

Introduced by: Mayor @ request of
Planning Comm.
Date: October 14, 1997
Hearing Date: November 18, 1997
Action: Enacted as
Vote: 8 Yes, 1 No

**KENAI PENINSULA BOROUGH
ORDINANCE 97-68**

**AN ORDINANCE CREATING A TASK FORCE TO
MAKE RECOMMENDATIONS REGARDING KPB 21.13
RELATING TO STANDARDS FOR SAND, GRAVEL OR MATERIAL SITES
AND APPROPRIATING \$2,500.00 FROM THE GENERAL FUND
FOR THE TASK FORCE**

WHEREAS, on May 21, 1996 the assembly of the Kenai Peninsula Borough enacted Ordinance 96-14, enacting KPB Chapter 21.13 which established land use permit requirements for sand, gravel or material sites; and

WHEREAS, KPB 21.13 has been enacted for approximately fifteen months and it is appropriate to review the ordinance's effectiveness; and

WHEREAS, an informal group was established by the Planning Commission during the Fall 1996/Spring 1997 to develop recommendations on amendments to the standards and provisions for sand, gravel and material sites; and

WHEREAS, Goal 5.5 of the Kenai Peninsula Borough Comprehensive Plan is to reduce conflicts arising from incompatible land uses outside incorporated cities, and one listed action for achieving that goal is to develop an objective ordinance which includes definitions, standards, and procedures to obtain advance notification of proposed future land use; and

WHEREAS, it is desirable to continue to issue permits under the current provisions of KPB 21.13, while conducting further research and developing recommendations for sand, gravel or material sites; and

WHEREAS, due to the attention this issue has received from the public and Assembly over the past fifteen months, it is appropriate to hear this matter on shortened hearing; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at the September 22, 1997 meeting recommended the Assembly formally establish a Material Site Task Force;

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

SECTION 1. That a task force of eleven citizens shall be established to provide recommendations to the Planning Commission and Borough Assembly with respect to amendments to relevant portions of Chapter 21.13 pertaining to sand, gravel or material sites.

SECTION 2. That recommendations from this task force shall be delivered to the Borough Administration, Planning Commission and Borough Assembly no later than four months of the appointment and confirmation of the task force members.

SECTION 3. That the task force shall include three material site/gravel pit operators; three borough residents; and one representative from each of the following: a village/regional corporation, an engineer, a hydrologist, Soil & Water Conservation District, and the Planning Commission. Members shall be appointed by the mayor and confirmed by the assembly.

SECTION 4: That \$2,500.00 is appropriated from the general fund balance of the Kenai Peninsula Borough to account 100-211010 for contractual services and advertising costs incurred by or on behalf of the task force.

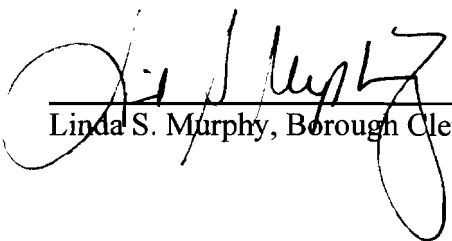
SECTION 5: That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 18th DAY OF NOVEMBER, 1997.



Jack E. Brown, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk

Ord.
97-68

Report to the Assembly

Overview of the Material Site Task Force

MSTF Purpose and Origin

The Material Site Task Force (MSTF) was established by the Kenai Peninsula Borough Assembly on November 18, 1997 to review KPB Chapter 21.13 regulating land use permits for Sand, Gravel and Material sites. The purpose of the MSTF was to provide recommendations to the Planning Commission and Borough Assembly for amendments to KPB 21.13.

The MSTF consisted of eleven citizens of the following affiliations: three material site/gravel pit operators, three borough residents, and one representative from each of the following: a village/regional corporation, and engineer, a hydrologist, a Soil and Water Conservation District representative, and a Planning Commission member. After appointment and confirmation, the task force was given four months to deliver their recommendations to the Borough Assembly, Planning Commission and Borough Administration.

The following individuals were appointed to the MSTF by the Mayor in December, 1997.

Operators

Paul Simonds
Terry Best
Buzz Kyllonen

Property Owners

Ann Bayes
Dave Donald
Duane Christensen

Engineer

Mike Tauriainen

Hydrologist

Robert Ruffner

Village/Regional Corporation

Mike Franger**
(replaced by Dean Kvasnikoff)

Planning Commission

Bob Clutts

Soil/Water Conservation District

Mike Swan

MSTF Meetings

The MSTF first met on January 14, 1998, and weekly thereafter with few exceptions. All meetings were open to public participation, with scheduled time for member and public comments. A total of 11 meetings were held in Soldotna, Ninilchik and Anchor Point.

Administrative Rules

Lisa Parker, KPB Planning Director chaired MSTF meetings with staff support from Rachel Clark, Planner. At the first meeting, members decided to forward all recommendations to the Borough Assembly which had full consensus of the group, defined as no more than two dissenting members. The dissenting members would have the option of presenting their views to the Assembly.

Action by the Material Site Task Force

Items Reviewed

The MSTF reviewed many items in an attempt to research relevant data, including:

1. Alaska Case Law on gravel ordinances.
2. Alaska DNR Statutes and Administrative Code relating to material sites.
3. Other municipal gravel ordinances (Alaska and lower 48 states).
4. Maps showing assessing categories for gravel and state categories.
5. Pertinent sections of the Borough Comp Plan.
6. Borough Code on Variances, Enforcement and Hearings and Appeals.
7. Technical documents on reclamation, setbacks, groundwater quality, and general land use planning.
8. Working documents and recommendations by the previous MSTF.

Presentations were heard by the group from the KPB Code Compliance Officer, group hydrologist, and internal subcommittees formed to develop recommendations on groundwater protection and reclamation.

Areas of Contention

The MSTF identified the following subsections of KPB 21.13 as non-controversial: 21.13.010, 21.13.020, 21.13.030, 21.13.040, 21.13.040A, 21.13.040B, and 21.13.140. 21.13.030F with the addition of the word "federal" between "or" and "state".

All other portions of 21.13 relating to Sand, Gravel and Material sites (as opposed to Community Correctional Residential Centers) was deemed in need of review.

Recommendations by the Material Site Task Force

Concepts Discussed

The MSTF discussed who they intended to regulate, how to regulate, and what standards would offer the most protection to property owners and the environment, while still protecting the private property rights of material site operators.

Through general consensus, a three-tiered permitting hierarchy evolved, although consensus was never reached on all issues. The three-tiered process involved the following general concepts:

1. **Exemptions** – define a lower limit through either size or activity which should be exempt from the provisions of the ordinance.

2. **Counter Permits** – define specific instances where a full land use would not be required. Generally this was thought to be excavations either occurring on remote (excavation perimeter greater than ½ mile from other parcels) sites, of limited duration (project specific) or where the material would be used entirely on-site. Limited standards would apply to counter permits (e.g. reclamation, buffers and distance to groundwater), although consensus was never reached on the distance of vertical separation from groundwater.
3. **Full Permits** – Required for all other excavations, with Planning Commission hearing and public notice. The group reached consensus in this area, with only minor revisions to the existing Code in the standards for reclamation and buffers.

The group discussed at length only regulating commercial sites, and eventually added this to the definition of material site. The MSTF was clear in its desire to see actual commercial material sites regulated, rather than excavations incidental to other work (e.g. building foundations, installation of septic systems, or development of driveways) even if materials were then sold, meeting the technical definition of "commercial". Consensus was reached to add this exemption to the ordinance.

Many other topics were proposed, without consensus, including:

1. Hours of operation.
2. Sunset clause to prior existing uses.
3. Standards for noise, dust and traffic.
4. Vertical separation from groundwater.

Consensus Items

The MSTF reached consensus on the following items:

1. Delete "stockpiling" from definition of Sand, Gravel or Material site. (8 yes, 1 no)
2. Delete "sand, rock, peat, pumicite, cinders, clay, sod, topsoil or other similar resources" and substitute "substances from the ground that are not applied for through the location (mining claim) system (e.g. gold, silver, and other metals) or leasing (e.g. energy minerals such as coal, oil and gas). (9 yes)
3. Add "Commercial means for buy, sale, trade or barter" to definitions. (9 yes, 1 no)

4. Add "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" to definitions. (10 yes)
5. "Project-specific use means material used for a single specific use such as road or building construction" to definitions. (10 yes)
6. For buffers, delete all reference of fences, berms and 50 setback and substitute "10 feet natural vegetation plus a 2:1 slope thereafter to the excavation floor. If an operator excavates into the area designated for the 2:1 slope, the slope must be restored within two calendar years." (10 yes)
7. For reclamation, require all sites to follow state reclamation provisions, with the exception of bonding for those less than five acres or 50,000 cubic yards annually. (9 yes, 1 no)
8. Define small quantity exemption as "If materials are extracted primarily for purposes other than commercial gravel extraction, such as when preparing a building site, installation of septic systems or development of driveways, the requirements of this chapter do not apply, even if the materials are sold commercially." (8 yes, 1 no)
9. Require the operator to obtain three well depths within ¼ mile of the site, where available. (8 yes, 1 no)
10. Require permanent storage of fuel in lined dikes. (9 yes)