

Introduced	Mayor
Date:	07/14/98
Hearing:	09/01/98, 10/13/98, 11/17/98, 01/05/99, 01/19/99, 02/02/99
Action Date:	02/16/99
Action:	Enacted as Amended
Vote:	7 Yes, 1 No, 1 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 98-33  
(Scalzi, Popp) Substitute**

**AN ORDINANCE REPEALING KPB 21.13 "LAND USE PERMITS" AND ADOPTING  
KPB 21.25 "CONDITIONAL LAND USE PERMITS" AND KPB 21.26 "MATERIAL  
SITE PERMITS" AND RENUMBERING "CORRECTIONAL COMMUNITY  
RESIDENTIAL CENTER PERMITS" AS KPB 21.27**

**WHEREAS,** in 1996 the borough adopted KPB 21.13 which, in part, regulates material sites; and

**WHEREAS,** goal 5.4 of the comprehensive plan encourages minimal regulation to deter land use conflicts and negative impacts on public health and safety; and

**WHEREAS,** amendments to the ordinance are necessary to clarify provisions and reduce land use conflicts; and

**WHEREAS,** the land use permit provisions have been reorganized for ease of reference without making any substantive revisions to the Correctional Community Residential Center provisions which are not a subject of this ordinance.

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

**SECTION 1.** That KPB 21.13 is hereby repealed.

**SECTION 2.** That KPB 21.25 is adopted as follows:

**CHAPTER 21.25. CONDITIONAL LAND USE PERMITS**

**21.25.010. Jurisdiction.**

Chapter 21.25 applies to all land within the rural district of the Kenai Peninsula Borough, as designated in KPB 21.04.010. This chapter sets forth general provisions applicable to all conditional land use permits (CLUPs) and definitions. The provisions in this chapter are in addition to the

chapters set forth in title 21 addressing specific types of CLUPs and where the provisions of this chapter and a CLUP chapter regulating a specific use conflict, the more specific chapter shall control.

#### **21.25.020. Purpose.**

It is the purpose of this chapter to require advance public notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights.

#### **21.25.030. Definitions.**

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

"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.

"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 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.

"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.

"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.

"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.

"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.

"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.

"Water source" means a well, spring or other similar source that provides water for human consumptive use.

#### **21.25.040. Permit required for commencement of certain land uses.**

A. It shall be unlawful for any person to use land, or to assist another to use land, within the rural district of the Kenai Peninsula Borough for the following uses without first obtaining a permit from the Kenai Peninsula Borough in accordance with the terms of this ordinance:

1. correctional community residential center (CCRC) pursuant to KPB 21.27; and
2. commercial sand, gravel or material site pursuant to KPB 21.26.

#### **21.25.050. Permit considerations--Public hearing required.**

A. Within 21 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.

B. When the application is scheduled to be considered, the planning commission shall conduct a public hearing to consider the permit application, and shall either approve, modify or disapprove the permit application. Those wishing to contest issuance of the permit may submit evidence and be heard at the hearing. Before granting the permit, the commission must find at a minimum that the proposed activity complies with the requirements of this chapter. Planning commission approval of these conditional land use permits shall be by resolution. Permits shall be conditioned upon continued compliance with this chapter and other applicable code provisions.

**21.25.060. Notice.**

Notice of the pending application shall be published two times in a newspaper of general circulation in the local area in which the land use is proposed. The notice shall also be posted in the post office(s) of the impacted community. At the beginning of the notice period a copy of the notice shall be sent by regular mail to all owners and/or leaseholders of record of property located with a radius of one-half mile of the subject property. The notice shall contain a description of the proposed location, the type of proposed land use, the applicant's name, where written comments may be submitted, the last date for which written comments may be submitted, and the date, time and location of the public hearing.

**21.25.070. Compliance with other laws.**

Applicants' land use operations shall comply with all applicable federal, state and local laws.

**21.25.080. Permit revocation.**

A permit issued pursuant to this chapter may be revoked by the planning commission if the applicant fails to comply with the provisions of this chapter. The planning director shall provide at least thirty (30) days written notice to the permittee of a revocation hearing before the planning commission. The notice shall provide specific grounds for the proposed revocation. If the applicant provides written evidence to the planning director demonstrating reasonable compliance with this chapter within the thirty day period then the revocation hearing may be canceled, at the discretion of the planning director.

**21.25.090. Penalty for violation.**

Violations of this chapter and other CLUP provisions adopted in accordance with this chapter are infractions and are subject to civil fines. Enforcement of the provisions of this chapter shall be done in accordance with the remedies set forth in KPB 21.24.

**21.25.100. Appeals.**

An aggrieved party may appeal the denial, modification, approval or revocation of a permit by filing an appeal to the assembly, sitting as a board of adjustment, within fifteen (15) days of the date of notice of the decision. Appeals from actions taken under this chapter shall be conducted in accordance with the appellate procedures established in Chapter 21.20 of this code.

**21.25.110. Conflict with local option zoning districts.**

Except as otherwise specifically provided by another provision of this chapter, the restrictions on use of land activity established by this chapter shall be in addition to any other restrictions adopted by any state, federal or local authority including local option districts established pursuant to KPB 21.08.

**21.25.120. Policies and Procedures.**

The mayor is authorized to adopt policies and procedures implementing this chapter.

**21.25.130. Prior existing uses.**

This chapter shall not apply to uses commencing before the effective date of this ordinance provided that the subject use continues in the same location and such use is not expanded beyond the smaller of the lot, block, or tract lines as they exist on May 21, 1996. Where a parcel subject to a pre-existing use is further subdivided after May 21, 1996, the use may not be expanded beyond the boundaries of the lots, tracts, or parcels it occupies on February 16, 1999 to new parcels created by the subdivision.

**21.25.140. Variances.**

Variances from the requirements for conditional land use permits may be requested pursuant to KPB 21.05.

**SECTION 3.** Chapter 21.26 "Material Site Permits" is adopted as follows:

**CHAPTER 21.26. MATERIAL SITE PERMITS**

**21.26.010. Application procedure.**

A. In order to obtain a material site permit, 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 application shall include the following items:

1. legal description of the parcel and identification of whether the permit is for the entire parcel or a specific location within a parcel;
2. a site plan including the location of excavation, points of ingress and egress and anticipated haul routes;
3. expected life span of the material site and, if the site is to be developed in phases, the life span and expected reclamation date for each phase;
4. the location of all wells within 300 feet of the proposed excavation site;
5. a buffer plan consistent with KPB 21.26.030;
6. reclamation plan; and
7. the estimated distance to groundwater and the estimated depth of excavation.

B. Following are the types of material site permits:

1. Counter Permits. A counter permit may be issued by the planning director without the notice requirements or planning commission approval of KPB 21.25.050 when the material is being used for on-site use only, provided that a four-foot vertical separation from the seasonal high water table is maintained.
2. Conditional Land Use Permits. A conditional land use permit (CLUP) will be required where a site does not qualify for a counter permit.

C. Small Quantity Exemption. There is a small quantity exemption from the requirements of this chapter where the materials are extracted primarily for purposes other than commercial gravel extraction, such as when preparing a residential building site, installation of septic systems, or driveway construction.

D. Dewatered Bar Exemption. Gravel mining taking place on dewatered bars within the confines of the following streams in the Seward area is exempt from the provisions of this chapter: Fourth of July Creek, Resurrection River, and Jap Creek as referenced in the Dictionary of Alaska Place Names, Geological Survey Professional Paper 567 (Orth, 1971). Operators subject to this exemption shall register with the borough by providing the quantity of material and the information required by KPB 21.26.010(A)(1)-(3) only. There shall be no fee for registration. Gravel mining which is exempted by this section operating prior to February 2, 1999 must register by January 1, 2000. All gravel mining operations exempt from the provisions of this chapter must re-register within five years from the date of initial registration.

**21.26.020. Standards for sand, gravel or material sites.**

A. The following standards and requirements apply to counter and conditional land use permits issued for sand, gravel or material sites:

1. Aquifer disturbance. Material site uses shall be conducted in a manner that minimizes disturbing an aquifer. Except as provided in this subsection, all permits shall be issued with a condition which prohibits any material extraction within 100 feet of any individual's existing water source and which limits material extraction between 100 feet and 300 feet of any individual's existing water source to no deeper than two feet above the water table. Material may be extracted from an aquifer provided there is no dewatering either by pumping, ditching or some other form of draining unless a variance is acquired from the planning commission. The variance for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified 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. A counter permit may be issued without requiring the applicant to acquire the variance for dewatering if written non-objection is received from all property owners within a one-half mile radius of the proposed excavation limits.

2. Roads. Operators shall not damage borough roads as required by KPB 14.40.070(C).
3. Adjacent properties. Material site uses shall be conducted in a manner to reduce physical injury to adjacent properties while recognizing private property rights by complying with the conditions set forth in KPB 21.26.030.
4. Voluntary permit conditions. The permittee and a majority of the property owners and leaseholders of record in the notice area defined by KPB 21.25.060 may mutually agree to additional lawful permit conditions. Allowable conditions may include protection of water sources, noise, dust and traffic safety controls, and other amenable agreements between the parties.

#### **21.26.030. Permit conditions.**

- A. The following are mandatory conditions for material site permits:
  1. Buffer zone. A permit shall not be issued unless the applicant provides and maintains a buffer zone between the site boundary and the property boundary of all contiguous parcels and roads. The buffer zone shall provide and retain a basic buffer of either:
    - a. 50 feet of natural or improved 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.
    - b. a minimum six-foot earthen berm, or
    - c. a minimum six-foot fence.

The planning commission shall designate one of the above as it deems appropriate. The vegetation and fence shall be of sufficient height and density to provide visual screening of the proposed use as deemed appropriate by the planning commission.

2. Reclamation.
  - a. The applicant shall revegetate and reclaim all disturbed land upon exhausting the material on site, or within a pre-determined time period for long term activities, in accordance with state statutes, so as



to leave the land in a stable condition. Reclamation must occur for all exhausted areas of the site exceeding one acre 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, reclamation must be performed as specified by the planning commission in the conditional use permit.

- 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.
3. Aquifer. The quantity and quality of an aquifer serving other property must not be negatively impacted by the material site. After a CLUP has been issued, the burden is on a complainant to provide evidence that aquifer is negatively impacted by the material site. Operations shall not breach an aquifer-confining layer.
4. Fuel storage. Fuel storage shall be contained in lined impermeable areas.
5. Water source separation. The permittee shall maintain a horizontal distance of at least 100 feet from any wells or water sources for consumptive use existing prior to original permit issuance. The permittee shall limit material extraction to no deeper than two feet above the seasonal high water table for extraction occurring between 100 and 300 feet from any well or water source for consumptive use prior to permit issuance.
6. Roads. Operators shall not damage borough roads as required by KPB 14.40.070© and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
7. Voluntary permit conditions. Conditions may be included in the permit upon agreement of the permittee and a majority of owners and leaseholders of record within the notice area defined by KPB 21.25.060, and approval of the planning commission. Such conditions must be consistent with the standards set forth in KPB 21.26.020(A)(4).

B. The permit must state whether it is being issued for an entire parcel or a portion of parcel. If the permit is issued for a portion of a parcel, the location on the parcel must be defined on the permit.

#### **21.26.040. Prior existing uses.**

A. Material sites are not required to obtain a CLUP if use as a material site commenced or was operated within ten years before the effective date of this ordinance 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 beyond the boundaries of the lots, tracts, or parcels it occupied on February 16, 1999.

B. Owners of sites must apply to be registered as a prior existing use prior to January 1, 2001. If the application is denied or untimely filed, the operator must comply with provisions of this chapter. Such registration shall include the identification of the premises, a description of the nature and extent of the prior existing use and, if required by the planning director or planning commission, a plot plan, drawn to scale, showing property lines, all structures and any other pertinent information, and an affidavit by the owner as to the date since which such nonconforming use has existed. A fee may be charged as set by planning commission resolution and approved by the borough assembly.

C. The planning director shall make determinations regarding prior existing use status. Notice and an opportunity to make written comments regarding prior existing use status shall be issued to owners of property in a one-half mile radius of the site. After receiving written comments, the planning director may decide whether to register the prior existing use or refer the matter to the planning commission for public hearing. If the planning director makes a determination, written findings shall be included in the decision which shall be distributed to all persons making written comments. The planning director's decision granting or denying registration may be appealed to the planning commission.

#### **21.26.050. Permit revocation and renewal.**

A. Permits may be revoked pursuant to KPB 21.25.080.

B. Material site operators must apply for permit renewal every five years after the resolution originally granting the permit is recorded. Failure to apply for renewal subjects the operator to permit revocation proceedings. Renewal may be denied if reclamation required by this chapter and the original permit has not been performed or the operator is otherwise in noncompliance with the original permit conditions. A renewal application shall be processed pursuant to KPB 21.26.010-030 with public notice given as provided by KPB 21.25.060 when operators:

1. request modification of their permit conditions based on changes in operations set forth in the renewal application,
2. are currently out of compliance with their permit, or
3. have had permit violations within the last two years.

C. There shall be no fee for permit renewal applications.

**SECTION 4.** KPB 21.27 "Correctional Community Residential Center Permits" is hereby adopted as follows:

**CHAPTER 21.27. CORRECTIONAL COMMUNITY RESIDENTIAL CENTER PERMITS**

**21.27.010. Application procedure.**

A. In order to obtain a permit, an applicant shall first complete and submit to the borough planning department a permit application, along with the appropriate fee as established by the planning commission. In addition to those items listed below, applicants shall provide any additional information the planning director deems appropriate and necessary to determine compliance with this chapter.

1. Application Acceptance. Two permits must be obtained, on an application form provided by the planning department, prior to operating a CCRC within the boundaries of the Borough: a Site and Facility Permit and an Operation permit. No CCRC permit application will be accepted by the Borough unless a Request for Proposals or sole-source contract has been issued by the State of Alaska within the previous 180 days. In the case of issuance of a contract between a local government and the Department of Corrections, Site/Facility and Operations permits are still required.
2. CCRC Site and Facility Permit. The Site and Facility Permit application shall include:
  - a. location of the proposed site; and
  - b. as-built and/or conceptual drawings for all buildings and structures.
3. CCRC Operation Permit. The Operation Permit application shall include:
  - a. a proposed organization chart of the operation identifying the lines of responsibility and general function of the operator and staff;
  - b. a general description of the number and types of residents proposed;
  - c. a description of the major programs offered on site;
  - d. general description of the security measures proposed to protect the public safety; and
  - e. a description of the notice procedures to be employed with respect to escapees and evasions.

4. At the discretion of the applicant, both permits under this section may be considered at the same planning commission meeting. If considered together, each permit must be approved, modified or disapproved by a separate vote of the planning commission.

**21.27.020. Standards for correctional community residential centers.**

CCRCs shall not be located within one-half geographical mile of any pre-existing public or private school, child care facility, multi-purpose senior center or senior housing project. The assembly may waive this requirement if any schools or facilities, as set forth above, located within one-half mile of the proposed CCRC express no objection to so locating the CCRC.

**21.27.030. Permit conditions.**

- A. In consideration of issuance of CCRC permits, the planning commission may include the following conditions, among others:
  1. The CCRC permittee shall submit an annual report to the planning commission detailing continued compliance with all applicable laws and conditions of the Site and Facility and Operations permits.
  2. Site and Facility Permit conditions and criteria
    - a. The CCRC must be the principal use of the parcel of land upon which it is located.
    - b. New construction should be in character with the neighborhood and reflect sensitivity and respect for the surrounding environment.
    - c. The size of the facility shall reflect the needs of the peninsula and not exceed 25 beds.
  3. Operation Permit conditions and criteria
    - a. The Operations permit should identify the number of beds authorized for the CCRC. If the permittee seeks to increase the number of beds, then the permittee will be required to obtain a new Operations permit.
    - b. The CCRC must be maintained in a safe, clean condition.
    - c. The CCRC shall provide the Kenai Peninsula Borough Planning Department with a monthly report on the number of residents and any reported violations.

- d. The CCRC shall provide the Kenai Peninsula Borough Planning Department with copies of all applicable State, federal, and local permits and approvals required to operate the facility.
- e. Sex offenders shall not be housed at a CCRC.
- f. Operation Permits are valid for only the specific RFP issued at the time of application.
- g. The permittee must follow the notification procedures for escapes and evasions submitted in 21.27.010 (A)(3)(e).
- h. Any entity operating a CCRC must furnish the borough with a performance bond issued by a company qualified by law to do business as a surety in the state. The bond shall be in an amount determined by the purchasing officer and on a form provided by the Borough Attorney.

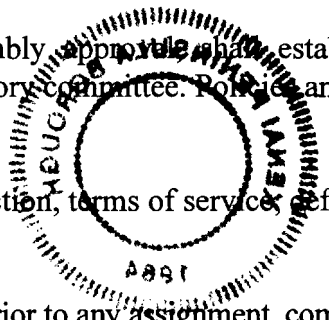
**21.27.040. Correctional community residential center advisory committee established.**

A. When a correctional community residential center is established, the Kenai Peninsula Borough through the Mayor, in consultation with the Department of Corrections, shall appoint a CCRC advisory committee consisting of five members from the geographic area in which the center is located. Committee appointments shall be confirmed by the assembly. The committee shall act as a liaison between the community and the department regarding concerns with the center.

B. The Mayor or designee and the Department of Corrections shall develop written policies and procedures for securing citizen involvement in the CCRC establishment and operations process and recruiting members for the advisory committee from all cultural and socioeconomic segments of the community.

C. The Mayor, with Assembly approval, shall establish policies and procedures governing operations of the advisory committee. Policies and procedures shall include, but are not limited to:

1. A system for selection, terms of service, definition of task, responsibilities, and authority.
2. A provision that prior to any assignment, committee members will complete the required background investigation information and training required; and
3. A provision that committee members agree in writing to abide by facility policies.



D. The committee shall meet at least quarterly with the CCRC administrator and appropriate personnel, if necessary, from the borough and Department of Corrections.

E. In addition to the requirements of this section, the committee shall adhere to the requirements contained in A.S. 33.30.171 and other standards as may be established by the Department of Corrections.

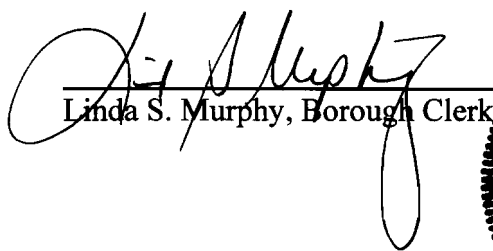
**SECTION 5.** Unless revoked pursuant to this ordinance, material site permits issued before February 16, 1999, and permits issued pursuant to applications approved by the planning commission before February 16, 1999, shall continue in full force and effect until February 16, 2004, on which date all such remaining permits shall expire. Thereafter, continued operations would require a new permit under KPB 21.26. Applicable provisions of KPB 21.13 shall remain in full force and effect until February 16, 2004, for purposes of governing such material site applications and permits. KPB 21.20 shall govern appeal procedures. Nothing in this section shall preclude a permittee from obtaining a new permit under KPB 21.26 prior to February 16, 2004, which permit would not be subject to KPB 21.13.

**SECTION 6.** That this ordinance shall take effect March 16, 1999.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF FEBRUARY, 1999.**

  
Ronald Wm. Drathman, Assembly President

ATTEST:

  
Linda S. Murphy, Borough Clerk

