

Introduced by: Mayor
Date: 05/18/99
Hearing: 06/15/99
Action: Enacted
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 99-29**

**AN ORDINANCE MAKING TECHNICAL AMENDMENTS TO
KPB 21.25 "CONDITIONAL LAND USE PERMITS"
AND KPB 21.26 "MATERIAL SITE PERMITS"**

WHEREAS, in February, 1999, the borough adopted KPB 21.26 regulating 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 21.25.050 is hereby amended as follows:

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.

C. There shall be written findings supporting the planning commission's decision on the permit application. The decision shall be distributed to the parties of record before the planning commission, with a notice of right to appeal to the board of adjustment.

SECTION 2. Sections 21.26.010 – 21.26.040 are amended as follows:

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 or letter of intent required by AS 27.19; 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 16, 1999 [FEBRUARY 2, 1999] must register by January 1, 2001 [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 conditional land use 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 seasonal high groundwater table. Material may be extracted from an aquifer provided there is no dewatering either by pumping, ditching or some other form of draining unless an exemption [A VARIANCE] is acquired from the planning commission. The exemption [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.] Counter permits are exempt from this standard.
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[.], provided that [I]if an operator excavates into the area designated for the 2:1 slope, the slope must be restored within two calendar years[.] or
 - b. a minimum six-foot earthen berm, or
 - c. a minimum six-foot fence.

The planning commission or planning director 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 or planning director.

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 or planning director 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 an aquifer is negatively impacted by the material site. Operations shall not breach an aquifer-confining layer. Counter permits are exempt from this provision.
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. Counter permits are exempt from this provision.
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 for CLUPs, or planning director for counter permits. 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 after May 21, 1986, and prior to May 21, 1996, [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. Notice of the public hearing shall be given to persons filing written comments with the planning director prior to the 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 within 15 days of the date of the notice of decision.

SECTION 3. Notwithstanding the amendment to KPB 21.26.040, persons who filed applications for prior existing use determinations after adoption of Ordinance 98-33 and prior to the effective date of this ordinance shall have 15 days from notice by the planning department of the effective date of this ordinance to appeal the decision to the planning commission.

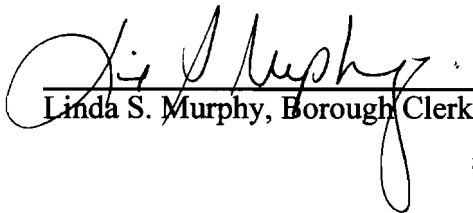
SECTION 4. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 15TH DAY OF JUNE, 1999.



Ronald Wm. Drathman, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk

