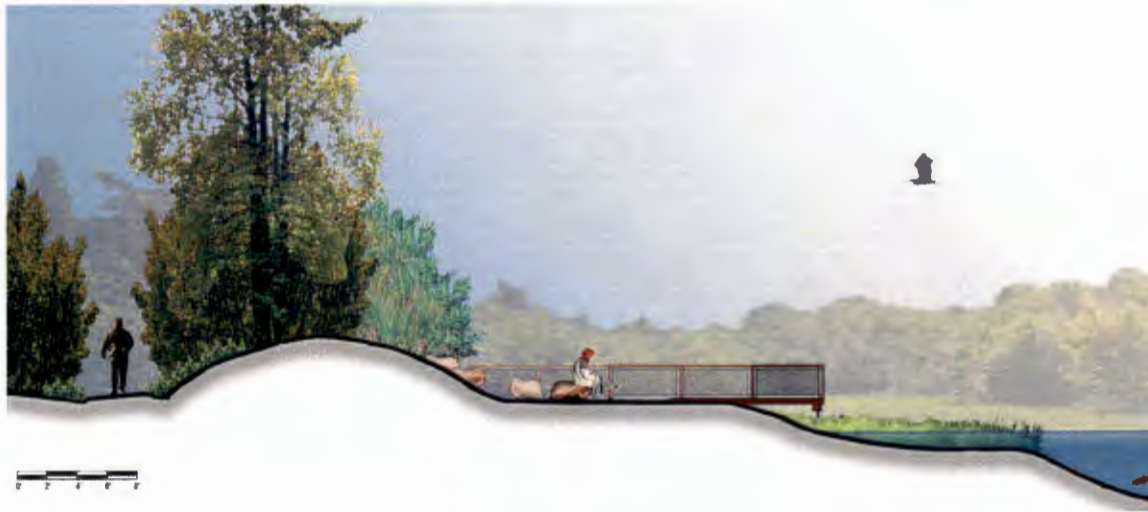


Figure 13. Cross Section of the Observation Deck

The deck is sited to allow for close viewing of open water and to capture a magnificent view of the Mendenhall Glacier as a backdrop to the wetlands.



Figure 14. Cross Section of the Bridges

The two bridges across the wetland are connected by an island. The first is a 25' wooden boardwalk across emergent wetlands, the second is a 70' steel bridge with metal grate decking across the stream channel. On the island, a gravel seating area with boulders allows for resting and wildlife viewing.

The constructed trail represents Phase I of the Duck Creek Greenway Trail that will extend through the Nancy Street Wetland and the upstream Church of Nazarene Wetland and the Allison Pond (See Figure 15). Ultimately, it will connect from the north and south to the Under Thunder trail to form a loop. The creation of a trail that links the three wetlands will raise awareness of the ecological connection for fish, birds and other wildlife among these stepping stone habitats.

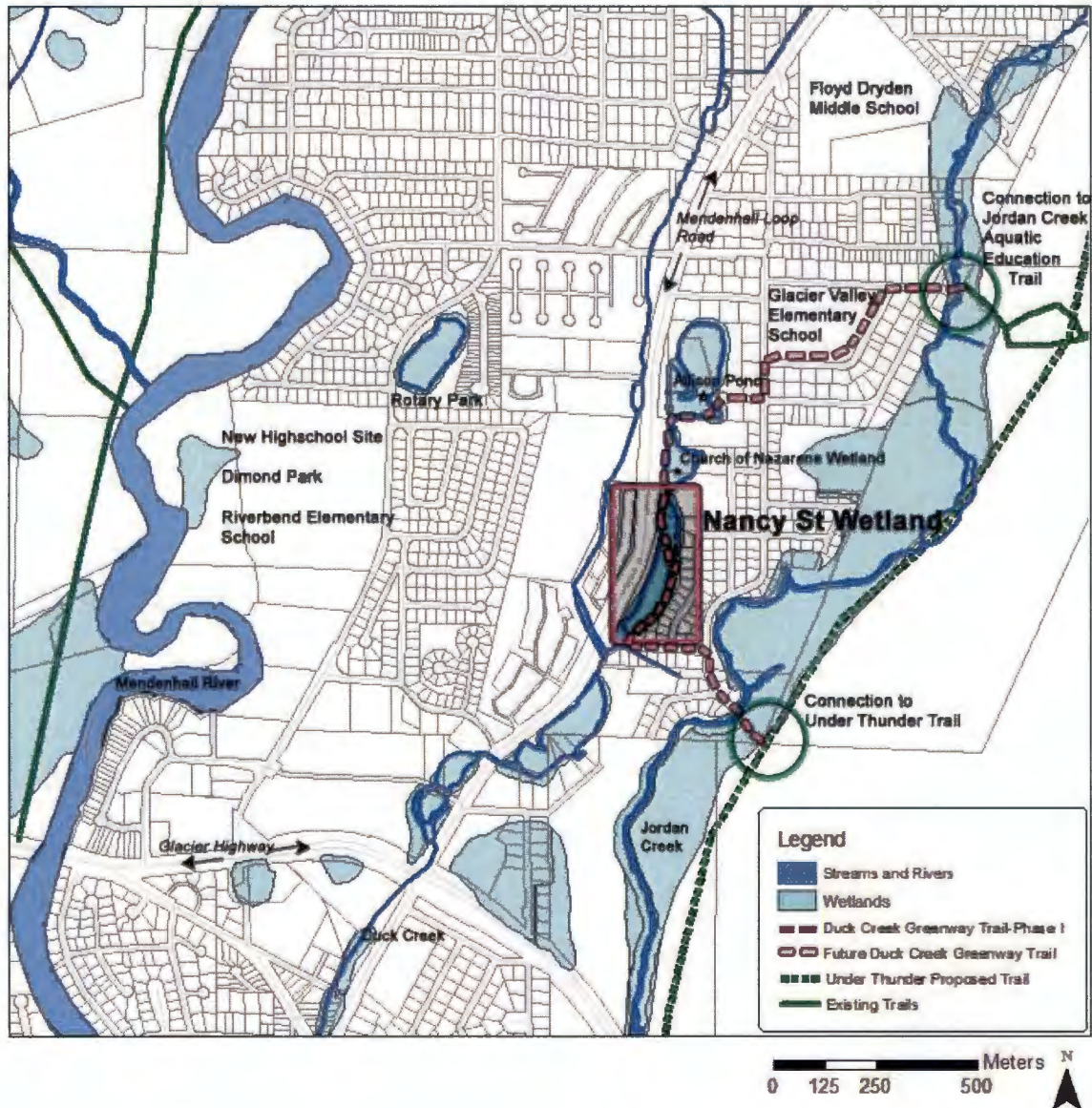


Figure 15. Duck Creek Greenway Trail Master Plan.

The trail through Nancy Street will connect the three former gravel pits to provide neighborhood connections, recreational opportunities, and to increase awareness of the ecological connections among the enhanced wetlands.

Glacier State shaped the rough trail bed and placed shot rock in May.



Trail Mix hauls gravel to build the trail across the island in August.

Trail Mix drives pilings for the observation deck and shapes the gathering area.





The finished bridge and boardwalk cross the wetland to an island with a bench for viewing.

Right: The steel gangway donated by CBJ Ports and Harbors extends from the northwest end of the trail to the east side. Trail Mix built new cedar rails for safety.



Below: The finished observation deck and gathering area.



VII. Monitoring and Maintenance

The monitoring and maintenance plan for the Nancy Street Wetland addresses issues of survival and performance of wetland vegetation, changes in wetland composition, the control of invasive species, and the general upkeep of the trail and interpretive areas. The plan for monitoring of wetland vegetation is informed by a plan for wetland monitoring in Bellevue, Washington by Herrera Environmental Consultants, a guide to “Wetland Restoration, Creation, and Enhancement” written by various federal resource agencies, and research done by Elzinga, Salzer, and Willoughby in Measuring and Monitoring Plant Populations. The plan for trail maintenance is based on observations of wetland trail requirements over time in Juneau.

Monitoring Plan

It is proposed that this work be performed in conjunction with the existing UAS water and fish monitoring plan and the data be combined into one report.

1. Establish plots in different plant community zones to measure species composition, aerial cover, and vegetative density. Measure water level above ground surface. Take measurements once per year in late July from 2007 to 2012. See Appendix XX for plot locations.
 - a. Plot 1 Upland - monitor a 5 meter radius around stake.
 - b. Plot 2 Island – monitor the entire island.
 - c. Plot 3 Emergent – monitor a 1 meter radius around stake.
 - d. Plot 4 Emergent – monitor a 1 meter radius around stake.
2. Establish 4 photopoints that capture each plot and 2 photopoints that capture emergent wetland, one from the observation deck looking north to the glacier and the second from the bench on the island looking south to the observation. See Appendix 2b and 2c for photopoints and 2006 photographs.
3. Complete table of information and draw maps recording the location, density and cover of each plot. See Appendix 2a for baseline data and sample table.

Maintenance Plan

The Nancy Street Wetland will be transferred to the CBJ Parks and Recreation Department for management. This department and Trail Mix can coordinate to maintain the trail using the excess trail grant money.

1. Prune and clear shrubs and trees obstructing passage along the trail.
2. Empty garbage cans, refill doggy bag dispenser and remove garbage from the trail.
3. Clear drainage culverts along trail.

VIII. Conclusion

The Nancy Street Wetland Enhancement Project offers an economically feasible, ecologically beneficial, and socially supported model of wetland reclamation for municipalities. Based on the data and assessment of the design and construction presented in this report, the project has been successful in the aspects of earthwork, transplanting, cost benefit and public participation. However, areas of improvement include the refining of final water levels, soil quality, and irrigation strategies during transplanting.

The design and implementation of the filling process determined largely the improvement of habitat, the efficiency of operations, and the accuracy of the as-built site to the design. By filling and completing each finger and section of the wetland individually, greater variety and attention to each landform was introduced. The other option, filling the entire site and then returning to dredge the stream channel would have resulted in less diversity of habitat and less attention to the design details. There is some concern that the water level is higher than the designed level. However, the rainfall was higher than average in 2006, so it is difficult to tell if the water levels in the wetland will drop. Designing elevations to within 3 inches to allow for necessary habitat for plants and wildlife is very difficult on a project where over 60,000 CY of fill are being placed. For this reason, designing a dam with adjustability to account for the discrepancy in water level would improve the function and success of the project.

The high rainfall this summer maintained a moist planting substrate throughout most of the summer. In late June, a sunny period of two weeks revealed the problems that would have been encountered had it been a drier summer. The soil dried and cracked around the newly transplanted plants and a hasty irrigation plan of buckets and a garden pump with hose was used to keep the plants alive. An irrigation plan should be in place prior to the revegetation phase. Tapping into city water through fire hydrants, or a private source are two potential solutions. Also, improving the quality of topsoil will improve moisture retention. The mineral topsoil had little organic content and was full of rock and cobble. Plant survival in 2007 will reveal whether higher quality topsoil is needed. At the end of the 2006 planting season, there was approximately 70% survival rate of transplanted species. Based on this estimate, the revegetation effort was very successful.

In addition to the improvement of fish and wildlife habitat, the other measure of success of the Nancy Street Wetland Enhancement is the strong base of public support. Throughout the construction process, volunteers donated time,

materials and money to the project. Many neighbors began to come out during the summer construction and comment on how happy they were about the project.

As a result of the success of this project, a similar process is planned for the Allison Pond upstream of the Nancy Street Wetland. The process will be improved based on this assessment and applied to the Allison Pond site needs. The CBJ has saved the community money by pioneering this alternative option to fill disposal. The support of the U.S. Fish & Wildlife Service and the Natural Resource Conservation Service has enhanced habitat for fish and wildlife and reclaimed a valuable community resource.

Plant List for Freshwater Wetlands											
Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
Deep Water											
<i>Caltha natans</i>	Floating Marsh Marigold	Book	aquatic floating	1-3'				attractive flower			floats or creeps in mud, stolons root at nodes
<i>Nuphar polysepalum</i>	Yellow pond-lily	Patti Krosse, Ed Buyarski	3-4' average water depth, up to 6' stalk		successful, use fork or clam digger to dig up entire root, or monofilament tied to root with rock to get plant it.		food, habitat for fish, cover for ducklings, frog habitat	very attractive open water flower		Patti-very difficult to dig roots, often extensive, and hard to get roots back into the water completely	found in pond near Superbear, very shallow water, may be easy to remove
<i>Potamogeton natans</i>	Floating Pondweed	Observed at Nancy Street	aquatic floating from bottom 3-8'		yes		very valuable food source for mallards and other marsh birds		Existed in Nancy Street Pond so it is tolerant of iron	In CoN it forms a dense cover in open water areas, too much shade and it may limit macroinvertebrate population	present at Nancy Street Pond prior to filling, present at CoN, Floyd Dryden, becomes very dense in areas, keep deep water areas in pools if open water habitat is desired
<i>Sparganium angustifolium</i>	Narrow-Leaved Bur-reed	Observed at Nancy Street	aquatic floating	1-3'			nesting, cover, seeds, muskrats		Existed in Nancy Street Pond so it is tolerant of iron		present at Nancy Street Pond prior to filling
Marsh											
<i>Caltha palustris</i>	Yellow Marsh Marigold	Book	wet areas with slow running water	variable	divide rootball	seed direct sow in fall		attractive flower			limited survival at CoN
<i>Carex mertensii</i>	Mertens's Sedge	Patti Krosse	upland, more dry conditions, in transition zone	4'	one of the easiest types of carex to transplant	yes		attractive colorful, large spikes	dense root system may hold more iron	Carex more difficult to dig roots	germinates easily, some found in CoN, planted in Kingfisher Pond, growing very well in low saturated soil, but also growing on wet slopes.
<i>Carex sitchensis</i>	Sitka Sedge	Observed at CoN Wetland	emergent	1-5'	yes	yes	excellent waterfowl habitat		dense root system may hold more iron	hard to dig up because of root system	transplanted into CoN, excellent survival rate
<i>Carex stipata</i>	Sawbeak Sedge	Observed at Kingfisher Pond	marsh and bog	1-3'		yes		attractive seed head	dense root system may hold more iron		planted in Kingfisher Pond (seed), found only a few plants, did not do well
<i>Eleocharis palustris</i>	Spike Rush	Observed at Floyd Dryden Wetland	in shallow standing water, 1-2"	8-24"				attractive head			spread very well in Floyd Dryden Pond and has an attractive head and reddish hue to the stems
<i>Equisetum</i>	Horsetail sp.	Patti Krosse	aquatic to semi-aquatic		yes				the roots are small and probably do not trap much iron, roots do not hold much soil	Has shown invasive tendencies in the CoN wetland	probably easy to transplant some rhizomes, excellent survival rate in CoN(dominates wetland-maybe too aggressive), also abundant in Floyd Dryden
<i>Hordeum brachyantherum</i>	Meadow Barley	Observed at Kingfisher Pond	moist soils	3'		yes	food for blacktail deer			Primarily a maritime species, along beaches and meadows	planted in Kingfisher Pond (seed), found only one plant

Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
Juncus effusus	Common Rush	Patti Krosse	some water-a little drier, gravelly disturbed land	1-4'	Difficult	yes		less attractive, smaller			germinates easily
Juncus mertensianus	Merten's Rush	Observed at Kingfisher Pond	marsh and bog	1'		yes		attractive seed head			planted in Kingfisher Pond (seed), growing in saturated soil
Lysichiton americanum	Skunk Cabbage	Observed at CoN, Ed Buyarski	wet edges of water	1-4'	thick root, need to get down deep to dig it out	yes, direct sow in fall	food for deer, bear, and gnats	attractive flower, color		Shady, forested areas	present at edges of CoN
Menyanthes trifoliata	Buckbean	Patti Krosse	aquatic to semi-aquatic	1'	easy to dig up but difficult to establish in soil	yes	fruit is food for flies, beetles, bees, and birds	attractive flower		rhizomes	planted in past with water around it at all times, creeping rhizomes should be separated in fall or early spring. Transplanted into Floyd Dryden wetland, has spread and is doing well there
Scirpus Microcarpus	Small-Leaf Bulrush	Patti Krosse, Dave Maddix	water with a gradient	4'	very easy to dig roots and transplant successfully	yes	nesting, cover, seeds	attractive seed heads, medium height	root uptake potential		some bulrush present in CoN, believed to be this type, planted in Kingfisher Pond. It is doing very well and has spread
Wet Meadow											
Aconitum delphinifolium	Monkshood	Book	wet meadow, streambanks	3'				attractive flowers		poisonous	needs the drier upslope of wet meadow, often found at higher elevations
Aquilegia formosa	Columbine	Ed Buyarski	wet meadow, streambanks, often in rocky areas	2'	yes	yes	food for hummingbirds, cover for nesting species	attractive flower			prefers drier areas, well-drained, Ed Buyarski says seeding works very well
Calamagrostis canadensis	Bluejoint Reedgrass	Book, Dave Maddix	wet meadows and well-drained uplands	3'	yes with sprigs	limited, grassroots or sprigging plugs	bird seed, nesting, cover for small mammals		dense fibrous root system, slightly rhizomatous		forms overhanging banks, aggressive colonizer in disturbed areas
Deschampsia cespitosa ssp. beringensis	Tufted Hairgrass	Book	moist soils	1-4'		yes, but high demand	low to moderate fishery and habitat value			Must be careful with seed, none being collected in SE AK. DNA issues with new varieties.	adaptable to many conditions, tufted growth form, seeded in Kingfisher Pond did well from low saturated locations moving up on wet slopes
Dodecatheon pulchellum	Shooting Star	Patti Krosse, Ed Buyarski	moist soil but not standing water	1-1.5'	very easy	difficult, needs to be wet and cold through winter		attractive flower			challenging to start from seed

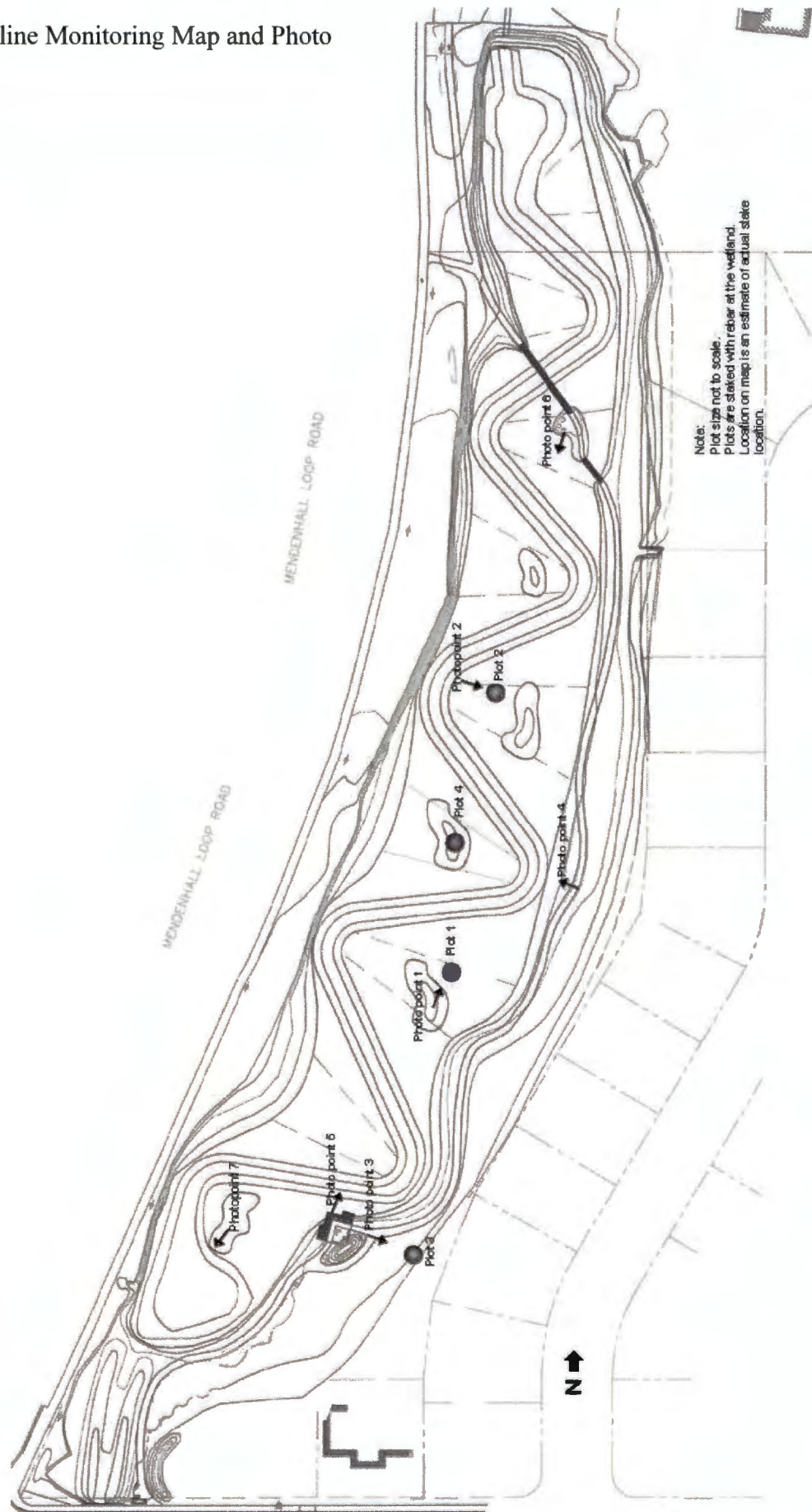
Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
Eriophorum angustifolium	Narrow-Leaved Cotton Grass	Book	wet, moist soil	2'				attractive seed head		rhizomes	
Festuca rubra	Red Fescue	Book	moist to well-drained	6"-40"		yes	low habitat and fishery value	reddish hue			very common in Alaska in low elevation meadows and mountain meadows, easy to seed, used for agriculture, horticulture, lawns, tolerates flooding
Fritillaria camschatcensis	Chocolate Lily	Patti Krosse	moist soil but not standing water	2.5'	Patti Krosse says it is very easy, and they take well (bulb form)			attractive flower			
Iris Setosa	Wild Flag	Book	moist soil	1-3'	easy			attractive flowers			Rhizomes can be divided and gathered in spring or in fall in mild areas
Lupinus nootkatensis	Nootka Lupine	Ed Buyarski	moist soils	2-3'	very difficult to transplant because of extensive root system	yes-gather in pods, dry out pods so they pop and capture the seeds	food for hummingbirds, cover for nesting species	attractive flowers		Needs mineral soil, likes gravel, well-drained	Fixes nitrogen, volunteered at Kingfisher Pond, seeded areas at Floyd Dryden did not take well, only a few plants
Rubus spectabilis	Salmonberry	Book	wet areas	3-9'	dig up rhizomes with many root off shoots, fairly easy		berries good for food	attractive flowers and berries, good screening		attracts bear	
Valeriana sitchensis	Sitka Valerian	Book	moist soil	1-3'				attractive flowers			
Viola palustris	Marsh Violet	Ed Buyarski	saturated soils	low	yes, easy			attractive flowers			
Tree/Shrub											
Acer glabrum	Douglas Maple		floodplain, moist, into uplands	30'	Seed, transplant, softwood cutting	yes	birds eat seeds, cover	attractive fall foliage, yellow-crimson		found mostly in Juneau on rocky coast	
Alnus rubra	Red Alder	Book	wet soils	75'	Hedge layer, transplant, seed, hardwood cutting	yes	food, cover				nitrogen fixing, good on steep slopes
Alnus viridus (Alnus sinuata)	Sitka Alder	Book	wet soils	18'	Hedge layer, transplant, seed, hardwood cutting	yes	food, cover				nitrogen fixing, longpointed teeth of two sizes
Arnica montana	Goat's Beard	Observed at Kingfisher Pond	wet soils to dry uplands	3-6'	yes	yes					Planted in Kingfisher Pond (seed), no mature plants found

Scientific Name	Common Name	Recommendation by	Water Level	Height	Transplant Potential	Seed Potential	Wildlife Benefits	Human Benefits	Iron phytoremediation	Liabilities	Other Issues
<i>Cornus stolonifera</i>	Red Osier Dogwood	Book	moist soils	3-18'	dormant cutting, live stakes, bundles, brush layer, hedge layering, rooted cuttings, transplants, seed	yes	berries provide winter food for deer	attractive white flowers, berries, and red twigs			2-4 specimens planted in Kingfisher Pond, looks like the original shoots died, but root base survived and is sending up new shoots.
<i>Picea sitchensis</i>	Sitka Spruce	Book	wet soils to dry uplands	200'	transplant, seed	yes	birds eat seed, habitat, winter nesting	evergreen, good screen			
<i>Populus balsamifera</i>	Black Cottonwood	Book	water edge	150'	dormant cuttings, live stakes, bundles, brush layer, hedge layering, rooted cuttings, transplants, seed	yes	birds eat seed, habitat				
<i>Salix barclayi</i>	Barclay's Willow	Ellen Anderson	water edge	6-8'		yes	habitat				often has 'willow roses' at end of twigs from deformed leaves and insects
<i>Salix sitchensis</i>	Sitka Willow	Book	water edge	3-24'	dormant cutting, live stakes, bundles, brush layer, live stiltation, hedge layering, rooted cuttings, transplants, seed	yes	habitat				
<i>Spirea douglasii</i>	Hardhack Steeplebush	Observed at Kingfisher Pond	wet soils							Juneau is north of its zone	Seeded in Kingfisher Pond, no plants found.
<i>Tsuga heterophylla</i>	Western Hemlock		wet soils	180'	transplant, seed	yes	habitat	evergreen, good screen			needs significant organic content on site to grow, does not do well in recently deglaciated areas, shade tolerant
<i>Viburnum edule</i>	Highbush Cranberry	Observed at Nancy Street in uplands	wet soils and streambanks to dry uplands	5-8'	cuttings possible		berries	attractive and edible berries			Ed Buysaki says its easy to take cuttings, similar to willow
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Appendix 2a. Baseline Monitoring Data
October 2006

Sample Plot	Dominant Species	Common Name	Coverage (%)	Density (number count of species)	Standing water (in)
Plot 1	Carex sitchensis	Sitka sedge		17	11.5
	Caltha palustris	Marsh marigold		1	11.5
Plot 2	Carex sitchensis	Sitka sedge		12	10
	Scirpus microcarpus	Small-Leaf Bulrush		2	10
	Equisetum	Horsetail		2	10
Plot 3	Salix barclayi	Barclay's Willow		11	0
	Alnus	Alder		3	0
	Rubus spectabilis	Salmonberry		2	0
	Athyrium filix-femina	Lady Fern		2	0
	Festuca rubra	Red Fescue			
Plot 4	Salix barclayi	Barclay's Willow		11	0
	Rubus spectabilis	Salmonberry		1	0
	Cornus stolonifera	Red-Twig Dogwood		1	0
	Deschampsia cespitosa	Tufted Hairgrass			0
	Calamagrostis canadensis	Blue-Joint Reed Grass			0
	Festuca rubra	Red fescue			0

Appendix 2b. Baseline Monitoring Map and Photo Point Locations



Appendix 2c. Photo points
October 2006



Photo point 1



Photo point 2



Photo point 3

Photo point 4



Photo point 5



Photo point 6



Photo point 7



Appendix 3A. Budget - CBJ Cost Benefit for New High School Project

Option 1: Typical Cost for Filling at Lemon Creek					
	Price	per Unit	Quantity	Unit	Cost
<i>Filling Lemon Creek 52,000 cy</i>					
tipping fee	\$2.50	cy	52,000	cy	\$130,000
trucking fee	\$68	load (8 cy)	6,500	loads	\$442,000
				Total Cost for Lemon Creek Filling	\$572,000
Option 2: Nancy Street Wetland Filling					
	Price	per Unit	Quantity	Unit	Cost
<i>Filling Nancy Street 52,000 cy</i>					
tipping fee	\$1	cy	52,000	cy	\$52,000
trucking fee	\$20	load (8 cy)	6,500	loads	\$130,000
				Total Cost for Nancy Street Filling	\$182,000
				Total Cost for Lemon Creek Filling	\$572,000
				Total Cost for Nancy Street Filling	-\$182,000
				CBJ cost of land purchase of Nancy Street Wetland	-\$137,000
				Savings for CBJ after land purchase	\$253,000

The City and Borough of Juneau saved \$253,000 by purchasing, filling and enhancing the Nancy Street Wetland instead of following the following the typical process of fill disposal at Lemon Creek. The reasons for the savings include:

1. The distance from the construction site to the Nancy Street Wetland is approximately 3 miles shorter than the distance to the Lemon Creek disposal site. This reduces fuel and transportation costs.
2. The CBJ owned the disposal property and could reduce the tipping fees considerably, thereby saving the project money.
3. The process of enhancing the Nancy Street Wetland was funded entirely by the U.S. Fish & Wildlife Service, the Natural Resource Conservation Service, and other grants and donations. The involvement of the resource agencies at all stages of planning, design and construction facilitated the filling and enhancement process. See Appendix 3B for contribution details.

Appendix 3B. Budget - Contributions

	Entity	Program	Task	Amount
1.	Land Purchase			
	CBJ	Street Sales Tax	Land Purchase	\$137,000
			Total	\$137,000
2.	Earthwork			
	USFWS	Partners for Fish and Wildlife Program	Intern	\$9,000
			Earthwork	\$31,000
	NRCS	Wildlife Habitat Improvement Program	Fill placement and rough grading	\$75,000
			Total	\$115,000
3.	Planting, Final Grading, Outlet Channel and Control Structure			
	USFWS	Partners for Fish and Wildlife Program	Outlet Design, Final Grading	\$45,000
			SAGA-FWS Contract - Reveg	\$26,800
			Intern	\$10,000
	NRCS	Wildlife Habitat Improvement Program	Fish passage channel	\$6,000
			Structure for water control	\$3,750
			Final grading, topsoil placement, planting	\$42,000
	Full Circle Farms	Donation-Cash	Plant Materials	\$5,000
	Full Circle Farms	Donation-Labor	Collection and Planting	\$5,600
	Full Circle Farms	Donation-In Kind	Plant Storage	\$3,000
	Duran Construction Co.	Third Party EPA Mitigation Compliance	Topsoil Delivery, 5500cy	\$30,000
			Total	\$177,150
4.	Trail Construction			
	DNR	Recreational Trails Grant	Trail materials, construction	\$46,746
	Glacier State Contractors	Private Donor	Trail grading and gravel	\$14,000
	Juneau Docks and Harbors	Donation- In Kind	Bridge and Delivery	\$14,900
			Total	\$75,646
			GRAND TOTAL	\$504,796

Timeline for Purchase, Filling and Enhancement

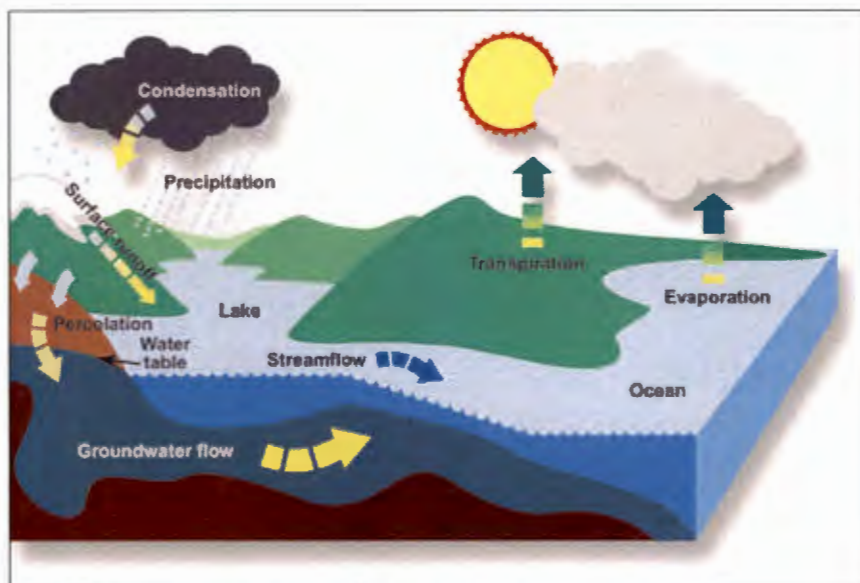
				2005												2006				
	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Land Purchase																				
Planning and Design for Filling																				
Planning and Design for Revegetation																				
Earthwork and Filling																				
Outlet Channel and Control Structure																				
Planting																				
Trail Construction																				

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GROUNDWATER IN THE AGGREGATE INDUSTRY

Groundwater is a renewable resource that is in constant motion as part of the hydrologic cycle. Above-water pits and quarries have little or no effect on water levels or the flow of groundwater.



What is Groundwater?

Just as the name implies, groundwater is water contained in the pores and fissures of the earth. Groundwater is a renewable resource. It is in constant motion, part of the hydrologic cycle (see Hydrologic Cycle on the cover page). Rainfall and snowmelt infiltrate into the earth to recharge groundwater, which then flows as baseflow into streams and lakes. Evaporation from open water, and transpiration from plants, returns water to the atmosphere to complete the cycle.

A common misconception is that groundwater flows in underground rivers and lakes like surface water. Instead, groundwater seeps very slowly through the pore spaces and small fissures in the soil and rock. Materials such as clay have a low permeability, and hence very slow groundwater flow, while sand and gravel, or highly fractured rock, have high permeability and permit groundwater to flow faster. These more permeable layers are called aquifers.

The water table is the depth at which the soils or rock become completely saturated with groundwater. If a hole were dug, and left to stand for a while for groundwater to seep in, the water level in the hole would represent the water table. The water table elevation is not static, though, and it can fluctuate in different seasons and from year-to-year, depending on the amount of recharge. Natural depressions can intersect the water table to form lakes, ponds and wetlands.

Water Wells

Groundwater is a critical resource in Ontario - nearly one quarter of us rely on wells for our water supply. Some of these are municipal wells serving urban communities, but the vast majority are private water wells, mainly in the rural parts of the province. Two common types of wells are shallow dug wells which draw water from the water table, and bored or drilled wells which draw water from deeper aquifers.

The *Ontario Water Resources Act* and the *Environmental Protection Act* both serve to protect the quality and quantity of groundwater. They are administered by the Ontario Ministry of the Environment, which will respond to public complaints regarding interference with water wells. The Ministry has several excellent publications available to

Fact Sheet

Groundwater at Pits and Quarries

- Groundwater is a renewable resource.
- Water wells are protected under provincial legislation.
- Above-water pits and quarries can have a beneficial effect on groundwater and aquatic resources.
- Below-water pits and quarries can be operated without significant groundwater impacts if they are carefully designed and operated.
- Permits to Take Water ensure that aggregate wash plants do not harm water resources.

Aggregate extraction and processing is a clean industry that does not provide groundwater contaminants.

homeowners on subjects including proper water well construction and maintenance, protecting water quality in wells and managing water shortages (1-800-565-4923 or www.ene.gov.on.ca).

Wells and their associated equipment require ongoing maintenance. Even with the best maintenance, though, they still tend to degrade naturally over a period of years, through mechanical wear and clogging of the well screen, pump and pipes, .

Can Pits and Quarries Affect the Flow of Groundwater?

The answer depends on the type of pit or quarry.

Above-Water Pits and Quarries

Most of Ontario's sand and gravel pits, and a few of its rock quarries, are excavated entirely above the water table. This type of operation has little or no effect on water levels or the flow of groundwater because there is no direct, physical alteration of the water table or any aquifers. Monitoring programs at above-water pits and quarries across Ontario have confirmed that groundwater is unaffected.

In some ways, above-water pits and quarries can actually be beneficial to groundwater. They create a "bowl" that captures and infiltrates all rainfall and snowmelt rather than allowing some of it to run off across the ground surface. A study on the Oak Ridges Moraine documented a number of benefits related to this extra groundwater recharge (Hunter/Raven Beck,

1996). One of the important benefits is to reduce direct run-off to surface water streams and increase cold groundwater baseflow which is critical to fish habitat.

Below-Water Pits

Below-water pits usually use large excavators or draglines to dredge sand and gravel from the *pit ponds* that form below the water table level. Generally, this type of extraction does not have major impacts because most of the groundwater remains in the pit, or drains back into the pit. This type of pit also captures surface water run-off and promotes more groundwater recharge, but these benefits are offset by the increased evaporation that will occur from the surface of a pit pond. Minor water losses also occur due to residual moisture contained in the aggregate products that are shipped from the site. Finally, the removal of solid sand and gravel particles from below the water table has the effect of temporarily lowering the water level in a pit pond (imagine removing a rock from a bucket of water).

The water surface in very large below-water pit ponds will stabilize at a uniform level, whereas the groundwater table before extraction may have been irregular or sloping. Therefore, the water table around the pit will have to “adjust” to the water level in the pit pond, possibly resulting in slightly different groundwater flow patterns. Fortunately, there is a simple solution where this may be a problem – digging several smaller pit ponds rather than one large pond (Ostrander *et al.*, 1998).

When all of these factors are combined, the net effects of below-water extraction are normally minor and very localized. However, in certain circumstances they could still be significant if there are sensitive features such as wetlands or shallow wells in close proximity. As a result, a detailed and careful hydrogeological study is necessary when licencing this type of pit (Ministry of Natural Resources, 1997), and mitigation (solutions) to any negative impacts will be required. An ongoing groundwater monitoring program may be required.

Below-Water Quarries

Most quarries that extract from below the water table pump water out of the excavation so that the work of blasting and recovering the bedrock can be done on a dry floor. *Dewatering* usually does affect groundwater levels and flow patterns around the site, since it artificially lowers the water table to at least the base of the quarry. Hydrogeologists call the area around the quarry that is affected by the dewatering the *drawdown cone* or the *radius of influence*. Wells, streams, wetlands, or other sensitive features within

this area must be carefully studied to predict the impacts and devise mitigation measures before the quarry can be licenced (Ministry of Natural Resources, 1997) and a groundwater monitoring program will normally be required.

There are many locations in Ontario where below-water quarries are successfully operated while sensitive water uses continue nearby – it depends very much on the specific hydrogeological setting. Recently, some innovative technologies have been introduced in Ontario to lessen the effects of quarry dewatering, such as pumping the water from the quarry back into the groundwater system around the quarry to artificially recharge the water table. This has so far proven to be quite successful (Gartner Lee Limited, 2001).

Other Water Takings

Pits and quarries have uses for water, similar to other businesses, such as supplying offices and shops with drinking water, watering lawns and gardens, etc., but these tend to be relatively minor. Most types of aggregate processing, such as crushing and screening, are dry operations and do not require water supply.

However, to minimize dust (which is a byproduct of excavation in a pit or quarry) spray water is used on internal haul roads, processing equipment, stockpiles and trucks.

One exception is aggregate washing plants, which are used at some sites, and do require relatively large quantities of water. Most plants recycle wash water through a “closed loop” series of holding ponds and settling ponds (i.e., the water is re-circulated, with no off-site discharge), so that the amount of water actually consumed in the process is usually less than about 10%. This *make-up water* normally comes from local groundwater or surface water sources. A common configuration would be to have a well that would be used occasionally during the production season to “top up” the ponds.

These water takings are regulated separately from the pit licence under the *Ontario Water Resources Act*, and controlled through Permits to Take Water. The applications and related hydrogeological studies are carefully reviewed by the Ministry of the Environment, other government agencies, and the interested public through the Environmental Bill of Rights process to ensure there will be no unacceptable impacts from these water takings, before the permit is issued.

GROUNDWATER IN THE AGGREGATE INDUSTRY

Can a Pit or Quarry Contaminate Groundwater?

It surprises some people to learn that aggregate extraction is a clean industry. Processing aggregates is a purely mechanical process of crushing, screening, blending, and sometimes washing (with water), without the need for chemicals. At most sites, fuels and lubricants for the equipment are the only potential sources of groundwater contamination, and these are closely regulated under the *Technical Standards and Safety Act*. A spills contingency plan is a standard condition of every new aggregate licence.

Bacteriological contamination of the type responsible for the Walkerton tragedy comes from human and animal wastes. Aggregate extraction and processing is not a source of this type of contamination.

As a result, water quality in and around pits and quarries is not normally an issue. This was confirmed through a study in 1989 as part of the Ontario government's MISA program, where monitoring at a selected number of pits and quarries found good water quality, with only sporadic traces of organic compounds at some sites that might indicate the use of petroleum products (SENEC, 1989). In addition, there are many site specific monitoring programs in place at aggregate operations.

What About Water Temperature?

Water temperature concerns are occasionally raised in conjunction with below-water pits. A pit pond warmed through the summer months could result in a flow of warmer groundwater to nearby points of baseflow discharge and, in turn, affect cold water fisheries resources. An analysis conducted on behalf of the Credit

Valley Conservation Authority in 1998 concluded that pit ponds have minimal impact on groundwater temperatures, and that these minor effects are completely dissipated within a few hundred metres from a pit (Ostrander *et al*, 1998). Field monitoring has also confirmed that groundwater returns to its normal background temperature within tens of metres of pit ponds (Harden Environmental, 1995).

As a result of the research to-date, thermal effects of pits and quarries is not considered to be a major issue in most cases. However, where there are cold water fisheries close to a pit pond, appropriate investigations and studies are required, and the setbacks and buffer zones will be adjusted accordingly.

For further information, please contact the OSSGA Environment and Resources Manager, at (905) 507-0711 or visit the OSSGA website at www.ossga.com.

Prepared by Gartner Lee Limited in consultation with OSSGA's Environment Committee.

References

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- Ostrander, M.D., Martin, P.J., Blackport, B. and Picotti, M., 1998. *Impact of Aggregate Extraction Activities on Cold Water Discharge. Groundwater in a Watershed Context*. Canadian Water Resources Association.
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The "About Aggregates" series:

1. Aggregates and the Law
2. Bronze Plaque Award
3. Rehabilitation of Pits and Quarries
4. Being a Good Neighbour
5. Importance of Aggregates
6. Geology and Aggregate Extraction
7. Controlled Blasting at Quarries
8. Groundwater in the Aggregate Industry
9. Management of Abandoned Aggregate Properties (MAAP) Program



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www.theholestory.ca

January 17, 2022

Mr. Ed Martin III, President
Kenai Peninsula Aggregate and Contractors Association
Via email: Kpac (kpacassocoation@yahoo.c0m)

Subject: Comments on KPB proposed material site ordinance amendments

As requested, I have reviewed the ordinance proposed to amend KPB 21.25 and 21.50.055 regarding material site permits, applications, conditions and procedures and offer the following comments, observations and suggestions. These comments are provided pro bono as a courtesy to your organization as well as to the Kenai Peninsula Borough and its residents.

I have been retired, as a principal partner with the engineering firm of Wince-Corthell-Bryson in Kenai, for the past three years and therefore have no further interest in contracts or projects within the Borough. I have been a Kenai Peninsula resident since childhood when my parents homesteaded the Kasilof area in 1957 and have over 50 years of construction and engineering experience in the central, southcentral and southwestern regions of Alaska.

I have over 40 year's experience in the planning, design, and management of federally funded highway and airport projects where the National Environmental Protection Policy Act (NEPA) procedures are followed to evaluate and mitigate environmental impacts caused by construction and use of the resulting infrastructure.

All this being said I will offer my comments from a engineering prospective and as a good neighbor in the order of the documents you provided.

Whereas #1and2: Not clear to me what Climate Change has to do with this ordinance

Whereas #3: I assume "other uses" refers to material production. I.e.. Crushing, screening, asphalt and concrete supply.

Whereas #4: I agree larger setbacks are not the answer where a material barrier will address impacts off site.

Whereas #5: Protecting, maximizing, minimizing is not a very definitive word, perhaps mitigating should be considered.

Whereas #12: *Dust, noise, traffic and visual aesthetics appears to me to be the crux of this ongoing debate and as a good neighbor is a reasonable topic. Its how they are reasonably addressed is the issue to me.*

Whereas #17: I agree this catchall statement that additional requirements may be required casts uncertainty in the process and should be removed. The permit process should establish the conditions up front.

SECTION 1. KPB 21.25.030

21.25.030. – Definitions

Permit Area and Haul routes I think this is a valid issue that should be addressed in the permit process. While I agree all vehicles have the right to use the borough roads, most of the Borough roads are not designed and built to carry high numbers of heavy trucks on a daily basis. Alternate access and/or upgrading existing roads may be something to consider to mitigate damage to existing roads as well as other traffic concerns.

21.29.020 Material extraction and activities requiring a permit

B. Conditional land use permit (CLUP) I see no problem with including material processing in with the site plan as crushing and screening operations can be noisy and dusty and can be addressed with effective barrier plans such as earth berms. For the smaller pits processing is not usually not going on so would be a non applicable item on a checklist.

21.29.030 Application Procedure

9. Site Plan. The Site plan along with accompanying SWEPP, Traffic, and Environmental mitigation proposals should be prepared or at least reviewed and signed off on by a Alaska registered Civil Engineer. A checklist would be convenient with this process.

9f. Test Holes. Perhaps the mining plan should be limited to the depth of test holes with provisions to amend the plan later or utilize a drill rig to bore the test holes.

9h. Waterbodies and wetlands. The Borough GIS source provides good planning level information on wetlands. Definitive designations can easily be requested with a two-page application to the local Corp of Engineers office in Soldotna for little to no cost and only takes 2-4 weeks to obtain.

21.29.040. Standards for sand, gravel or material sites. This section addresses protecting or minimizing environmental conditions again perhaps mitigating would be an acceptable term. Regarding damage to adjacent properties, I believe that goes with out saying. Any damage to another person's property is protected under state law and pursuable in civil court.

21.29.050. Permit Conditions

2. Buffer Zone. A) I don't believe a 50-foot strip of trees affectively buffers adjacent property and ROW from visual, noise or dust impacts. A 10-foot minimum, neatly shaped and seeded, earth berm would affectively mitigate those three impacts and is readily available from site stripping as well as being available for reclamation activities. The buffer should not overlap ROW utility easements as those are dedicated for utility use.

I think it might be a good idea to establish some parameters to be achieves with the buffer such as visibility level which a 10-foot berm achieves. Noise levels which the borough proposes late at 75 decibels should be achievable considering FAA noise standards for airport noise is 65 decibels and easily measured with a decibel meter which I have can loan you. Airborne particulate is a difficult to measure without special equipment so maybe a visible standard could be used.

4. Water Source Separation b. I don't believe a few feet of gravel separation to the ground water protects it at all from fuel and oil spills, on the contrary. Minor spills that can be obscured by pit operations can build up over time and steadily leach into the water table not showing up for quite some time and well down gradient resulting in a long term impact.

Dredging operations below water table can be boomed off and if a spill occurs is immediately visible and can be quickly boomed in, skimmed and absorbed.

5. Excavation in the water table. Simply dredging into the water table should have little affect on its level or down gradient wells. I agree some horizontal separations is required and would think the 200-foot separation required by ADEC would be sufficient.

If dewatering is proposed, then the following requirements address those impacts .

6. Waterbodies. I believe a 100-foot buffer with appropriate SWEPP practices will adequately protect surface water and wetlands.

11. Hours of Operation. Over my career I have only been involved with a few double shifting projects and they were on airports well away from residential areas. From what I have observed most operations run about 12 hours a day 5-7 days a week. Perhaps a special use permit could be utilized for unusual working hours.

17. Sound Level. The 75 decibel limit may be impossible to meet during initial pit development until the clearing, stripping, berming and the pit is to a depth below grade. Perhaps the permit could allow the 1.5 increase during initial development. This should be achievable during the first season of operation.

The smaller pits (1-2.5 acres) should be exempt from this requiremen, as I don't believe they can ever meet the requirement and they are normally project specific, only operating for a few weeks to a few months.

19. Ingress and Egress. Should be addressed in the permit process to assure existing Borough roads are capable of accommodating the increase in heavy truck traffic.

I have no comments on the Decision and Reclamation sections as that is housekeeping between the operators and the Borough in m my mind.

I also think that the final product of this ordinance should be a result of a consensus of the stakeholders and not simply a mater of majority vote rule. In the end a Permit Checklist should be provided that addresses all the impacts, their limits and provides a template for proposed mitigation .

One last observation is that considering how important gravel borrow sites are to the long term development and economics of the Peninsula I think the Borough and State should be encouraged to set aside some suitable land in proximity to the road system but buffered from private holding for land lease or sale. Making land available that is more neighbor friendly would solve not only this current issue but insure the continued growth of our area.

I hope my comments provide some ideas for consideration and wish you and the Borough success with the continued process to address this matter

Sincerely

A handwritten signature in cursive script, reading "Casey Madden". The signature is written in dark ink and is positioned above a horizontal line.

Casey Madden, P.E.
Alaska Registered Civil Engineer No. 7235



Broyles, Randi

From: Blankenship, Johni
Sent: Monday, January 24, 2022 10:52 AM
To: Broyles, Randi
Subject: FW: New Public Comment to Assembly Members

Public comment

From: Kenai Peninsula Borough <webmaster@borough.kenai.ak.us>
Sent: Monday, January 24, 2022 10:48 AM
To: BoroughAssembly <Borough-Assembly@kpb.us>; Mayor's Department <MayorDepartmental@kpb.us>
Subject: New Public Comment to Assembly Members

Your Name: Joseph Ross

Your Email: smokeross@alaska.net

Subject: Gravel ordinance

Message:

No other industry in the borough is regulated to the extent that you are considering for our local gravel producers. Where are the regulations for the dirt burner? There was an immense amount of public outcry about it, but no task force was formed by KPB to address it. Homeless shelters? Same deal. Marijuana growers? Crickets. What you are attempting is spot zoning, and will cripple the gravel industry. One item you are considering in the new list of zoning is back up alarms. Will you be making rules about back up alarms for everyone, or just gravel producers? I hear back up alarms from Peak Construction every day. Sometimes even at night. How about the back up alarms on the graders out plowing snow at night?

Need to look @
18 AAC 80 SOA Drinking
Water Dept - there are
some source water provisions
80.015.

- differentiate Bt major
and minor extraction operations
and those in GWT
stay above GWT

and are valid for one year. The site development plan may be renewed on an annual basis subject to the planning director's approval.

21.29.020. Material extraction and activities requiring a permit.

- A. *Counter permit.* A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. *Conditional land use permit.* A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling. (Material processing occurs on every civil construction jobsite. This is a burden to the public at large to develop their property)

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:
 1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
 2. Expected life span of the material site;
 3. A buffer plan consistent with KPB 21.29.050(A)(2);
 4. Reclamation plan consistent with KPB 21.29.060;
 5. The depth of excavation;

6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. Surface water protection measures, if any, for adjacent properties designed by a SWPPP certified individual civil engineer (many of the operators are certified), including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence;

DEC Regs
on "Certified
Individual"
may not incl
Civil Engr

Don't know what this means

9. A site plan and field (verification) prepared by the site operator or a professional surveyor licensed and registered in the State of Alaska, including the following information: (surveyors don't offer this service, nor are qualified)

Should separate
site plan from other issues
calling it a "site plan" may
bring other state requirements
into play

- a. Location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
- b. Proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
- c. Identification of all encumbrances, including, but not limited to easements;
- d. Points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit;
- e. Anticipated haul routes;
- f. Location and [DEPTH] elevation of test holes, and depth of groundwater, if encountered between May and December. At least one test hole per ten acres of excavated area is required to be dug. The test holes shall be at least four feet below the proposed depth of excavation; (can't dig that deep many times, if resource is deeper than conventional equipment can dig without stage excavation)
- g. Location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;

may not be enough for
Public wells
- separate Private
From public sources

- h. Location of any water body on the parcel, including the location of any riparian wetland as determined by "Wetland Mapping and Classification of the Kenai Lowland, Alaska" maps created by the Kenai Watershed Forum; (wetland mapping by KWF under contestment and found unreliable)
- [I]. SURFACE WATER PROTECTION MEASURES FOR ADJACENT PROPERTIES, INCLUDING THE USE OF DIVERSION CHANNELS, INTERCEPTION DITCHES, ON-SITE COLLECTION DITCHES, SEDIMENT PONDS AND TRAPS, AND SILT FENCE; PROVIDE DESIGNS FOR SUBSTANTIAL STRUCTURES; INDICATE WHICH STRUCTURES WILL REMAIN AS PERMANENT FEATURES AT THE CONCLUSION OF OPERATIONS, IF ANY;]
- [J]i. Location of any processing areas on parcel, if applicable;
- [K]i. North arrow;
- [L]k. The scale to which the site plan is drawn;
- [M]l. Preparer's name, date and seal; (A site operator may not have a seal)
- [N]m. Field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious or staking is unnecessary.

*Separate Site
Plan From other
Requirements*

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

21.29.040. Standards for sand, gravel or material sites.

- A. These material site regulations are intended to protect against (protects against is an absolute term and most of the time is unobtainable) Minimize aquifer disturbance, road damage, physical damage to adjacent properties, dust, and, noise, and visual impacts. (See explanation below) Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
 - 1. Protects against Minimizes the lowering of water sources serving other properties;

- properties;
2. Protects against Minimizes physical damage to [OTHER] adjacent
 3. [MINIMIZES] Protects against off-site movement of dust;
 4. [MINIMIZES] Protects against noise disturbance to other properties;
 5. [MINIMIZES] Protects against visual impacts of the material site; [AND] (visual impacts implies the taking of visual rights from one citizen and giving to another. I have done extensive research on this and found the KPB just doesn't have the authority. Keeping this language puts the KPB at risk of litigation.)
 6. Provides for alternate post-mining land uses[.];
 7. Protects Minimizes Receiving Waters against adverse effects to fish and wildlife habitat;
 8. Minimizes Protects against traffic impacts; and
 9. Provides consistency with the objectives of the Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents. (Possible Zoning)

21.29.050. Permit conditions.

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

1. [PARCEL] Permit boundaries. [ALL BOUNDARIES OF THE SUBJECT PARCEL] The buffers and any easements or right-of-way abutting the proposed permit area shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor or site operator. Stakes shall be in place [AT TIME OF APPLICATION] prior to issuance of the permit. (Many site operators have GPS capability accurate to +/- 1".)

2. BUFFER ZONE. A BUFFER ZONE SHALL BE MAINTAINED AROUND THE EXCAVATION PERIMETER OR PARCEL BOUNDARIES. WHERE AN EASEMENT EXISTS, A BUFFER SHALL NOT OVERLAP THE EASEMENT, UNLESS OTHERWISE CONDITIONED BY THE PLANNING DIRECTOR OR PLANNING COMMISSION.

A. THE BUFFER ZONE SHALL PROVIDE AND RETAIN A BASIC BUFFER OF:

I. 50 FEET OF UNDISTURBED NATURAL VEGETATION, OR

II. A MINIMUM TEN SIX-FOOT EARTHEN BERM WITH AT LEAST A 2:1 SLOPE, OR (THIS 10FT BERM IS CONTINGENT ON THE SETTLEMENT OF THE WATER TABLE ACCESS)

III. A MINIMUM SIX-FOOT FENCE.

B. A 2:1 SLOPE SHALL BE MAINTAINED BETWEEN THE BUFFER ZONE AND EXCAVATION FLOOR ON ALL INACTIVE SITE WALLS. MATERIAL FROM THE AREA DESIGNATED FOR THE 2:1 SLOPE MAY BE REMOVED IF SUITABLE. STABILIZING MATERIAL IS REPLACED WITHIN 90 DAYS FROM THE TIME OF REMOVAL.

C. THE PLANNING COMMISSION OR PLANNING DIRECTOR SHALL DESIGNATE ONE OR A COMBINATION OF THE ABOVE AS IT DEEMS APPROPRIATE. THE VEGETATION AND FENCE SHALL BE OF SUFFICIENT HEIGHT AND DENSITY TO PROVIDE VISUAL AND NOISE SCREENING OF THE PROPOSED USE AS DEEMED APPROPRIATE BY THE PLANNING COMMISSION OR PLANNING DIRECTOR.

D. BUFFERS SHALL NOT CAUSE SURFACE WATER DIVERSION WHICH NEGATIVELY IMPACTS ADJACENT PROPERTIES OR WATER BODIES. SPECIFIC FINDINGS ARE REQUIRED TO ALTER THE BUFFER REQUIREMENTS OF KPB 21.29.050(A)(2)(A) IN ORDER TO MINIMIZE NEGATIVE IMPACTS FROM SURFACE WATER DIVERSION. FOR PURPOSES OF THIS SECTION, SURFACE WATER DIVERSION IS DEFINED AS EROSION, FLOODING, DEHYDRATION OR DRAINING, OR CHANNELING. NOT ALL SURFACE WATER DIVERSION RESULTS IN A NEGATIVE IMPACT.

E. AT ITS DISCRETION, THE PLANNING COMMISSION MAY WAIVE BUFFER REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT FEASIBLE OR NOT NECESSARY. BUFFER REQUIREMENTS SHALL BE MADE IN CONSIDERATION OF AND IN ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT THE TIME OF APPROVAL OF THE PERMIT. THERE IS NO REQUIREMENT TO BUFFER THE MATERIAL SITE FROM USES WHICH COMMENCE AFTER THE APPROVAL OF THE PERMIT.]

with a
steeper not steeper
than 2:1

Comply w/
18 AAC 70-50A
Water Quality
Regulations

2. Buffer Area. Material sites shall maintain buffer areas in accord with this section.

- a. A buffer area of a maximum of 100 feet shall be established between the area of excavation and the parcel boundaries. The buffer area may include one or more of the following: undisturbed natural vegetation. (Historically, choosing the natural vegetation buffer has almost always ended with both neighbors disappointed. The home owner doesn't realize that the forest isn't very dense and can see and hear the material operation.) a minimum six-foot fence, a minimum six-foot berm or a combination thereof. (The berms are historically the best tool. Does a great job of minimizing the dust and noise, as well as providing a visual screen. A ten-foot berm will add 280% more in size and reclaimable material stored for later use in reclamation.)
- b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 90 30days from the time of removal. (30 days may not be enough time to move the amount of material)
- c. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning commission or planning director, as applicable. (Basically, stacking buffers)
- d. The buffer area may be reduced where the planning commission or planning director, as applicable, has approved an alternate buffer plan introduced by the applicant. (This is necessary to clarify that the planning commission or director cannot make an alternate plan at will) The alternate buffer plan must consist of natural undisturbed vegetation, or a minimum ten six-foot berm, or a minimum six-foot fence or a combination thereof, consisting of only one option in a single geographical location; (prevents stacking of buffers, and provides consistency in permit requirements) unless the permittee proposes another solution approved by the planning commission or planning director, as applicable, to meet this condition.
- e. The buffer requirements may be waived by the planning commission or planning director, as applicable, where the

topography of the property or the placement of natural barriers makes screening not feasible or unnecessary.

f. There is no requirement to buffer a material site from uses that commence after approval of the permit.

g. When a buffer area has been denuded prior to review of the application by the planning commission or planning director revegetation may be required. (Could be a lot cleared years before or an old wildfire site)

3. *Processing.* In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of [OF ADJACENT PROPERTY AT THE TIME] the properties in the vicinity at the time of approval of the permit. (Until vicinity is better defined, we can't consider this)

4. *Water source separation.*

a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.

b. All counter permits shall be issued with a condition which requires that an excavation distance of 15 feet below the seasonal high-water table must be maintained under these conditions:

1. No dewatering is allowed.

2. The bottom of excavation must be 15 feet above the nearest, shallowest private wells intake, within 500 ft of operation.

3. A spill response kit.

4. Operations shall not breach an aquifer-confining layer.

A four-foot vertical separation [FROM] between extraction operations and the seasonal high-water table be maintained. (I have talked with multiple hydrologists and engineers and have come to a conclusion that this is not only possible, but preferable in regard to reclamation, spill response and potential clean up. I will have letters of opinion in favor. The ponds or lakes created will be reclaimed upon existence, provide habitat for wetlands and wildlife, potentially raise property values as lake front property, etc.)

He above seems conflicting - Allows operator to excav. 15' into GWT but requires a 4' vert separation to GWT?

Drinking water source - 700' for public well / source

who provides the adjacent well information? How is it obtained? What if adjacent property owner refuses to give that info? well drillers will not provide a log for someone's well who owns approval - especially in a contested situation.

see 18 AAC 80.1990(A)

- c. All CLUPS shall be issued with a condition which requires that a [TWO] four-foot vertical separation [FROM] between extraction operations and the seasonal high-water table be maintained. (Null and void if minimum water table excavation regulation is considered)
- d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. Excavation in the water table. Excavation in the water table greater than 15 vertical 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following: (15 vertical feet is better measurement if minimum water table excavation regulation is considered)

- a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
- b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
- c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
- d. Operations shall not breach an aquifer-confining layer.

6. Waterbodies.

- a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within [100] 200 linear feet from excavation limits and the ordinary high water level

of surface water bodies such as a lake, river, stream, [OR OTHER WATER BODY, INCLUDING] riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to ponds less than one acre on private land, man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required. (Again, we can not trust the current adopted wetland mapping. It has been found incorrect. Also, we would like to manipulate and possibly enlarge waterbodies within private land. Promoting wetland expansion and environmental habitat.)

- b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.

Containment Areas
are problematic bk
they collect water
that will prob. stain
a sheep - then what?

7. *Fuel storage.* Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface. Double wall tanks are also acceptable. (Double wall tanks are an acceptable standard for many other agencies)
8. *Roads.* Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. *Subdivision.* Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. *Dust-control.* Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. *Hours of operation.* [ROCK CRUSHING EQUIPMENT SHALL NOT BE OPERATED BETWEEN 10:00 P.M. AND 6:00 A.M.]
- a. Processing equipment shall not be operated between 10:00 7:00 p.m. and 6:00 a.m. (Construction season is short and

processing operations are usually job specific. This puts a burden on development at all levels and can extend the length of days on a job that effects public safety.)

- b. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening the material site from properties in the vicinity and conditions placed on the permit by the planning commission to mitigate the noise, dust and visual impacts caused by the material site.

12. *Reclamation.*

- a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
- b. [AS A CONDITION OF ISSUING THE PERMIT, THE APPLICANT SHALL SUBMIT A RECLAMATION PLAN AND POST A BOND TO COVER THE ANTICIPATED RECLAMATION COSTS IN AN AMOUNT TO BE DETERMINED BY THE PLANNING DIRECTOR. THIS BONDING REQUIREMENT SHALL NOT APPLY TO SAND, GRAVEL OR MATERIAL SITES FOR WHICH AN EXEMPTION FROM STATE BOND REQUIREMENTS FOR SMALL OPERATIONS IS APPLICABLE PURSUANT TO AS 27.19.050.] The applicant shall operate the material site consistent with the approved reclamation plan and provide bonding pursuant to 21.29.060(B). This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

13. *Other permits.* Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC air and water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits reported to

or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. ~~[VOLUNTARY]~~Volunteered permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. ~~[VOLUNTARY]~~ Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in ~~[VOLUNTARY]~~ volunteered permit conditions may be proposed ~~[AT]~~ by permit ~~[RENEWAL OR AMENDMENT]~~ modification.
15. *Signage.* For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.
16. Appeal. No clearing of vegetation shall occur within the 50 100-foot maximum buffer area from the permit boundary nor shall the permit be issued or operable until the deadline for the appeal, pursuant to KPB 21.20, has expired. (No need for this regulation as the natural vegetative buffer is not and should not be a best choice. If the need for additional buffing is required, the ten foot berm will suffice.)
17. Sound level.
 - a. No sound resulting from the materials extraction activities shall create a sound level, when measured at or within the property boundary of the adjacent land, that exceeds 75 dB(A).
 - b. For any sound that is of short duration between the hours of 7 a.m. and 7 p.m. the levels may be increased by:
 - i. Five dB(A) for a total of 15 minutes in any one hour; or
 - ii. Ten dB(A) for a total of five minutes in any hour; or
 - iii. Fifteen dB(A) for a total of one and one-half minutes in any one-hour period.

- c. At its discretion, the planning commission or planning director, as applicable, may reduce or waive the sound level requirements on any or all property boundaries. Sound level requirements shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit.
 - d. Mandatory condition KPB 21.29.050(A)(17) shall expire 365 days from adoption of KPB 21.29.050(A)(17) unless extended or modified by the assembly.
(There is no science behind this. Almost every instance, it will be impossible to achieve with OSHA and MSHA standards. Also, will be further managed by the introduction of larger 10ft berms)
18. Reverse signal alarms. Reverse signal alarms, used at the material site on loaders, excavators, and other earthmoving equipment may shall be more technically advanced devices; such as, a multi-frequency "white noise" alarms rather than the common, single (high-pitch) tone alarms. At its discretion, the planning commission or planning director, as applicable, may waive this requirement or a portion of this requirement. The waiver of this requirement shall be made in consideration of and in accordance with existing uses of the properties in the vicinity at the time of approval of the permit. (May is the proper term and gives flexibility)
19. Ingress and egress. The planning commission or planning director may determine the points of ingress and egress for the material site. The permittee is not required to construct haul routes outside the parcel boundaries of the material site. Driveway authorization must be acquired, from either the state through an "Approval to Construct" or a borough road service area as appropriate, prior to issuance of a material site permit when accessing a public right-of-way. (This can only be instituted with strict standards and limitations of the planning commissions discretionary power. As written, it gives the planning commission discretion at will in an area of construction that they don't have the expertise.)
20. Dust suppression. Dust suppression may shall be required when natural precipitation is not adequate to suppress the dust generated by the material site traffic on haul routes within property boundaries. Based on surrounding land uses the planning commission or planning director, as applicable, may waive or reduce the requirement for dust suppression on haul routes within property boundaries. (As explained before)

21. Surface water protection. Use of surface water protection measures as specified in KPB 21.29.030(A)(8) must be approved by a licensed civil engineer or SWPPP certified individual.

22. Groundwater elevation. All material sites must maintain one monitoring tube per ten acres of excavated area four feet below the proposed excavation. (This will be unnecessary as the material site will be digging in the water table or unable to reach it and not effecting its formation.)

23. Setback. Material site excavation areas shall be 250-feet from the property boundaries of any local option zoning district, existing public school ground, private school ground, college campus, child care facility, multi-purpose senior center, assisted living home, and licensed health care facility. If overlapping, the buffer areas of the excavation shall be included in the 250-foot setback. At the time of application. (This gives consistency in the regulation)

21.29.055. Decision.

The planning commission or planning director, as applicable, shall approve permit applications meeting the mandatory conditions or shall disapprove permit applications that do not meet the mandatory conditions. The decision shall include written findings supporting the decision, and when applicable, there shall be written findings supporting any site-specific alterations to the mandatory condition as specifically allowed by KPB 21.29.050(A)(2)(a), (2)(c), (2)(d), (2)(e), (2)(g), (3), (4)(d), (5), (11)(b), (12), (14), (17)(c), (18), (19), and (20) and as allowed for the KPB 21.29.060 reclamation plan. (This is written that the planning commission will disapprove of applications that do not meet the mandatory conditions. It contradicts many previous languages that gives the planning commission discretion to approve applications that may need special modifications.)

21.29.060. Reclamation plan.

- A. All material site permit applications require an overall reclamation plan along with a five-year reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours. A five-year reclamation plan must be submitted with a permit extension request. (Why the need for a five-year reclamation plan? As site operators, we cannot foresee the market in a five-year span, therefore, cannot provide an accurate plan for five years.)
- B. The applicant may shall revegetate with a non-invasive plant species and reclaim all disturbed land (There are many ways to reclamation. This limits it to one method) [UPON EXHAUSTING THE MATERIAL ON-SITE, OR WITHIN A

What's the purpose of the monitoring well? Is it (are they?) down gradient? Testing?



To whom it may concern:

The Kenai Peninsula Aggregate and Contractors Association does not support ordinance 2021-41. We feel that it is flawed in many ways, and in some respects, impossible to follow.

The lack of all information or slanted information in the whereas is misleading. The use of Changing Climate has nothing to do with material extraction nor is scientifically proven without a doubt. The lack of mention that this exact document other than its previous designation of 2019-30 mayor substitute, was voted down, reconsidered, then voted down again, is important to note.

We feel the creation of this document was not done in a fair, well educated, and well represented way. The Material Site Work Group was formed using 8 members, and only 2 from the industry it would regulate. A 6 to 2 vote was all too common, as the majority of its members had limited experience if any at all. This ultimately created an ordinance that no one could support. That being said, we feel if such document should be created, this ordinance should not be considered as a guide whatsoever, as it would be counterproductive. Our reasoning is stated below.

The use of aesthetics, view, unsightliness, or any term that insinuates regulating view shed rights is not a power afforded to the KPB. After many hours of research, we have found that there are only 3 ways view shed rights have been regulated or transferred in the USA. The federal government regulates view shed on federal land containing historical sites and parks. Local first-class governments have zoning power. Some local governments have regulated through zoning, view shed rights over large zones containing all parcels of land within. There is no precedent of any government regulating view shed on singular parcels of land pertaining to one industry. The KPB is a second-class government with no zoning power. Last, we have found some instances where view shed rights have been transferred in the private sector through purchase.

This ordinance was founded by its initial goals. Those goals contained view shed language and concerns. Therefore, the ordinance was given wrong direction from its inception. All language concerning view must be stricken from its contents.

The definition of "disturbed" should not include "stockpiles" as it is used in 21.29.060 (b). The intent of reclamation is to put the land back to a suitable condition after operations have ceased. If operations have truly ceased, and the land has been put back to a suitable condition, there will be no stockpiles.

Eliminating the term "exhausted" was counterproductive in the intent of the original use of the land.

The definition of "haul route" and its use in the ordinance is unfairly singling out one industry as many others haul commercially in the KPB. Also, we are already regulated by KPB 21.29.050 (8), KPB 14.40.175, and subject to KPB 14.40.

The definition of "vicinity" is too broad and can give other residents not effected by operations by geographic and topographic locations the ability to diminish operations such as processing. Adjacent was a better term used.

21.29.030 (8) is already regulated by the federal government through SWPPP plans. This is unneeded, and a further burden to the KPB and the operator.

21.29.030 (9) (f) the timeframe from May to December does not coincide with construction season. Many bids come out before May for the upcoming season and a contractor will have to speculate and possibly apply for a permit before bidding a project. This will only burden the public to unnecessary costs and safety by denying the opportunity to obtain a close source of material.

21.29.040 (a) (3,4,5) the definition of “minimizes” and the inclusion of “protects against” is an unobtainable condition. “Minimizes” allowed the operator the ability to mitigate the situation. “Protects against” insinuates the absolute disbursements of, and is an impossible and unfair condition. It also contradicts other conditions levied in this ordinance. (3) is impossible as written, as dust moves naturally. It is not only unfair, because everyone creates dust, such as a parking lot on a windy day, or a homeowner mowing their lawn, but impossible to comply to because one particle across the property line defies the law. (4) is already regulated by the federal government agency MSHA. This is a further burden on the KPB and the operator. (5) is unlawful for the KPB to regulate as it insinuates the taking of view shed rights and the KPB is a second-class government with no zoning power.

(8) also includes the term “protects against” and is an impossible condition. As soon as an operator uses a public road to travel, they will impact traffic just by their presence. We have the right to travel by federal law, 5th amendment to the U.S. constitution.

21.29.050 (2) we feel the changes in the buffer zones were negotiated on incorrect information by KPB staff. Our representatives were misinformed as well as the rest of the MSWG and public as to the current distance and application of buffers conditioned to the applicant. As we read the current law, you may impose a combination of buffer requirements on an application, but only one in any geographical location. “Stacking” is prohibited. For instance, you may have a 50ft natural vegetative buffer on the north border and a minimum 6ft fence on the west, and a minimum 6ft berm on the east, but not all on one border. The word “or” in (2) (a) supports that. The KPB has already misused this law by asking for or requiring operators to comply with “stacking”. We feel the MSWG and the public did not receive the correct data to make an informed decision or to give public comment. A 100ft maximum buffer is an unnecessary burden to the applicant as it locks up a rare and high demanded commodity.

(2) (b) is in conflict with other conditions such as noise and undisturbed natural vegetation. How can we remove and replace material near or on the border of our site with heavy machinery if we cannot make noise, dust, or disturb vegetation?

(3) the use of “vicinity” is too broad. A property over a large hill, across a forest, on another road, may affect the use of processing even though they cannot see, hear, or be troubled in any way.

(4) we feel that the changes from 2 vertical ft. to 4ft is unnecessary. We don’t feel the MSWG was really given the option to go the other way and scientific data to make an informed decision. To our knowledge, there has been no conflict proven in the KPB with a 2ft separation. Many sites in Alaska mine in the water table. Some right here in the KPB. There is no precedent to support the taking of 2ft of resources away from an operator. We feel this section could have been abolished in its entirety and section (5) is sufficient.

(6) Again, we feel this is a product of lack of scientific data and there is no precedence to support the taking of 100ft of horizontal distance. State mining law is very different and allows for a much closer distance.

(17) this is also conceived by lack of scientific knowledge. Also, we are already regulated by the federal agency MSHA. This should be abolished in its entirety.

(18) this is unfairly enforcing a regulation on one industry. The KPB doesn't want to get involved in the type of safety equipment used. If an accident occurred, the KPB could be held liable. Also, we cannot control other possible members of the industry from outside the KPB who may not have these devices and come here to work for the season.

(19) this is unfair to the operator as we have the right to travel on any road. The possible burden to an operator could be massive because of topography and diminish the opportunity to access resources.

(20) this is unfair to the industry. We already supply dust suppression as good neighbors and stewards of the land. This is singling out one industry as almost all industries on the KPB are involved with a heavy truck creating dust on a road at some point. School busses create the same dust.

(21) Again, already regulated by federal SWPPP plans.

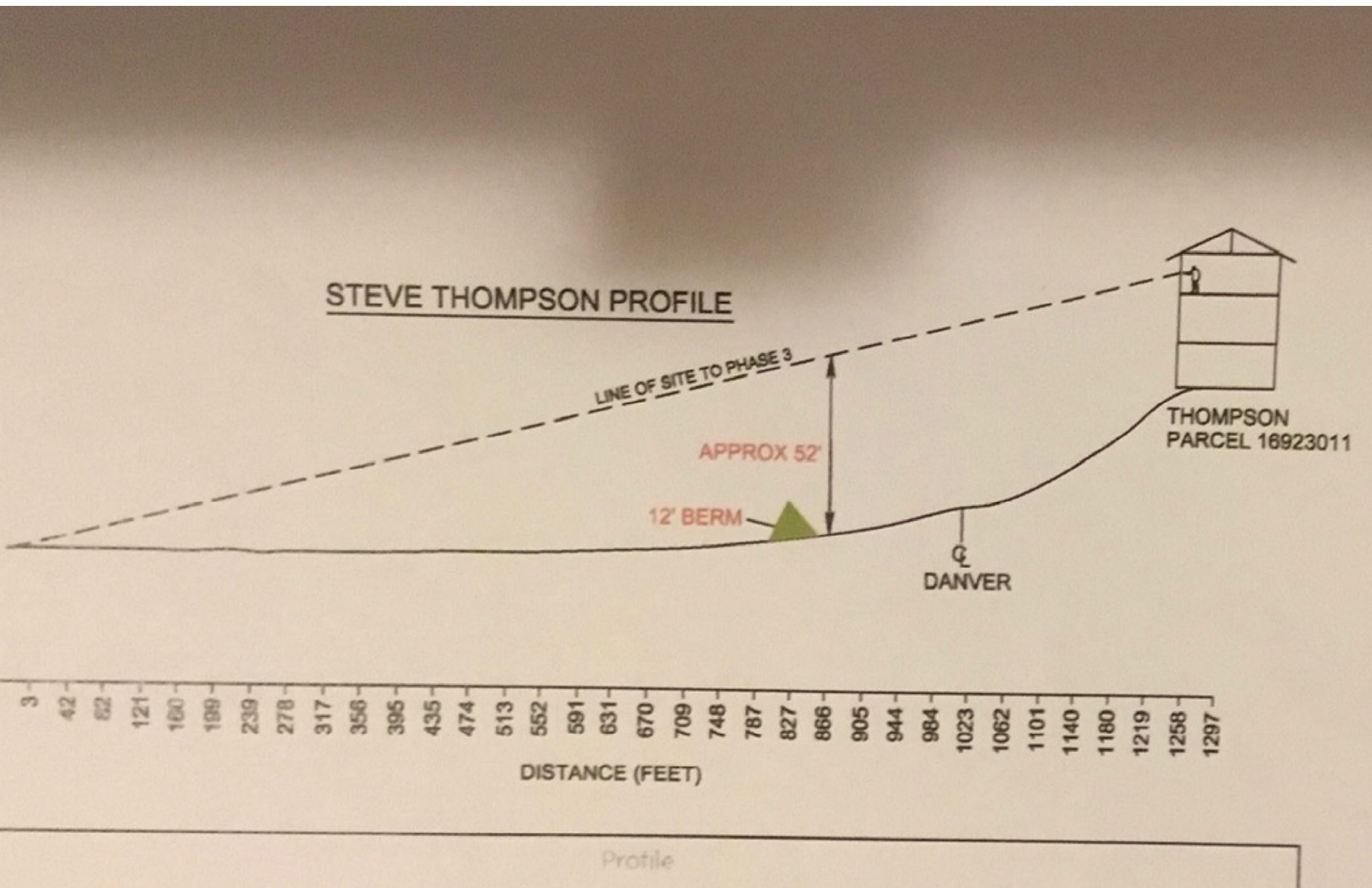
(22) unnecessary. Mining in the water table is common throughout Alaska.

21.29.060 (b) the use of "disturbed" includes basically, the whole site, including stockpiles. This is unrealistic. If there was more industry input, the MSWG would know that in general, the geology on the KPB is quite scarce of suitable topsoil. Every time you move it, you lose some. If we constantly reclamated our sites, we won't have the material to finish the job. Also, this doesn't have the provisions for other uses of the site such as a commercial property or parking lot needing no reclamation. The bonding requirement is also an undue burden as the State requires only \$750.

21.29.120 (c) we feel this is unjust to current operators. While to all it is reneging on the deal they agreed to at time of origin, some PEU's aren't required to submit a reclamation plan with the state and have no way of complying. This is just a way for government to not hold up their end of a deal struck with a citizen and harass them. It is not very becoming of the KPB to do so.

So, as you can see, the Kenai Peninsula Aggregate and Contractors Association and its members, families, and dependents, can find inconsistencies and faults in almost every aspect of this ordinance. It is inconsistent with industry standards, lacks scientific merit, isn't in harmony with other government agencies such as MSHA, OSHA, and DEC. This ordinance lacks an avenue for operators to complete discovery and reclamation that coincides with best management practices. In many areas it is based on false or inconsistent fact and overreach of regulatory power. Such as viewshed rights and wetland mapping. We consider this document as a form of a taking without just compensation and a form of zoning to a specific industry. We urge you to vote no on 2021-41 to save us all the conflict and burden it will surely cause.

Thank you for your consideration, Ed Martin III, President, KPACA.



Turner, Michele

From: Blankenship, Johni
Sent: Tuesday, January 18, 2022 4:23 PM
To: Turner, Michele
Subject: FW: <EXTERNAL-SENDER>Please provide to the Assembly for tonight's meeting on Ord. 2021-14

From: K, E, & E Martin <keeconstructionllc@yahoo.com>
Sent: Tuesday, January 18, 2022 4:02 PM
To: Blankenship, Johni <JBlankenship@kpb.us>
Subject: <EXTERNAL-SENDER>Please provide to the Assembly for tonight's meeting on Ord. 2021-14

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

To all it may concern :

Below is a Opinion of Jim Valenine of Reno ,NV Posted last Sunday Jan.16th in the "Nevada Appeal " News paper serving Carson City , NV I could not better put one's Rights to Private Property & the Constitutional Rights of Ownership & Due Process unobstructed by Government or anyone else!

Please review all Whereas's for facts & truth before considering any Therefore(s) that don't meet constitutional muster!

This second Class Borough shouldn't legislate ZONING without the power to do so & then only if a" taking is warranted " for a public good , then be prepared to pay just compensation . As I have told several Assembly members " Have the courage" to introduce new Zoning Powers for a vote of the people of this Borough. Otherwise this appears as a " BACK DOOR " way to those means. Ed Martin Jr., 702 Lawton Drive , Kenai, Ak

The Fifth Amendment of the U.S. Constitution includes a provision known as the Takings Clause, which states that "private property (shall not) be taken for public use, without just compensation."

This is a very important component of our Constitution that effects all property owners. Some governmental agencies in recent years have implemented laws, rules, policies and procedures that have impacted the quiet enjoyment of the property and the owner's use of the property which is, in fact, an uncompensated taking. More are being proposed as efforts to redistribute wealth become more commonplace. These often include giving rights to tenants that are adverse to the interest of the property owner with no compensation for their loss(es). Richard B. Sanders, Washington State Supreme Court justice, wrote a treatise about the "Fifth Amendment" wherein he wrote, "Our State, and most other states, define property in an extremely broad sense." He continued, "Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment, and disposal. Anything which destroys any of the elements of property, to that extent, destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right."

Two more statements we find relevant: Founding Father John Adams, "The moment the idea is admitted into society that property is not as sacred as the law of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."

From Nevada's own Wayne Hage, property rights activist, "If you don't have the right to own and control property then you are property."

It is so important to those of us living in the free world environment of the United States to understand that you can own real estate and you can enjoy all of the components of the bundle of rights of real estate ownership, as long as you don't willingly, or unwillingly, let them take them from you.

The bundle of rights affords the owner the right of possession, the right of control, the right of exclusion, the right of enjoyment and the right of disposition. We take it for granted that we have this with our property ownership because of the Fifth Amendment, but like all of the freedoms we enjoy in these United States, we must work to protect them.

.[One must be diligent in protecting private property rights for all of us.

If you willingly allow a governing body to make a change that adversely affects you, then you cannot claim an uncompensated taking. If a body such as a Local Planning Commission makes changes to which you don't agree that have a negative impact on your, your use of your property and ultimately the value of your property, then you may be the victim of a Fifth Amendment breach.] Other factors can come into play so it is best to do your best to avoid such actions gaining any traction.

Don't let others push their agenda to your detriment. Your real property is yours, yours to do what you want with, not what you are told to do with it. That's why you bought it and that's why others still aspire to experience the American dream of home ownership without it being given to them.

KEE Construction, LLC



DATE: January 19, 2022

TO: KPB Assembly Members

SUBJECT: KPB 2021-41 Version 1
Material Site Permits, Applications, Conditions and Procedures

RE: Assembly Mtg January 18th Testimony

I was asked by multiple Assembly Members to discuss or provide my testimony regarding KPB2021-41 V1. Below are the talking points that I prepared prior to the Assembly meeting. Not all this information was included in my testimony due to time constraints and/or the climate of the chambers.

21.29.030.A.9 (Application Requirements)

Requiring that the site plan be prepared by a licensed surveyor is outside the Surveyors' area of work. Surveyors don't offer site development plan services. The portion of the application that should require a licensed and registered surveyor should be limited to the boundary survey, encumbrances, location and elevation of test holes, adjacent well locations, and location of water bodies. Essentially, a property as-built and boundary survey.

If KPB wants to require a professional to prepare the CLUP site development plan, then the ordinance should specify that a licensed Civil Engineer prepare the remainder of the required items.

The ordinance should require that site elevations (including those of test holes and groundwater) tie to a published datum or benchmark. Otherwise, each site may reference an assumed elevation and not a real-world elevation.

21.29.030.A.9(m) says 'field verification shall include staking the boundary of the parcel as sequentially visible intervals'. This conflicts with 21.29.050.A.1 which says 'stakes shall be in place prior to the issuance of the permit'. It is my recommendation that staking the parcel should be part of the field verification process otherwise prior to application.

21.29.050.A (Permit Conditions)

21.29.050.A.2. Buffer Zones. I caution the Assembly on continuing to increase buffer width requirements without granting the Applicant a means to extract the material that is under or within the buffer zone. Gravel is a commodity that is utilized by all and will continue to be so. By providing the mechanisms for a material site to responsibly extract as much gravel as possible from said site, there becomes less need for additional material sites.

21.29.050.A.6 Waterbodies. The US Army Corps of Engineers no longer has jurisdiction on wetlands that are not connected to Waters of the US. Waterbody setbacks should not apply to these isolated wetlands. These isolated wetlands are often ideal locations of peat mining and often have marketable sand or gravel beneath the peat.

Page 1 of 2



21.29.050.A.21 Groundwater Elevation. Recommend adding that the groundwater monitoring tube be installed when excavation is within 10' or such of the groundwater elevation. Many of the area material sites exceed 20' of usable material and installing a monitoring tube to this depth is a major undertaking. As an example, installing a 25' deep monitoring tube would require an excavation of approximately 2,500 SF hole to gain that depth utilizing traditional excavation equipment.

21.29.050.A.13. Other Permits. Alaska Department of Natural Resources (Division of Land and Water) should be added to this list.

21.29.060 Reclamation Plan. ADNR updated their requirements for Material Sales Reclamation Plans in June 2021. This should be reviewed in context to KPB's reclamation requirements. ADNR has set per-acre bond amount at \$750/acre. ADNR allows for an operator to post bond with another government agency as allowed by a cooperative management agreement between that agency and ADNR Division of Land and Water. Does the Borough have a cooperative management agreement with ADNR? Otherwise, there is the potential for material site operators to have to 'double-bond' for reclamation.

Please feel free to contact me if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina DeBardelaben", written in a cursive style.

Gina DeBardelaben, P.E.
Vice President
McLane Consulting, Inc.

Introduced by:	Martin
Substitute Introduced:	03/14/06
O2006-01 (Long, Martin, Superman)	See Original Ord for Prior History
Hearing:	03/14/06
Action:	Substitute Introduced and Set for Public Hearings on 04/04/06 and 04/18/06
	Additional Hearing on 05/16/06
Action:	Postponed until 04/18/06
Action:	Time did not Allow for Action
Date:	05/02/06
Action:	Postponed until 05/16/06
Action:	Additional Hearing on 08/01/06
Date:	05/16/06
Action:	Postponed until 08/01/06
Action:	Enacted as Amended
Vote:	8 Yes, 0 No, 0 Absent, 1 Abstention

**KENAI PENINSULA BOROUGH
ORDINANCE 2006-01 (MARTIN) SUBSTITUTE**

**AN ORDINANCE REPEALING KPB CHAPTER 21.26 AND ENACTING KPB
CHAPTER 21.29, MATERIAL SITE PERMITS**

WHEREAS, Goal 6.5, Objective 1 of the 2005 Kenai Peninsula Borough Comprehensive Plan is to ensure that land use regulations adopted by the borough are necessary to control uses that affect public health and safety and address adverse impacts on the rights of adjacent property owners; and

WHEREAS, Goal 6.5, Objective 1, Implementation Action A, is to continue to periodically review and update existing regulations to reflect changing conditions and policies in the borough; and

WHEREAS, Goal 6.6 of the 2005 comprehensive plan is to reduce land use conflicts outside of the cities; and

WHEREAS, Goal 6.6, Objective 1, Implementation Action D, is to improve the land use regulations currently in existence including those related to material sites to minimize the impacts of erosion and flooding of neighboring properties and to minimize conflicts with surrounding land uses; and

WHEREAS, Goal 7.1, Objectives 1 and 2, of the 2005 comprehensive plan are to work with other agencies to protect public health and environment, to avoid duplications of other agencies' regulations, and to provide input to federal and state agencies on local conditions and opinions; and

WHEREAS, Goal 1 of the Mining and Minerals Processing section of the 1990 Kenai Peninsula Borough Coastal Management Program is to provide opportunities to explore, extract and process minerals, sand and gravel resources, while protecting environmental quality and other resource users; and

WHEREAS, a review of the material site ordinance was undertaken in 1998 after a citizen task force comprised of citizens and industry made recommendations; and

WHEREAS, the mayor sponsored Ordinance 98-33 after considering the task force recommendations and supplementing the same; and

WHEREAS, assembly members sponsored a substitute Ordinance 98-33 which was ultimately adopted in 1999; and

WHEREAS, the planning department has been administering Ordinance 98-33, codified as KPB 21.26 as amended, for six years; and

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

WHEREAS, the planning department has recognized that certain provisions of the material site ordinance could be better clarified for the operators, public, and staff; and

WHEREAS, the planning department receives comments expressing concerns about dust, noise, and aesthetics which are minimally addressed by the current code; and

WHEREAS, there are parcels registered as nonconforming prior existing uses which have not been operated as material sites for a number of years; and

WHEREAS, certain additional conditions placed on material site permits would facilitate a reduction in the negative secondary impacts of material sites, e.g. dust, noise, and unsightliness; and

WHEREAS, an assembly subcommittee was formed in 2005 to review the material site code; and

WHEREAS, at its regularly scheduled meeting of July 17, 2006, the Planning Commission recommended enactment of the amended ordinance by unanimous consent.

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

SECTION 1. KPB 21.26 Material Site Permits is hereby repealed and KPB 21.29, Material Site Permits, is adopted as follows:

CHAPTER 21.29. MATERIAL SITE PERMITS

21.29.010. Material extraction exempt from obtaining a permit.

- A. Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within 10 feet of a lot line.
- B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations.
- C. A prior existing use under KPB 21.29.120 does not require a permit.

21.29.020. Material extraction and activities requiring a permit.

- A. Counter permit. A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension.
- B. Conditional land use permit. A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.

21.29.030. Application procedure.

- A. In order to obtain a counter permit or CLUP, an applicant shall first complete and submit to the borough planning department a permit application, along with the appropriate fee as established by resolution of the planning commission and approved by the borough assembly. The planning director may determine that certain contiguous parcels are eligible for a single permit. The application shall include the following items:

1. Legal description of the parcel, KPB tax parcel ID number, and identification of whether the permit is for the entire parcel, or a specific location within a parcel;
2. Expected life span of the material site;
3. A buffer plan consistent with KPB 21.29.050(A)(2);
4. Reclamation plan consistent with KPB 21.29.060;
5. The depth of excavation;
6. Type of material to be extracted and type of equipment to be used;
7. Any voluntary permit conditions the applicant proposes. Failure to include a proposed voluntary permit condition in the application does not preclude the applicant from proposing or agreeing to voluntary permit conditions at a later time;
8. A site plan and field verification prepared by a professional surveyor licensed and registered in the State of Alaska, including the following information:
 - a. location of excavation, and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
 - b. proposed buffers consistent with KPB 21.29.050(A)(2), or alternate buffer plan;
 - c. identification of all encumbrances, including, but not limited to easements;
 - d. points of ingress and egress. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit.
 - e. anticipated haul routes;
 - f. location and depth of test holes, and depth of groundwater, if encountered;
 - g. location of wells of adjacent property owners within 300 feet of the proposed parcel boundary;

- h. location of any water body on the parcel, including the location of any riparian wetland as determined by “Wetland Mapping and Classification of the Kenai Lowland, Alaska” maps created by the Kenai Watershed Forum;
 - i. surface water protection measures for adjacent properties, including the use of diversion channels, interception ditches, on-site collection ditches, sediment ponds and traps, and silt fence; provide designs for substantial structures; indicate which structures will remain as permanent features at the conclusion of operations, if any;
 - j. location of any processing areas on parcel, if applicable;
 - k. north arrow;
 - l. the scale to which the site plan is drawn;
 - m. preparer's name, date and seal;
 - n. field verification shall include staking the boundary of the parcel at sequentially visible intervals. The planning director may grant an exemption in writing to the staking requirements if the parcel boundaries are obvious.
- B. In order to aid the planning commission or planning director’s decision-making process, the planning director shall provide vicinity, aerial, land use, and ownership maps for each application and may include additional information.

21.29.040. Standards for sand, gravel or material sites.

- A. These material site regulations are intended to protect against aquifer disturbance, road damage, physical damage to adjacent properties, dust, noise, and visual impacts. Only the conditions set forth in KPB 21.29.050 may be imposed to meet these standards:
- 1. protects against the lowering of water sources serving other properties;
 - 2. protects against physical damage to other properties;
 - 3. minimizes off-site movement of dust;
 - 4. minimizes noise disturbance to other properties;

5. minimizes visual impacts; and
6. provides for alternate post-mining land uses.

21.29.050. Permit conditions.

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:
 1. **Parcel Boundaries.** All boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter. Field verification and staking will require the services of a professional land surveyor. Stakes shall be in place at time of application.
 2. **Buffer Zone.** A buffer zone shall be maintained around the excavation perimeter or parcel boundaries. Where an easement exists, a buffer shall not overlap the easement, unless otherwise conditioned by the planning director or planning commission.
 - a. The buffer zone shall provide and retain a basic buffer of:
 - i. 50 feet of undisturbed natural vegetation, or
 - ii. A minimum six-foot earthen berm with at least a 2:1 slope, or
 - iii. A minimum six-foot fence.
 - b. A 2:1 slope shall be maintained between the buffer zone and excavation floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
 - c. The planning commission or planning director shall designate one or a combination of the above as it deems appropriate. The vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed use as deemed appropriate by the planning commission or planning director.
 - d. Buffers shall not cause surface water diversion which negatively impacts adjacent properties or water bodies. Specific findings are required to alter the buffer requirements of KPB 21.29.050(A)(2)(a) in order to minimize negative impacts from surface water diversion. For purposes of this section, surface

water diversion is defined as erosion, flooding, dehydration or draining, or channeling. Not all surface water diversion results in a negative impact.

- e. At its discretion, the planning commission may waive buffer requirements where the topography of the property or the placement of natural barriers makes screening not feasible or not necessary. Buffer requirements shall be made in consideration of and in accordance with existing uses of adjacent property at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.
3. Processing. In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time.
4. Water Source Separation.
- a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
 - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation from the seasonal high water table be maintained.
 - c. All CLUPS shall be issued with a condition which requires that a two-foot vertical separation from the seasonal high water table be maintained.
 - d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. Excavation in the Water Table. Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
 - a. certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
 - b. the installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
 - c. groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
 - d. operations shall not breach an aquifer-confining layer.
6. Waterbodies.
 - a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
 - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. Fuel Storage. Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

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- e. At its discretion, the planning commission may waive buffer requirements where the topography of the property or the placement of natural barriers makes screening not feasible or not necessary. Buffer requirements shall be made in consideration of and in accordance with existing uses of adjacent property at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.
- 3. Processing. In the case of a CLUP, any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries. At its discretion, the planning commission may waive the 300-foot processing distance requirement, or allow a lesser distance in consideration of and in accordance with existing uses of adjacent property at the time.
 - 4. Water Source Separation.
 - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
 - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation from the seasonal high water table be maintained.
 - c. All CLUPS shall be issued with a condition which requires that a two-foot vertical separation from the seasonal high water table be maintained.
 - d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified impartial civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.

5. Excavation in the Water Table. Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
 - a. certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
 - b. the installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
 - c. groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three-month intervals by a qualified independent civil engineer or professional hydrogeologist, for at least one year prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
 - d. operations shall not breach an aquifer-confining layer.
6. Waterbodies.
 - a. An undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains as defined in KPB 21.06. This regulation shall not apply to man-made waterbodies being constructed during the course of the materials extraction activities. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
 - b. Counter permits and CLUPS may contain additional conditions addressing surface water diversion.
7. Fuel Storage. Fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.

8. Roads. Operations shall be conducted in a manner so as not to damage borough roads as required by KPB 14.40.175 and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
9. Subdivision. Any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit. The planning director may issue a written exemption from the amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
10. Dust control. Dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
11. Hours of Operation. Rock crushing equipment shall not be operated between 10 p.m. and 6 a.m.
12. Reclamation.
 - a. Reclamation shall be consistent with the reclamation plan approved by the planning commission or planning director as appropriate in accord with KPB 21.29.060.
 - b. As a condition of issuing the permit, the applicant shall submit a reclamation plan and post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
13. Other permits. Permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives. Any violation of these regulations or permits

reported to or observed by borough personnel will be forwarded to the appropriate agency for enforcement.

14. Voluntary permit conditions. Conditions may be included in the permit upon agreement of the permittee and approval of the planning commission for CLUPs or the planning director for counter permits. Such conditions must be consistent with the standards set forth in KPB 21.29.040(A). Planning commission approval of such conditions shall be contingent upon a finding that the conditions will be in the best interest of the borough and the surrounding property owners. Voluntary permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in voluntary permit conditions may be proposed at permit renewal or amendment.
15. Signage. For permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access, whichever is more visible. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

21.29.060. Reclamation plan.

- A. All material site permit applications require a reclamation plan.
- B. The applicant shall revegetate with a non-invasive plant species and reclaim all disturbed land upon exhausting the material on-site, or within a pre-determined time period for long-term activities, so as to leave the land in a stable condition. Reclamation must occur for all exhausted areas of the site exceeding five acres before a five-year renewal permit is issued, unless otherwise required by the planning commission. If the material site is one acre or less in size and has been granted a CLUP due to excavation in the water table, reclamation must be performed as specified by the planning commission or planning director in the conditional use or counter permit.
- C. The following measures must be considered in preparing and implementing the reclamation plan, although not all will be applicable to every reclamation plan.
 1. Topsoil that is not promptly redistributed to an area being reclaimed will be separated and stockpiled for future use. This material will be protected from erosion and contamination by acidic or toxic materials and preserved in a condition suitable for later use.

2. The area will be backfilled, graded and recontoured using strippings, overburden, and topsoil to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time. It will be stabilized to a condition that will allow sufficient moisture for revegetation.
 3. Sufficient quantities of stockpiled or imported topsoil will be spread over the reclaimed area to a depth of four inches to promote natural plant growth that can reasonably be expected to revegetate the area within five years. The applicant may use the existing natural organic blanket representative of the project area if the soil is found to have an organic content of 5% or more and meets the specification of Class B topsoil requirements as set by Alaska Test Method (ATM) T-6. The material shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes greater than 2:1 require special consideration and design for stabilization by a licensed engineer.
 4. Exploration trenches or pits will be backfilled. Brush piles and unwanted vegetation shall be removed from the site, buried or burned. Topsoil and other organics will be spread on the backfilled surface to inhibit erosion and promote natural revegetation.
 5. Peat and topsoil mine operations shall ensure a minimum of two inches of suitable growing medium is left or replaced on the site upon completion of the reclamation activity (unless otherwise authorized).
 6. Ponding may be used as a reclamation method as approved by the planning commission.
- D. The plan shall describe the total acreage to be reclaimed each year, a list of equipment (type and quantity) to be used in reclamation, and a time schedule of reclamation measures.

21.29.070. Permit extension and revocation.

- A. Conditional land use permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration. Counter permittees must submit any request for a 12-month extension at least 30 days prior to the expiration of the original 12-month permit period.
- B. A permit extension certificate for a CLUP may be granted by the planning director after 5 years, and after one year for a counter permit where no modification to operations or conditions are proposed.

- C. Permit extension may be denied if: (1) reclamation required by this chapter and the original permit has not been performed; (2) the permittee is otherwise in noncompliance with the original permit conditions; or (3) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be processed pursuant to KPB 21.29.030-050 with public notice given as provided by KPB 21.25.060 when operators request modification of their permit conditions based on changes in operations set forth in the modification application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.29.070(D) will be the same as an original permit application.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration pursuant to KPB 21.29.080. Once a permit has expired, a new permit application approval process is required in order to operate the material site.
- G. Permits may be revoked pursuant to KPB 21.25.080.

21.29.080. Permit termination.

When a permit expires, is revoked, or a permittee requests termination of their permit, a review of permit conditions and site inspections will be conducted by the planning department to ensure code compliance and verify site reclamation prior to termination. When the planning director determines that a site qualifies for termination, a termination document shall be issued to the permittee.

21.29.090. Permit modifications.

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

21.29.100. Recordation.

All permits, permit extensions, modified permits, prior existing uses, and terminations shall be recorded. Failure to record a material site document does not affect the validity of the documents.

21.29.110. Violations.

- A. Violations of this chapter shall be governed by KPB 21.24.
- B. In addition to the remedies provided in KPB 21.24, the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.24, 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

21.29.120. Prior existing uses.

- A. Material sites are not held to the standards and conditions of a CLUP if a prior existing use (PEU) determination was granted for the parcel in accordance with KPB 21.29.120(B). To qualify as a PEU, a parcel's use as a material site must have commenced or have been operated after May 21, 1986, and prior to May 21, 1996, provided that the subject use continues in the same location. In no event shall a prior existing use be expanded beyond the smaller of the lot, block, or tract lines as they existed on May 21, 1996. If a parcel is further subdivided after May 21, 1996, the pre-existing use may not be expanded to any lot, tract, or parcel where extraction had not occurred before or on February 16, 1999. If a parcel is subdivided where extraction has already occurred, the prior existing use is considered abandoned, and a CLUP must be obtained for each parcel intended for further material site operations. The parcel owner may overcome this presumption of abandonment by showing that the subdivision is not inconsistent with material site operation. If a parcel subject to a prior existing use is conveyed, the prior existing use survives the conveyance.
- B. Owners of sites must have applied to be registered as a prior existing use prior to January 1, 2001.
- C. Any prior existing use that has not operated as a material site between May 21, 1996, and May 21, 2011, is considered abandoned and must thereafter comply with the permit requirements of this chapter. The planning director shall determine whether a prior existing use has been abandoned. After giving notice to the parcel owner that a PEU is considered abandoned, a parcel owner may protest the termination of the PEU by filing written notice with the planning director on a form provided by the planning department. When a protest by a parcel owner is filed, notice and an opportunity to make written comments regarding prior existing use status shall be issued to owners of property within a one-half mile radius of the parcel boundaries of the site. The owner of the parcel subject to the prior existing use may submit written information, and the planning director may gather and consider any information relevant to whether a material site has operated. The planning director may conduct a hearing if he or she

believes it would assist the decision-making process. The planning director shall issue a written determination which shall be distributed to all persons making written comments. The planning director's decision regarding termination of the prior existing use status may be appealed to the planning commission within 15 days of the date of the notice of decision.

SECTION 2. That KPB 21.24.030(C) is hereby amended as follows:

- C. Fine Schedule. The following fines are the scheduled fines for violations. The scheduled fine for an offense may not be judicially reduced.

<i>Code Chapter Section Citation</i>	<i>Chapter / Section Title</i>	<i>Scheduled Fine</i>
KPB 21.06.040	Failure to obtain a development permit	\$75.00
KPB 21.09.060	Violation of nonconforming use/structure provisions	\$50.00
KPB 21.09.070	Prohibited use	\$100.00
KPB 21.09.080	Violation of development standards	\$50.00
KPB 21.09.090(A)	Violation of home occupation standards	\$100.00
KPB 21.09.090(B)	Sign size violation	\$50.00
KPB 21.09.090(C)	Prohibited home occupations	\$100.00
KPB 21.14.030	Failure to obtain a mobile home park permit	\$75.00
KPB 21.18.050(A)	Failure to obtain fuel storage/logging permit	\$75.00
KPB 21.18.060	Prohibited activity in habitat protection area	\$100.00
KPB 21.18.072	Failure to obtain commercial activity permit	\$75.00
KPB 21.18.080	Failure to obtain a conditional use permit	\$75.00
KPB 21.18.090(D)	Failure to obtain expansion/enlargement conditional use permit	\$100.00
KPB 21.24.050	Violation of or removal of an enforcement order	\$100.00
KPB 21.25.040	Failure to obtain land use permit	[\$75.00] <u>\$300.00</u>
<u>KPB 21.29.050</u>	<u>Violation of conditions</u>	<u>\$300.00</u>
KPB 21.42.060	Violation of nonconforming use/structure provisions	[\$75.00] <u>\$300.00</u>
KPB 21.42.090	Prohibited use	\$100.00
KPB 21.42.100	Violation of development standards	\$50.00
KPB 21.42.110(D)	Failure to obtain a home occupation permit	\$75.00
KPB 21.44.110	Violation of nonconforming use standards	\$75.00
KPB 21.44.130	Failure to obtain a home occupation permit	\$75.00
KPB 21.44.160(A)(B)	Prohibited use	\$100.00
KPB 21.44.160(C)	Violation of development standards	\$50.00
KPB 21.44.170(A)(B)	Prohibited use	\$100.00
KPB 21.44.170(C)	Violation of development standards	\$50.00
KPB 21.44.180(A)(B)	Prohibited use	\$100.00
KPB 21.44.180(C)	Violation of development standards	\$50.00
KPB 21.44.190(A)(B)	Prohibited use	\$100.00
KPB 21.44.190(C)	Violation of development standards	\$50.00

KPB 21.44.200(A)	Prohibited use	\$100.00
KPB 21.44.200(B)	Violation of development standards	\$50.00
KPB 21.44.210(B)(C)	Prohibited use	\$100.00
KPB 21.44.210(D)	Violation of development standards	\$50.00

SECTION 3. That KPB 21.24.070 is hereby amended as follows:

21.24.070. Civil fine.

The Borough code compliance officer may assess a [\$100.00] \$300.00 civil fine for each violation of this chapter. Notice of a fine shall be served personally or by certified mail on the property owner, lessee, operator, or occupant of the parcel upon which the violation occurs. The fine may be appealed to the Planning Commission pursuant to the terms of KPB 21.20. Each day a violation occurs is a separate violation. Citations for fines may be included in an enforcement order. Appeals from the planning commission's determination shall not be taken to the board of adjustment, but shall proceed to the superior court pursuant to the Alaska Rules of Appellate Procedure, Part 6.

SECTION 4. KPB 21.25.030, Definitions, is amended to add the following definitions in alphabetical order:

Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

Commercial means any [USE] provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services[, AND INCLUDING ALL ACTIVITIES DIRECTLY SUBSIDIARY].

Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

[ON-SITE USE MEANS MATERIAL USED ENTIRELY WITHIN THE BOUNDARIES OF THE PARCEL IT WAS EXTRACTED FROM, OR WHEN

DEVELOPMENT OF THE PARCEL REQUIRES DISPOSAL OF THE MATERIAL OFF-SITE THROUGH BARTERING.]

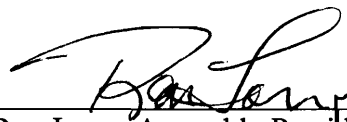
Surface Water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

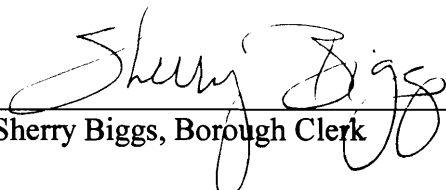
SECTION 5. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF AUGUST, 2006.

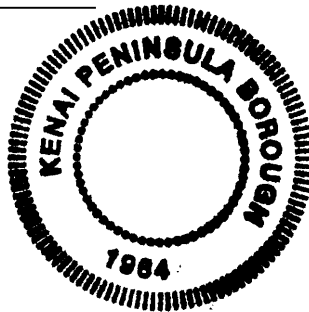


Ron Long, Assembly President

ATTEST:



Sherry Biggs, Borough Clerk



Yes: Chay, Fischer, Germano, Gilman, Martin, Sprague, Superman, Long
No: None
Absent: None
Abstained: Merkes

Introduced by:	Mayor
Substitute Introduced:	01/16/18
Resolution 2018-004 (Mayor)	See Original for Prior History
Action:	Adopted
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2018-004
(MAYOR) SUBSTITUTE**

A RESOLUTION ESTABLISHING A MATERIAL SITE WORK GROUP

WHEREAS, KPB 21.25.040(A)(2) requires a permit for the commencement of commercial sand, gravel or material sites within the rural district of the Kenai Peninsula Borough; and

WHEREAS, KPB 21.29 provides for a permit process to extract material from the ground; and

WHEREAS, with the exception of one minor change relating to floodplain permits, the material site code was last updated in 2006; and

WHEREAS, the assembly, administration, planning department and the planning commission have recognized that certain provisions of the material site ordinance can be clarified for the operators, public, and staff; and;

WHEREAS, the public has expressed many concerns about dust, noise, water, and negative secondary impacts of material sites; and

WHEREAS, it is the intent of the assembly and administration to involve the public and industry in a collaborative discussion designed to incorporate possible changes to the material site code;

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

SECTION 1. That a work group is established for the purpose of examining the current material site permit process and potentially recommending amendments to the material site code provisions.

SECTION 2. That the work group shall consist of at least two assembly members; two planning commissioners; two members of the public; and, two material site industry members. The group shall elect from among its members a chair and a vice-chair who may serve in the absence of the chair. The two members of the assembly shall be appointed by the assembly. The remaining members shall be appointed by the mayor.

SECTION 3. That each meeting time and place shall be advertised, open to the public and subject to the Open Meetings Act.


SECTION 4. The material site work group shall have no authority to act on behalf of the assembly or the administration or communicate on the borough's behalf other than to make recommendations to the planning commission, administration and assembly.

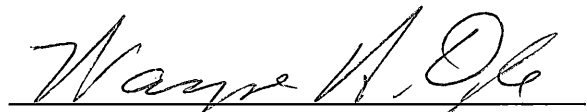
SECTION 5. The work group shall provide a final report to the planning commission, administration and assembly by June 5, 2018, and then discontinue unless extended by the assembly.

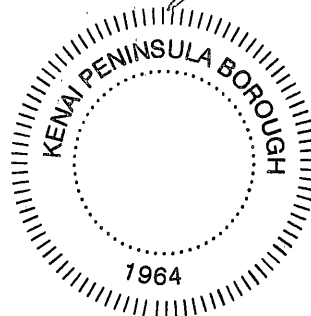
SECTION 6. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JANUARY, 2018.

ATTEST:


John Blankenship, MMC, Borough Clerk


Wayne H. Ogle, Assembly President



Yes: Bagley, Blakeley, Carpenter, Dunne, Fischer, Hibbert, Smalley, Ogle
No: None
Absent: Cooper

Introduced by: Ogle
Date: 05/15/18
Action: Adopted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2018-025**

**A RESOLUTION EXTENDING THE DEADLINE FOR SUBMISSION OF THE
MATERIAL SITE WORKING GROUP'S FINAL REPORT**

WHEREAS, a material site working group ("MSWG") was formed by Resolution 2018-004 on January 16, 2018; and

WHEREAS, a final report is due to the administration, planning commission and assembly by June 5, 2018; and

WHEREAS, the MSWG needs additional time to consider proposed revisions to the material site code, explore additional revisions, and hear and consider public testimony regarding the same; and

WHEREAS, the summer months are the most active for material site operators who may not have time to be involved in the public process during that time frame; and

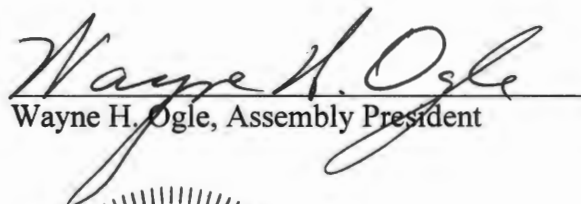
WHEREAS, the planning commission considered this resolution at its May 14, 2018 meeting and recommended approval by majority consent;

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

SECTION 1. The deadline for the final report of the MSWG is extended to April 30, 2019. Meetings of the MSWG are suspended from June 1, 2018 through September 30, 2018.

SECTION 2. That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
15TH DAY OF MAY, 2018.**


Wayne H. Ogle, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle
No: None
Absent: None

Kenai Peninsula Borough Assembly

MEMORANDUM

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

FROM: Bill Elam, Assembly Member *BE*

DATE: January 18, 2022

SUBJECT: Elam Amendment #1 to Ordinance 2021-41, Amending KPB 21.29, KPB 21.25, and KPB 21.50.055 Regarding Material Site Permits, Applications, Conditions, and Procedures (Johnson, Mayor)

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

➤ Amend Section 3, KPB 21.29.030(A)(9)(h), as follows:

21.29.030. Application procedure.

...

- h. Location of any water body on the parcel, including the location of any riparian wetland as determined by **best available data** [~~**"WETLAND MAPPING AND CLASSIFICATION OF THE KENAI LOWLAND, ALASKA" MAPS CREATED BY THE KENAI WATERSHED FORUM**~~];

Your consideration of this amendment is appreciated.