

Kenai Peninsula Borough

Material Site Work Group

Meeting Minutes

January 31, 2018

2:00 p.m. George A. Navarre Borough Administration Building
Assembly Chambers

Committee Members: Norm Blakeley, Tom Clark, Stacy Crouse, Jim Isham, Brent Johnson, Wayne Ogle, Robert Ruffner, Larry Smith

Staff Support: Holly Montague, Deputy Borough Attorney, Max Best, Planning Director, Bruce Wall, Planner, Johni Blankenship, Borough Clerk, Randi Broyles, Borough Clerk Assistant

CALL TO ORDER

The meeting was called to order by Planning Director Max Best at 2:04 p.m.

ROLL CALL

The following members were present:

Norm Blakeley
Wayne Ogle
Tom Clark
Stacy Crouse

Brent Johnson
Robert Ruffner
Larry Smith (Excused)
Jim Isham (arrived at 2.32.p.m.)

Also in attendance were:

Holly Montague, Deputy Borough Attorney
Max Best, Director of Planning
Bruce Wall, Planner
Johni Blankenship, Borough Clerk
Randi Broyles, Borough Clerk Assistant

APPROVAL OF AGENDA

MOTION: Clark moved to approve the agenda.

SECOND: Johnson

INTRODUCTIONS

Each member of the work group gave a brief introduction of themselves.

NEW BUSINESS

1) Election of Chairperson

Best called for nominations for the office of chair.

NOMINATION: Ogle nominated Ruffner
 Blakeley nominated Ogle – Respectfully declined

Clark moved to close nominations. Seeing no objections, Best closed the nomination period and declared Robert Ruffner as Chair.

Best passed the gavel to Chair, Robert Ruffner.

Chair Ruffner called for nominations for the office of Vice Chair.

NOMINATION: Johnson nominated Ogle

Seeing no objections, Ruffner closed nominations and Ogle was declared Vice Chair.

2) Work Group Role – Resolution 2018-004 (Mayor) Substitute

Chair Ruffner stated he would work with staff to develop a proposed mission statement for member consideration.

3) Work Group Structure

Deputy Attorney Montague summarized the Open Meetings Act and offered recommendations to the members to avoid violations of the act. Borough Clerk Blankenship summarized the KPB Clerk's role for the group as well as other KPB staff members.

Vice Chair Ogle asked if the work group would be taking public testimony throughout the process.

Chair Ruffner stated it was his intent to solicit public comment later on in the process. He hoped to have a working document for the public to review and comment on.

4) Work Group Meeting Schedule – Deadline June 5, 2018

Chair Ruffner suggested bi-weekly meetings and there was no objection.

He stated meetings would be held during the day from 2:00 p.m. to 4:00 p.m. every other Wednesday. He further indicated that meetings would be held in the evenings later on, in order to maximize public input.

Best stated he had scheduled a groundwater expert to give a presentation the group on March 5th, 2018. Chair Ruffner stated the March 5th, 2018 meeting would be an exception to the prior agreed to schedule.

5) Discussion Regarding the Current Code and the Areas of Concern

Chair Ruffner opened discussion regarding the current code. Best and Wall summarized the concerns which had been stated by both staff and the public. Wall summarized the current permit process and briefly touched on the regulations.

OTHER

Chair Ruffner encouraged the members to read the code section provided and begin to formulate questions and concerns. He stated their familiarity with the existing code would assist in the process.

Clerk Blankenship stated a link would be provided within an email which would give the members electronic access to the agenda and packet not less than 48 hours prior to meeting.

Clerk Blankenship stated the Clerk's Office would be utilizing Facebook and the Material Site Webpage in order to provide information to the public.

Chair Ruffner indicated the public would also have an opportunity to testify at both the Planning Commission meetings and the Assembly meetings at which the ordinance amending the code would be discussed.

The members stated they wanted to explore regulation regarding the following:

- Water quality
- Visual Impact, Property Values
- Noise Pollution and Control

Blakeley inquired as to whether a weekend town hall meeting to capture public testimony was warranted?

Clerk Blankenship encouraged the members to consider traveling to Homer and Seward to gather public input as well?

Best stated that current active operations would merit a visit to Anchor Point.

With no objections public comment was tabled until 2 or 3 meetings had taken place.

ANNOUNCE NEXT MEETING DATE AND TIME

The next meeting was scheduled to be held on February 14, 2018 at 2:00 PM in the KPB Assembly Chambers.

ADJOURNMENT

The meeting was adjourned at 3:28 p.m. with no objections.

I certify the above represents accurate minutes of the Material Site Work Group of January 31, 2018.

Johni Blankenship, MMC, Borough Clerk

Approved by Work Group: _____



Kenai Peninsula Borough Material Site Work Group – Action Plan

Mission Statement: To evaluate existing Kenai Peninsula Borough codes with respect to material sites (gravel extraction) to ensure we collectively believe an appropriate balance exists to ensure affordable development while also protecting quality of life for our residents.

Meeting Date	Location	Packet Deadline	Agenda Items	Guest Speakers	Notice Date	Distribution Date
Wednesday, January 31	Assembly Chambers		Purpose, Current Code Overview	-----	Thursday, January 25	
Wednesday, February 14	Assembly Chambers	Wednesday, February 7	Sectional Analysis and Staffs' Proposed Code Changes		Wednesday, February 7	Monday, February 12
Wednesday, February 28	Assembly Chambers	Wednesday, February 21	Issue discussion Buffers, Noise, Dust, Roads, Public Safety Quality of Life	Robert Wood MSHA (Calling in)	Wednesday, February 21	Monday, February 26
Monday, March 5	CANCELED	-----	Issue discussion Water Quantity/ Effects of Temperature	Dr. Mark Rains	-----	-----
Wednesday, March 14	Assembly Chambers	Wednesday, March 7	Issue discussion Peat Extraction; Water Quality Cont.	Palmer (DEC)	Wednesday, March 7	Monday, March 12

Meeting Date	Location	Packet Deadline	Agenda Items	Guest Speakers	Notice Date	Distribution Date
Wednesday, March 28	Assembly Chambers	Wednesday, March 21	Issue discussion Reclamation, Insurance, Prior Existing Use (PEU)	Bonding Expert	Wednesday, March 21	Monday, March 26
Public Outreach Central – Date TBD	Assembly Chambers					
Public Outreach Anchor Point – Date TBD	Chapman Elementary					
Wednesday, April 11	Assembly Chambers	Wednesday, April 4	Public Comment; Begin discussion of potential code adjustment		Wednesday, April 4	Monday, April 9
Wednesday, April 25	River Center	Wednesday, April 18	Member input on requested changes.		Wednesday, April 18	Monday, April 23
Wednesday, May 9	Assembly Chambers	Wednesday, May 2	Deliberations on changes; final call for amended language		Wednesday, May 2	Monday, May 7
Wednesday, May 23	River Center	Wednesday, May 16	Deliberations on Changes		Wednesday, May 16	Monday, May 21



KENAI PENINSULA BOROUGH

Legal Department

144 North Binkley Street • Soldotna, Alaska 99669-7520

Toll-free within the Borough: 1-800-478-4441, Ext. 2120

PHONE: (907) 714-2120 • FAX: (907) 714-2379

www.kpb.us

**MIKE NAVARRE
BOROUGH MAYOR**

MEMORANDUM

TO: Blair Martin, Planning Commission Chair
Members of the Kenai Peninsula Borough Planning Commission

FROM: Holly B. Montague, Deputy Borough Attorney
Max Best, Planning Director
Bruce Wall, Planner

CC: Mike Navarre, Mayor

DATE: August 14, 2017

SUBJECT: KPB 21.29 - Sectional Analysis

The planning commission requested a work session regarding possible changes to the material site code. The attached draft amendment to KPB 21.29 is a starting point based on concerns frequently heard by the planning commission and staff. Following is a sectional analysis of the proposed amendments.

- **21.25.030. - Definitions.**

A definition of development plan is added to clarify that sites upon which extraction occurs as part of an on-site building project are exempt from the material site permit requirements.

A definition of “disturbed” is added and the definition of “exhausted” is deleted as the term exhausted resulted in lack of compliance with reclamation plans as operators claimed their sites were not yet “exhausted” and were not required to be reclaimed.

A definition of “permit area” is added to help define what areas of a parcel subject to a CLUP are actually considered part of the material site plan.

- **KPB 21.29.010. - Material extraction exempt from obtaining a permit.**

New subsection (D) exempts extraction incidental to site development from the permit process when a site development plan is on file with the planning director. This exemption allows excavation that is necessary for an on-site building project to proceed without obtaining a material site permit as these projects are for a specific purpose and

are not subject to the indefinite lifespan of a material site with its associated long-term impacts on the surrounding land uses.

- **KPB 21.29.030. - Application procedure.**

(A)(5) - Reworded to require the elevation of the proposed excavation, rather than the depth of excavation, as typically the landscape of a material site is not flat but changing in elevation.

(A)(7) - Surface water protection measures is moved from the site plan to the application section as not all site plans will require surface water protection measures for adjoining parcels.

(A)(9)(f) - Revised to require the depth to groundwater which is now only required if it is encountered while digging test holes. Additionally there must be a test hole per 10 acres of excavation since the elevation of groundwater could vary over the landscape of the material site. The test holes are required to go four feet below the expected depth of excavation which is consistent with the recommendation that excavation stay four feet above groundwater which is also a state of Alaska best management practice for material sites.

(A)(9)(n) - Revised to allow the planning director to grant an exemption from staking if it is unnecessary such as when topography would eliminate the need for staking.

- **KPB 21.29.040. - Standards for sand, gravel or material sites.**

The purpose of the standards for material sites is clarified which is to protect existing surrounding land uses against the negative impacts of material site operations. A standard is added for providing consistency with the borough comprehensive plan and other planning documents as land use regulations are required by state law to be consistent with the borough comprehensive plan.

- **KPB 21.29.050. - Permit Conditions.**

(A)(1) - The permit area is required to be staked by time of issuance of the permit as many times the excavation area is significantly smaller than the size of the parcel and the staking will allow the operator to know the bounds of his excavation area leading to less accidental breaches of buffers or rights of way.

(A)(2) - The purpose of the buffers is clarified and a change is made that the 50 foot natural vegetation is a minimum vegetative requirement rather than a maximum allowed.

(A)(2)(f) – This is a new paragraph addressing material sites that are denuded prior to permit application making it difficult to devise appropriate protective buffers. Additional buffer space may be required between the permit area and the parcel boundaries and revegetation may be required.

(A)(4)(b) - A four foot vertical separation between groundwater and excavation depth is recommended. This is consistent with what is currently required for counter permits and is consistent with the state of Alaska best management practices for material sites.

(A)(5)(c) - A requirement is added that measurements be taken twice a year by a civil engineer or hydrogeologist for the duration of excavation in the groundwater.

(A)(11) - Hours of operation are revised to be prohibited between 10pm and 6am with processing hours being prohibited between 7pm and 6am. The planning commission can increase the allowed operating and processing hours and may place additional conditions on the permit to mitigate negative impacts from the increased hours.

(A)(16) - This is a new paragraph that requires the points of egress and ingress to be approved and driveway permits to be acquired before issuance of the permit. Current practice is not to issue a material site permit until the driveway permit has been obtained.

(A)(17) - Dust suppression will be required on haul routes from the material site to paved roads when there are more than 10 truck trips a day and natural precipitation is inadequate to suppress dust. Currently dust suppression is only required within the material site.

(A)(18) - A new requirement to help mitigate noise disallows noise exceeding 60 decibels at the parcel boundary.

(A)(19) - An additional protective buffer is added for existing LOZs of 500 feet from material sites. It was suggested during the LOZ rewrite that the material site code would be the more appropriate location for this setback that protects neighborhoods that have been proactive in maintaining their residential quality.

(A)(20) - A new condition for surface water protection measures is added when necessary which is consistent with the current requirement for including surface water protection measures at time of application.

(A)(21) - A new condition is proposed that one piezometer must be maintained per 10 acres four feet below the proposed excavation with depth to groundwater collected twice a year.

- **KPB 21.29.060. - Reclamation plan.**

Bonding will be required for all new permits at \$2,000 per acre, or a civil engineer's estimate for bonding requirements may be accepted by the planning director. It is clarified that ponding is a reclamation method only allowed when there has been excavation in the water table. It is further clarified that only five disturbed acres may remain unreclaimed at any time which is the intent of the current code but the provision is not clear.

- **KPB 21.29.070. – Permit extension and revocation.**

(C) - Consistent with the enforcement provisions of KPB 21.50 it is clarified that permit extension may be denied if the permittee has unresolved violations.

- **KPB 21.29.080. – Permit termination.**

It is clarified that CLUPs are not terminated until all required excavation has occurred and no material stockpiles remain on site.

- **KPB 21.29.090. – Permit modifications.**

The current rule that permit modifications need to comply with the regulations in place at the time of the modification is clarified.

- **KPB 21.29.110. - Violations**

(A) - It is clarified that a permit violation may trigger a bonding requirement.

- **KPB 21.29.120. – Prior existing uses.**

A reclamation plan is required for PEUs, otherwise the PEU will terminate. Additionally processing on PEUs is prohibited from the hours of 10pm to 6am which is the current requirement for permits issued under KPB 21.29. It is clarified that violations of PEU conditions are enforceable pursuant to KPB 21.50.

Excerpts from Alaska Statute 27.19

Sec. 27.19.030. Reclamation plan.

- (a) Except as provided in AS 27.19.050, a miner may not engage in a mining operation until the commissioner has approved a reclamation plan for the mining operation.

Sec. 27.19.040. Reclamation financial assurance.

- (a) The commissioner shall require an individual financial assurance in an amount not to exceed an amount reasonably necessary to ensure the faithful performance of the requirements of the approved reclamation plan. The commissioner shall establish the amount of the financial assurance to reflect the reasonable and probable costs of reclamation. The assurance amount may not exceed \$750 for each acre of mined area, except that the \$750 an acre limitation does not apply to the assurance amount required for a lode mine.

Sec. 27.19.050. Exemption for small operations.

- (a) AS 27.19.030(a) and 27.19.040 do not apply to a mining operation

(1) where less than five acres are mined at one location in any year and there is a cumulative unreclaimed mined area of less than five acres at one location; or

(2) where less than five acres and less than 50,000 cubic yards of gravel or other materials are disturbed or removed at one location in any year and there is a cumulative disturbed area of less than five acres at one location.

(b) To obtain an exemption under (a) of this section, a miner shall file a letter of intent notifying the commissioner of the

(1) total acreage and volume of material to be mined;

(2) total acreage to be reclaimed; and

(3) reclamation measures to be used.

(c) A miner exempt under (a) of this section shall file an annual reclamation statement with the commissioner disclosing the total acreage and volume of material mined by the operation in the current year, the total acreage reclaimed, and the specific reclamation measures used to comply with AS 27.19.020. A miner does not qualify for an exemption under (a) of this section for subsequent operations unless the annual reclamation statement for the previous operation has been filed with the commissioner.

(d) A miner exempted from the requirements of AS 27.19.030(a) and 27.19.040 under (a) of this section that fails to reclaim a mining operation to the standards of AS 27.19.020 is required for two consecutive years to conduct each subsequent mining operation, regardless of size, under an approved reclamation plan and to provide an individual financial assurance.

New Manual: Best Management Practices

FOR

GRAVEL / ROCK AGGREGATE MINING

WHAT IT IS

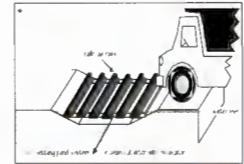
Revised manual: "Best Management Practices for Gravel/Rock Aggregate Extraction Projects, Protecting Surface Water and Groundwater Quality in Alaska, dated September 2012."

Replaces the previous manual: "Best Management Practices for Gravel Pits and the Protection of Surface Water Quality in Alaska, dated June 2006."



WHY IT'S IMPORTANT

Regulations have changed, and research and experience have led to new and modified best management practices (BMPs). BMPs are physical, chemical, structural, or managerial techniques to minimize water pollution. It's easier and cheaper to prevent impacts to the environment before they happen, rather than attempting to fix them after they've occurred — and after potential penalties have been levied.



WHO SHOULD USE IT

Owners and operators of gravel and rock aggregate extraction projects, permitting agencies, and those seeking permits. The manual addresses both large- and small-scale operations.



QUESTIONS & FEEDBACK

Alaska Department of Environmental Conservation (DEC)
555 Cordova St., Anchorage, Alaska 99501

Division of Water

Wastewater Discharge Authorization

Storm Water Multi-Sector General Permits

William Ashton, Storm Water/Wetlands Engineer

Phone: (907) 269-6283

Fax: (907) 269-3487

Email: william.ashton@alaska.gov

Web: <http://dec.alaska.gov/water/wnpssc/stormwater/MultiSector.htm>

Division of Environmental Health

Drinking Water Program

Drinking Water Protection

Charley Palmer, Hydrologist

Phone: (907) 269-0292

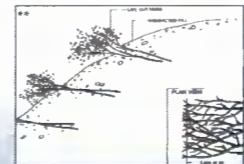
Toll-free: (866) 956-7656

Fax: (907) 269-7650

Email: charley.palmer@alaska.gov

Web: <http://dec.alaska.gov/eh/dw/index.htm>

Web map: <http://bit.ly/dt7p2d>



WHAT'S NEW

- Addition of groundwater protection considerations
- Guidelines for protecting drinking water sources and Public Water Systems
- New best management practices
- Instructive illustrations
- New topics, like Naturally Occurring Asbestos and Acid Mine Drainage
- Updated discussion of current regulations, including the transition of the National Pollutant Discharge Elimination System (NPDES) Program to the State of Alaska (APDES)
- Updated permitting decision-making trees
- Updated Stormwater Guide references
- A new Revegetation Guide reference
- Material Sales Application information

FIND THE MANUAL ONLINE:

dec.alaska.gov/water/wnpssc/protection_restoration/BestMgmtPractices/gravel.htm



* Modified from Best Management Practices for Reclaiming Surface Mines in Washington & Oregon, Washington State DNR 1997. ** Modified from Best Management Practices for Mining in Idaho, Idaho Department of Lands, 1992.



Figure 1 Milky Way Road - Nikiski - July 2015



Figure 2 Milky Way Road - Nikiski - July 2017



Figure 3 Milky Way Road - Nikiski - July 2017



Figure 4 Milky Way Road - Nikiski 2003



Figure 5 Milky Way Road - Nikiski - 2012



Figure 6 Milky Way Road - Nikiski - 2016



Figure 7 Anchor Point 2014



Figure 8 Anchor Point 2014



Figure 9 Anchor Point 2014

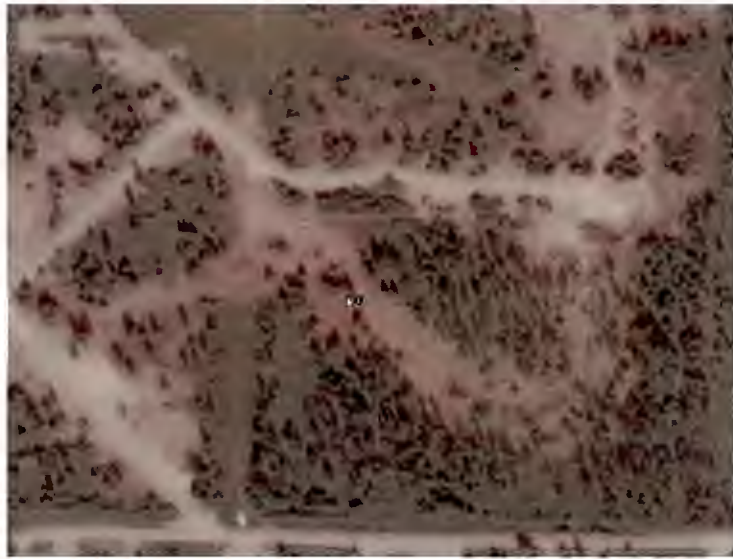


Figure 10 Anchor Point 2003



Figure 11 Anchor Point 2012



Figure 12 Anchor Point 2016

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.

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 excluded under KPB 21.29.020.

Disturbed includes excavation and all areas necessary to use a parcel as a material site including but not limited to berms, stockpiles, and excavated areas.

[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 stormwater runoff is directed.

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

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] elevation of the proposed excavation;
6. Type of material to be extracted and type of equipment to be used;
7. 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 fences. Designs for substantial structures shall be provided and the proposal shall indicate which structures will remain as permanent features at the conclusion of operations, if any;

[7]8. 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]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 of test holes, and depth of groundwater[; IF ENCOUNTERED]; at least one test hole per 10 acres of excavated area is required. The test holes shall be at least 4 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;
- [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]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 existing surrounding property uses against negative impacts of material site operations, as follows [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. Protection [PROTECTS] against the lowering of water sources serving other properties;
2. Protection [PROTECTS] against physical damage to other properties;
3. Minimizing [MINIMIZES] off-site movement of dust;
4. Minimizing [MINIMIZES] noise disturbance to other properties;
5. Minimizing [MINIMIZES] visual impacts; [AND]
6. Providing [PROVIDES] for alternate post-mining land uses; and [.]
7. Providing consistency with the general objectives and any applicable specific objective of the Kenai Peninsula Borough Comprehensive Plan and other applicable borough 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. A minimum of 50 feet of undisturbed natural vegetation to mitigate dust, noise and visual impacts, or
 - ii. A minimum six-foot earthen berm [WITH AT LEAST] that is no steeper than a 2:1 slope to mitigate noise and visual impacts, or
 - iii. A minimum six-foot fence to mitigate noise and visual impacts.
 - 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] unnecessary. 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.
 - f. When a buffer area has been denuded prior to review of the application by the planning commission or planning director additional buffer space between the permit area and the property boundary may be required to reduce the impact of noise, dust, and diminished aesthetics. 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 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 and CLUPS 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 twice a year by a licensed civil engineer or hydrogeologist, 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.* Material site operations are prohibited between 10 p.m. and 6 am. Processing [ROCK CRUSHING] equipment shall not be operated between [10] 7:00 p.m. and 6:00 a.m. The planning commission may grant exceptions to increase the hours of operation and processing based on surrounding land uses, topography, screening from adjacent properties and conditions placed on the permit by the planning commission to mitigate the noise, dust, traffic, 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] Prior to issuance of 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 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. Volunteered [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. Volunteered [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] 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. The planning commission or planning director shall approve the points of ingress and egress and immediate haul routes to diminish noise, dust and damage to borough roads. Driveway permits must be acquired from either the state or borough as appropriate prior to the issuance of the material site permit.
17. Dust suppression on haul routes from the material site to paved roads is required when there are more than 10 truck trips from the material site in a day and natural precipitation is not adequate to suppress dust.
18. Material sites shall not produce noise exceeding 60 decibels at the parcel boundary of the material site.
19. Material site permit areas shall be 500 feet from the boundaries of an existing LOZ. The buffer areas of the permit area may be included in this 500 foot setback.
20. The planning commission may require surface water protection measures for adjacent parcels. The planning commission may require analysis by a civil engineer as part of the surface water protection measures.
21. All material sites must maintain one piezometer per 10 acres 4 feet below the proposed excavation and collect the depth to groundwater twice a year by a licensed civil

engineer or hydrogeologist, or upon request of the planning department, to determine the elevation of groundwater.

22. The permit shall not be issued nor operable until the deadline for filing an appeal pursuant to KPB 21.20 has expired.

21.29.055. – Decision.

In order for a material site or counter permit to be approved the planning commission or planning director must conclude that the application meets the relevant standards. The decision shall be written and shall include findings supporting modification, approval, or denial of the permit application.

21.29.060. - Reclamation plan.

- A. All material site permit applications and prior existing uses require a reclamation plan. A site plan for reclamation shall be required including a scaled drawing with finished contours.
- 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 approved by the planning commission for CLUPs or planning director for counter permits [FOR LONG-TERM ACTIVITIES,] so as to leave the land in a stable condition. Reclamation must occur for disturbed [ALL EXHAUSTED] areas of the site exceeding five acres before a five-year [RENEWAL] extension permit is issued, unless otherwise required by the planning commission. Bonding shall be required at \$2,000.00 per acre for all excavated acreage. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding. Compliance with reclamation plans shall be enforced under KPB 21.50. 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 the preparation, approval and implementation of [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 with a 2:1 slope 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 four inches of topsoil [TO A CONDITION THAT ALLOWS FOR THE REESTABLISHMENT OF RENEWABLE RESOURCES ON THE SITE WITHIN A REASONABLE PERIOD OF TIME. IT] so that it will be stabilized to a condition that will allow sufficient moisture for the required 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 used for reclamation shall be reasonably free from roots, clods, sticks, and branches greater than 3 inches in diameter. Areas having slopes [GREATER] steeper 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]5.Ponding may be used as a reclamation method as approved by the planning commission. Ponding may only be an approved reclamation plan for material site operations which excavated in the groundwater.

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.

E. No more than five disturbed acres of a material site may remain unreclaimed at any time.

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] an unresolved enforcement notice has been issued to the permittee; 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. CLUPs shall not be terminated until all required reclamation has occurred and no material stockpiles remain on site.

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 and shall comply with the regulations in effect at the time of the modification application.

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] violated KPB 21.50, 21.25, [AND] or 21.29 [WITHIN A THREE-YEAR PERIOD]. Bonding may be required for material sites under the same ownership or management as the material site subject of the violation. [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.

- D. All owners of PEUs must submit a reclamation consistent with KPB.21.29. 060 by _____ . Notice of reclamation plan requirement shall be issued by _____ to the current record owners as listed in borough assessing department records. If a reclamation plan is not submitted by _____ the PEU shall be deemed terminated and any further material site operations must comply with requirements of this chapter. Bonding shall be required at \$2,000.00 per acre for all excavated acreage. Reclamation plans are approved by the planning director. In the alternative, the planning director may accept a civil engineer's estimate for determining the amount of bonding.
- E. Processing on PEUs is prohibited between the hours of 10 p.m. and 6 a.m. unless an exception is granted consistent with KPB 21.29.050(A)(11).
- F. Compliance with the requirements of KPB 21.29.120 are enforceable pursuant to KPB 21.50.