

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.30 CONDITIONAL USE PERMIT FOR EARTH MATERIALS EXTRACTION ACTIVITIES TO ALLOW FOR AN EXEMPTION OF 10,000 CUBIC YARDS ANNUALLY WITHOUT A PERMIT.

AGENDA OF: November 22, 2022

ASSEMBLY ACTION: *Postponed Indefinitely. 3/21/23. (8P)*
No objection.

MANAGER RECOMMENDATION: Refer to Planning Commission for 90 days

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER: *MB*

Route To:	Department/Individual	Initials	Remarks
	Originator - A. Strawn	<i>AS</i>	for Assemblymember Tew
	Planning Director	<i>AS</i>	
	Borough Attorney	<i>NS</i>	
	Borough Clerk	<i>Bona for Tew</i>	

ATTACHMENT (S): Fiscal Note: YES ___ NO X
 Planning Commission Resolution No. 22-*02* (*2*pp)
 Ordinance Serial No. 22-131 (9 pp)
MSB 17.30 (13pp)

SUMMARY STATEMENT: This ordinance is sponsored by Assemblymember Tew to amend MSB 17.30 Conditional Use Permit for Earth Materials Extraction Activities to allow for an annual extraction of earth material up to 10,000 yards annually without a permit.

Currently, MSB 17.30 regulates earth materials extraction activities. Extraction of 2,000 cubic yards or less annually on any one parcel does not require an administrative or conditional use permit. For extraction activities which do not exceed 2 years or do not exceed an annual volume of 7,000 yards, an administrative permit is allowable. Beyond those limits, a conditional use permit from the Matanuska-Susitna Borough Planning Commission is required to engage in earth materials extraction activities as defined in the code.

The annual exemption limit of 2,000 yards is too low. The intent

of raising the exemption is to allow the citizens and owners of this resource to use and develop the resource without unnecessary regulation and expense. Resource development is one of the primary activities in the State of Alaska and the Matanuska-Susitna Borough should be encouraging development and use of our natural resources. By lowering costs of development, materials prices will be lower which will benefit everyone in our community as we continue to experience the highest population growth rate in Alaska.

This ordinance will raise the annual exemption limit for earth materials extraction to 10,000 cubic yards. Below that amount, no permit will be necessary. Above that amount, a permit from the Matanuska-Susitna Borough Planning Commission is required. There will no longer be a need for an administrative permit process because the current levels of extraction for needing that permit are below 10,000 cubic yards. Therefore, the administrative permitting process for earth materials extraction activities will be deleted from the code.

By: A. Strawn
Introduced: January 16, 2023
Public Hearing: February 6, 2023
Action: ADOPTED

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. 23-02**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION
RECOMMENDING APPROVAL OF AN ORDINANCE AMENDING MSB 17.30
CONDITIONAL USE PERMIT FOR EARTH MATERIALS EXTRACTION ACTIVITIES
TO ALLOW FOR AN EXEMPTION OF 10,000 CUBIC YARDS ANNUALLY WITHOUT
A PERMIT.

WHEREAS, MSB 17.30 regulates earth materials extraction
activities within the Borough; and

WHEREAS, currently, extraction of 2,000 cubic yards or less
annually on any one parcel does not require an administrative or
conditional use permit; and

WHEREAS, the annual exemption limit of 2,000 cubic yards is
too low; and

WHEREAS, raising the exemption limit will allow citizens and
owners of gravel resources to use and develop the resource without
unnecessary regulation and expense; and

WHEREAS, resource development is one of the primary
activities in the State of Alaska and the Matanuska-Susitna Borough
should be encouraging development and use of our natural resources;
and

WHEREAS, by lowering costs of development, materials prices will be lower which will benefit everyone in our community as we continue to experience the highest population growth rate in Alaska.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby recommends approval of Assembly Ordinance 22-131.

ADOPTED by the Matanuska-Susitna Borough Planning Commission this 6th day of February, 2023.



WILLIAM KENDIG, Chair

ATTEST



KAROL RIESE, Planning Clerk

(SEAL)

YES: (5) Commissioner Rubeo, Scoggin, Glenn, Kendig & Koen

NO: (2) Commissioner Allen & Fernandez

CHAPTER 17.30: CONDITIONAL USE PERMIT (CUP) FOR EARTH MATERIALS EXTRACTION ACTIVITIES

Section

17.30.010 Intent and purpose

17.30.020 Applicability

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17.30.130 Termination of permit

17.30.140 Violations, enforcement, and penalties

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17.30.010 INTENT AND PURPOSE.

(A) It is the intent of the Matanuska-Susitna Borough to recognize the value and importance of promoting the utilization of natural resources within its boundaries. The purpose of this chapter is to allow resource extraction activities while promoting the public health, safety, order, prosperity, and general welfare of the Matanuska-Susitna Borough through regulation of land use to reduce the adverse impacts of land uses and development between and among properties. It is the further purpose of this chapter to promote compatible, orderly development. These purposes are accomplished by:

- (1) allowing for a public review process for earth materials extraction activities in the Matanuska-Susitna Borough;
- (2) enhancing the character and stability of residential, agricultural, business, commercial, and industrial areas, promoting the orderly and beneficial development of such areas by the owner/permittee in a manner that will not devalue the extraction site or neighboring properties for future beneficial uses upon completion of gravel extraction;
- (3) promoting diversified land use and economic opportunity;
- (4) encouraging the most appropriate uses of land;
- (5) enhancing the natural, manmade, and historical amenities of the Matanuska-Susitna Borough;
- (6) recognizing and preserving traditional uses of land within the Matanuska-Susitna Borough; and
- (7) protecting and enhancing the quality, peace, quiet and safety of the Matanuska-Susitna Borough neighborhoods.

(Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.020 APPLICABILITY.

(A) This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a special land use district. Where a special land use district regulates earth materials extraction as a conditional use, the granting of a conditional use permit shall require compliance with this chapter. Where this chapter is in conflict with the conditional use permit conditions of the special land use district, the more restrictive conditions shall apply.

(B) This chapter does not apply within the cities of Houston, Palmer, or Wasilla, or the Port MacKenzie Special Use District.

(C) This chapter applies to commercial earth materials extraction activities where the principal activity of use of the property is the extraction of earth materials.

(D) This chapter does not apply when earth material extraction activity is not intended for sale or barter.

(E) Annual extraction of more than 2,000 cubic yards of earth materials on property that has not been granted a permit or pre-existing legal nonconforming status as of the date of the enactment of this chapter is required to obtain a conditional use permit or administrative permit.

(F) *[Repealed by Ord. 11-153, § 13, 2011]*

(G) Extraction of 2,000 cubic yards or less annually on any one parcel does not require an administrative or conditional use permit. Where a site is exempt under this subsection the exemption is revoked if operations proceed within four feet of the seasonal high water table.

(H) This chapter shall not apply to earth material extraction activities on land owned by the state of Alaska that are in existence as of the date of adoption of the ordinance codified in this chapter except for such operations that extract materials within four feet of the water table. Where a site is exempt under this subsection the exemption is revoked if operations proceed to within four feet of the water table.

(Ord. 16-102, § 10, 2016; Ord. 12-096, § 3, 2012; Ord. 11-153, § 13, 2011; Ord. 08-043, §§ 2, 3, 2008; Ord. 07-130, § 2, 2007; Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.025 NONCONFORMING USES.

(A) At the date of adoption of the ordinance codified in this chapter, or amendments thereto, earth materials extraction activities that have been granted a permit or pre-existing legal nonconforming status are permitted to continue subject to the provisions of this section.

(B) *[Repealed by Ord. 11-153, § 14, 2011]*

(C) *[Repealed by Ord. 11-153, § 14, 2011]*

(D) Legal nonconforming extraction operations shall comply with MSB 17.28.067(A) through (D).

(E) Operations with pre-existing legal nonconforming status that extract material below or within four feet of the seasonal high water table shall conduct operations in accordance with the requirements outlined in MSB 17.30.037(D), except that MSB 17.30.037(D)(8)(b) through (d) shall not apply.

(F) Nonconforming status shall expire if material extraction or earth material processing activity ceases for longer than five years.

(Ord. 11-153, § 14, 2011; Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.030 TYPES OF PERMITS AVAILABLE.

(A) There are two types of permits available for earth materials extraction:

(1) *Administrative permit* – a use permit approved by the director with public notification may be issued if the proposed development meets the minimum thresholds for an administrative decision.

(2) *Conditional use permit* – a conditional use permit granted by the planning commission after a public hearing, when the proposed development goes beyond the minimum threshold for an administrative permit.

(Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.035 APPLICATION PROCEDURES.

(A) For all permits required under this chapter, the following shall be submitted to the department:

- (1) a completed application form provided by the department;
- (2) a site development plan in accordance with MSB 17.28.050 and 17.28.060;
- (3) the fee in the amount designated in MSB 17.99; and
- (4) reclamation plan in accordance with MSB 17.28.063.

(B) The director may reject any application which is incomplete or fails to meet the requirements of this section. The rejection shall be in writing and shall state the deficient items. Once the deficiencies have been corrected, the complete application will be processed.

(C) If the minimum criteria for an administrative permit can be met, the director will notify surrounding property owners in accordance with MSB 17.03, public notification, except that the notification area will be one-half mile. Within 30 days of acceptance of the application, the administrative permit will be issued with conditions to address concerns raised by neighboring property owners, and as deemed appropriate by the director, to protect the public health, safety and general welfare.

(D) *[Repealed by Ord. 11-153, § 15, 2011]*

(E) If the proposed development exceeds the minimum criteria for an administrative permit, a public hearing before the planning commission shall be conducted within 45 calendar days of the acceptance of a complete application in accordance with MSB 17.03, public notification, except that the notification area will be one-half mile. The applicant may waive the 45-day limit.

(F) The planning commission shall hear any interested parties and shall render a decision on the application for a conditional use permit within 30 calendar days from the date of public hearing, unless the applicant agrees to a time extension. In the granting of a conditional use permit, the planning commission shall state in writing the conditions of approval of the permit.

(Ord. 11-153, § 15, 2011: Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.037 MATERIAL EXTRACTION BELOW OR WITHIN FOUR FEET OF THE SEASONAL HIGH WATER TABLE.

(A) Extraction of material below or within four feet of the seasonal high water table requires a permit under this section except:

- (1) material extraction in navigable water performed under the authority of the state or federal

governments.

(B) Prior to application for a water table extraction permit, the following requirements shall be met:

(1) installation of a sufficient number of monitoring wells and test pits, as recommended by a qualified professional, to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high water table elevation, and monitor groundwater quality upgradient and downgradient of the proposed activity on the property on which the activity will take place. Monitoring well and test pit locations must provide the qualified professional with adequate information to characterize the entire property that will be permitted for material extraction:

(a) Monitoring wells shall be installed, maintained, and decommissioned in accordance with 18 AAC 80.015.

(b) Well casing elevations shall be surveyed to a vertical accuracy of 0.01 feet by a registered land surveyor.

(c) Monitoring well logs and a report must be submitted to the Alaska Department of Natural Resources (ADNR) prior to time of application. The submittal to ADNR must comply with 11 AAC 93.140 by showing well construction parameters and information.

(2) collection of a sufficient number of representative groundwater samples, as recommended by a qualified professional, to determine baseline water quality.

(a) Baseline representative groundwater samples shall be collected biannually (either mid-summer and fall or fall and late winter) from monitoring wells, and at a minimum, be analyzed for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, total nitrite/nitrates, phosphates, total dissolved solids, fecal coliform bacteria, benzene, toluene, ethylbenzene, and xylenes by appropriate methods approved by the state. Additional analytes shall be included if recommended by a qualified professional and based on review of regulated potential sources of contamination within one-half mile of the boundary of the property on which the activity will take place;

(b) Representative groundwater samples shall be collected under supervision of a qualified professional using sampling methods and analytical methods as defined by a state-certified laboratory. Sampling methods shall include documentation to assure acquisition of representative samples.

(3) Determination of seasonal high water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site shall be measured under supervision of a qualified professional.

(4) A written report shall be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water body elevation, groundwater and surface water

quality, surrounding water users and adjacent properties. The determination shall be based on available data, interpretations of the data and knowledge of groundwater processes.

(5) The report shall be submitted with the conditional use permit application and shall:

- (a) identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the state, that are located within one-half mile of the boundary of the property on which the activity will take place;
- (b) identify actual or presumed private drinking water wells located within one-half mile of the boundary of the property on which the activity will take place and include a copy of the available well logs. The qualified professional shall inspect ADNR well log records available for properties within one-half mile of the boundary of the property on which the activity will take place;
- (c) identify public drinking water source capture areas less than or equal to the distance of the two-year-time-of-travel isochron as identified or approved by the state, located within one-half mile of the boundary of the property on which the activity will take place;
- (d) identify existing regulated potential sources of contamination within at least one-half mile of the boundary of the property on which the activity will take place;
- (e) contain maps at appropriate scales presenting the results of the well search, the setbacks required by subsection (D)(8) of this section, and illustrating wetlands and water bodies; at least one map shall show identified potential sources of contamination;
- (f) include the water table elevation monitoring data, groundwater sampling analytical results, monitoring well logs and records of any test pits, and a discussion of the seasonal high water table determination;
- (g) evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions shall include identifying confining layers; and
- (h) The report and all data relied upon in creation of the report shall be provided to the borough and shall be available to the public for inspection and review by members of the public.

(6) A monitoring plan shall be completed by a qualified professional with appropriate action levels requiring additional investigation and monitoring to assess potential adverse effects to groundwater or surface water.

- (a) The monitoring plan shall include a field sampling plan; and

(b) The plan shall contain all well construction and development details.

(C) In addition to the application requirements for a conditional use permit for earth materials extraction, the application for a water table extraction permit shall include:

- (1) a description of the proposed extent and depth of material extraction beneath the seasonal high water table.
- (2) a written report that meets the requirements of subsection (B) of this section, a monitoring plan, and a spill prevention, control, and countermeasures plan as required by this section.
- (3) a fee in the amount designated by the assembly in accordance with this chapter.
- (4) a certificate of general liability insurance with limits not less than \$1,000,000 per occurrence/\$1,000,000 aggregate for operations involving less than 40 acres and \$2,000,000 per occurrence/\$2,000,000 aggregate for operations involving 40 acres or larger. Insurance shall insure liability for bodily injury and property damage and be written on the Insurance Services Office form number CG0001 12 07 or a form as broad as CG0001 12 07. The certificate of insurance shall include 30 days' notice of cancellation to the borough. The borough shall be named on the applicant's general liability policy as an additional insured and the applicant shall waive their rights of subrogation against the borough. Such insurance shall remain in full force and effect in the specified amounts for the duration of the permit period. Insurance coverage must include liability for providing comparable alternate sources of drinking water to all impacted parties served by any private or public water system adversely affected as a result of the activity.
- (5) a certificate of pollution liability insurance with limits of \$1,000,000 per occurrence/\$1,000,000 aggregate including third party bodily injury and property damage and cleanup costs. If the responsible party's pollution liability (environmental) insurance is written on a claims-made form, the responsible party shall provide insurance for a period of three years after expiration or termination of the permit. The policy(ies) shall evidence a retroactive date, no later than the effective date of the conditional use permit.

(D) Operating standards for extraction within or below four feet of the seasonal high water table are as follows:

- (1) Implement a monitoring plan that meets the requirements of this chapter. If existing wells will provide sufficient data, no additional wells are required;
- (2) Implement the spill prevention, control and countermeasures plan in accordance with Environmental Protection Agency's requirements for above ground storage tank operations regardless of the quantity of petroleum products on site;

(a) Fuel storage containers larger than 50 gallons shall be contained in impermeable berms and

basins capable of retaining 110 percent of the storage capacity;

(b) Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface;

(c) Locate above ground storage tanks farthest from the path of groundwater flow to private and public water systems and farthest from state-approved drinking water source capture areas, and outside the setbacks for all drinking water sources;

(d) Equipment operating within the area of excavation shall be maintained to minimize leaks of petroleum fluids. Equipment that releases petroleum fluids to the environment shall be repaired as soon as practical. The responsible party or owner shall contain the leaks immediately on discovery; and

(e) In the event of a reportable release of regulated contaminants, notification shall include the director and shall occur concurrently with the state and federal agencies, if applicable.

(3) Groundwater flow direction, hydraulic gradient, and groundwater table elevation for the subject parcel shall be measured at least monthly during active extraction. Monitoring wells must be maintained or replaced with equivalent monitoring wells.

(4) Collect groundwater samples biannually prior to seasonal excavation startup and within two weeks of seasonal shutdown from the down-gradient and cross-gradient monitoring wells. Sample collection shall be conducted in accordance with sampling methods defined by a state certified laboratory.

(a) Representative groundwater samples shall be analyzed, at a minimum, for benzene, toluene, ethylbenzene, xylenes, and total dissolved solids, by methods approved by a certified laboratory as well as any analyte identified in the water quality monitoring data with a concentration within 15 percent of the applicable water quality standards established by state regulation. Groundwater sample analysis shall include testing for analytes that may indicate water quality changes including, but not limited to, pH, conductivity, nitrates, sulfates, sodium, calcium, magnesium, bicarbonate, and potassium.

(b) Analytical sampling results and water elevation monitoring data shall be retained for two years following completion of reclamation activities and shall be provided to the director upon request.

(i) If the monitoring data indicates that a maximum contaminant level set under 18 AAC 80 has been exceeded, or if the water level measurements indicate a shift, beyond natural variability, in the elevation of the water table, the owner or responsible party shall report that result to the department within 48 hours of notification.

(c) A qualified professional shall annually submit a report to the department that includes:

- (i) a table of monitoring results;
 - (ii) water quality sample analytical results in a table that includes the appropriate maximum contaminant levels established under 18 AAC 80; and
 - (iii) water table elevation monitoring data.
- (5) Operations shall not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer currently used as a drinking water source.
 - (a) If evidence suggests a confined aquifer or confining layer has been breached, or if groundwater or surface water elevation changes rapidly or beyond natural variation, the director shall be notified within 24 hours.
 - (i) A hydrologic assessment, conducted by a qualified professional, to determine the affected area and the nature and degree of effects and a description of potential repair or mitigation options shall be submitted to the director within 14 calendar days of notification;
 - (ii) Repair or mitigation sufficient to address identified effects shall be initiated as soon as practical, not to exceed 45 calendar days from the date the assessment is received by the director;
- (6) Proof of insurance as required by subsection (C)(4) of this section to mitigate impacts arising from the extraction activity shall be maintained until completion and acceptance of reclamation activities.
- (7) Operations should be conducted in accordance with the current publication of the State of Alaska's User Manual Best Management Practices for Gravel Pits.
- (8) Operations shall maintain the following setbacks:
 - (a) sixty-five feet from the property line, except where operations encompass contiguous parcels and extraction within four feet of the seasonal high water table is proposed across adjoining lot lines;
 - (b) five hundred feet from the nearest downgradient drinking water source;
 - (c) three hundred fifty feet from the nearest cross-gradient drinking water source; and
 - (d) two hundred feet from the nearest upgradient drinking water source.
 - (i) Minimum separation distances shall not apply to drinking water sources constructed after a permit to extract material below the water table has been issued.

(Ord. 11-153, § 16, 2011)

17.30.040 CRITERIA TO QUALIFY FOR AN ADMINISTRATIVE PERMIT.

(A) To qualify for an administrative permit, all of the following criteria must be met:

- (1) *[Repealed by Ord. 16-102, § 11, 2016]*
- (2) extraction activities subject to the permit shall not exceed:
 - (a) twenty-four months. A one-time extension of six months may be granted administratively upon written request from the applicant; provided, that all conditions of the permit have been met; or
 - (b) annual volume of 7,000 cubic yards (one cubic yard equals one and one-half tons) or less; and
- (3) any proposed batch plant use shall not exceed 24 months.

(B) The director may also set basic conditions of approval for issuance of the administrative permit, as appropriate for the area in which the development is sited, for the following:

- (1) setbacks (no less than minimum setback requirements as established in MSB 17.55; however, may be increased as appropriate for existing surrounding development);
- (2) visual screening, noise mitigation, lighting restrictions and roads/access restrictions as appropriate for surrounding development and in accordance with development standards referenced in MSB 17.28.060, site development standards; and
- (3) road maintenance may be required by permittee.

(Ord. 16-102, § 11, 2016; Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.050 PLANNING COMMISSION APPROVAL.

(A) *[Repealed by Ord. 16-102, § 12, 2016]*

(B) The commission may set conditions of approval for issuance of the conditional use permit, as appropriate for the area in which the development is sited, for the following:

- (1) setbacks (no less than minimum setback requirements as established in MSB 17.55; however, may be increased as appropriate for existing surrounding development);
- (2) visual screening, noise mitigation, lighting restrictions and roads/access restrictions as appropriate for surrounding development and in accordance with development standards referenced in MSB 17.28.060,

site development standards;

(3) road maintenance may be required of the permittee; and

(4) length of time of operation and location of batch plants.

(Ord. 16-102, § 12, 2016: Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.055 REQUIRED COMPLIANCE WITH STATE AND FEDERAL LAWS.

(A) All applicants for permits for earth materials extraction are required to demonstrate compliance with state and federal law. Prior to final approval of the permit, the applicant or agent shall provide written documentation of compliance with the following:

(1) mining license as required by the Alaska State Department of Revenue, pursuant to A.S. 43.65;

(2) mining permit as required by the Alaska State Department of Natural Resources (ADNR) if extraction activities are to take place on state land;

(3) reclamation plan as required by ADNR, pursuant to A.S. 27.19;

(4) notice of intent for construction general permit or multi-sector general permit and storm water pollution prevention plan, and other associated permits or plans required by the Department of Environmental Conservation (DEC) pursuant to the Alaska Pollutant Discharge Elimination System (APDES) requirements; and

(5) United States Army Corps of Engineers permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344, if material extraction activity is to take place within wetlands, lakes and streams.

(B) In addition to the requirements in subsection (A) of this section, all activity shall be conducted in compliance with state or federal regulations governing the items listed below. Written documentation of compliance with these regulations is not required. Complaints received by the borough of violations of requirements within this section will be forwarded to the appropriate agency for enforcement.

(1) *Air quality.*

(a) EPA air quality control permit is required for asphalt plants and crushers.

(b) ADNR burn permit is required for brush or stump burning. Combustibles shall be stockpiled separate from noncombustibles, and burn permit requirements shall be followed.

(c) ADEC dust control and air quality regulations pertaining to burning activities shall be followed.

(2) *Water quality.*

(a) EPA or ADEC regulations controlling spills, spill reporting, storage and disposal of oil, anti-freeze and hydrocarbons.

(3) *Use and storage of hazardous materials, waste and explosives.*

(a) EPA regulations controlling use of hazardous materials shall be followed.

(b) Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (FBATFE) regulations shall be followed when storing or using explosives.

(C) Failure to comply with any of the requirements in subsections (A) and (B) of this section is a violation of the permit, and is subject to enforcement pursuant to MSB 17.30.140.

(IM 07-289, page 2 (part), presented 11-13-07; Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.060 GENERAL STANDARDS FOR APPROVAL.

(A) In granting an administrative permit or a conditional use permit, the director or commission must make the following findings:

- (1) that the use is not inconsistent with the applicable comprehensive plan;
- (2) that the use will preserve the value, spirit, character, and integrity of the surrounding area;
- (3) that the applicant has met all other requirements of this chapter pertaining to the use in question;
- (4) that granting the permit will not be harmful to the public health, safety and general welfare; and
- (5) that the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in MSB 17.30.050(B).

(Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.110 AMENDMENT OF CONDITIONAL USE PERMIT.

(A) A conditional use permit may be amended by application to the department and approval by the planning commission. The applicant shall provide the department an update of all information required in the original permit, shall describe the proposed changes in detail, and shall provide copies of any additional state and federal permits which the amendments may require. The notice and hearing provisions of this chapter shall apply to an amendment to the permit.

(Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.120 TRANSFER OF A CONDITIONAL USE PERMIT.

(A) A permit may be transferred subject to the conditions of MSB 17.60.180.

(Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.130 TERMINATION OF PERMIT.

(A) A permit shall terminate under this chapter subject to the conditions in MSB 17.60.190.

(Ord. 05-124(SUB)(AM), § 2 (part), 2005)

17.30.140 VIOLATIONS, ENFORCEMENT, AND PENALTIES.

(A) Unless otherwise specified, any violation of this chapter is an infraction.

(B) It is a violation to conduct commercial earth material extraction activities without a permit issued under this chapter unless designated as an interim materials district or as a pre-existing legal nonconforming use in accordance with MSB 17.28 or MSB 17.30.025.

(C) It is a violation to operate with a permit issued under this chapter but in violation of any criteria or condition which was necessary for the issuance of the permit.

(D) Enforcement of the provisions of this chapter and associated penalties shall be consistent with the terms and conditions of MSB 1.45.

(Ord. 11-153, § 17, 2011; Ord. 05-124(SUB)(AM), § 2 (part), 2005)

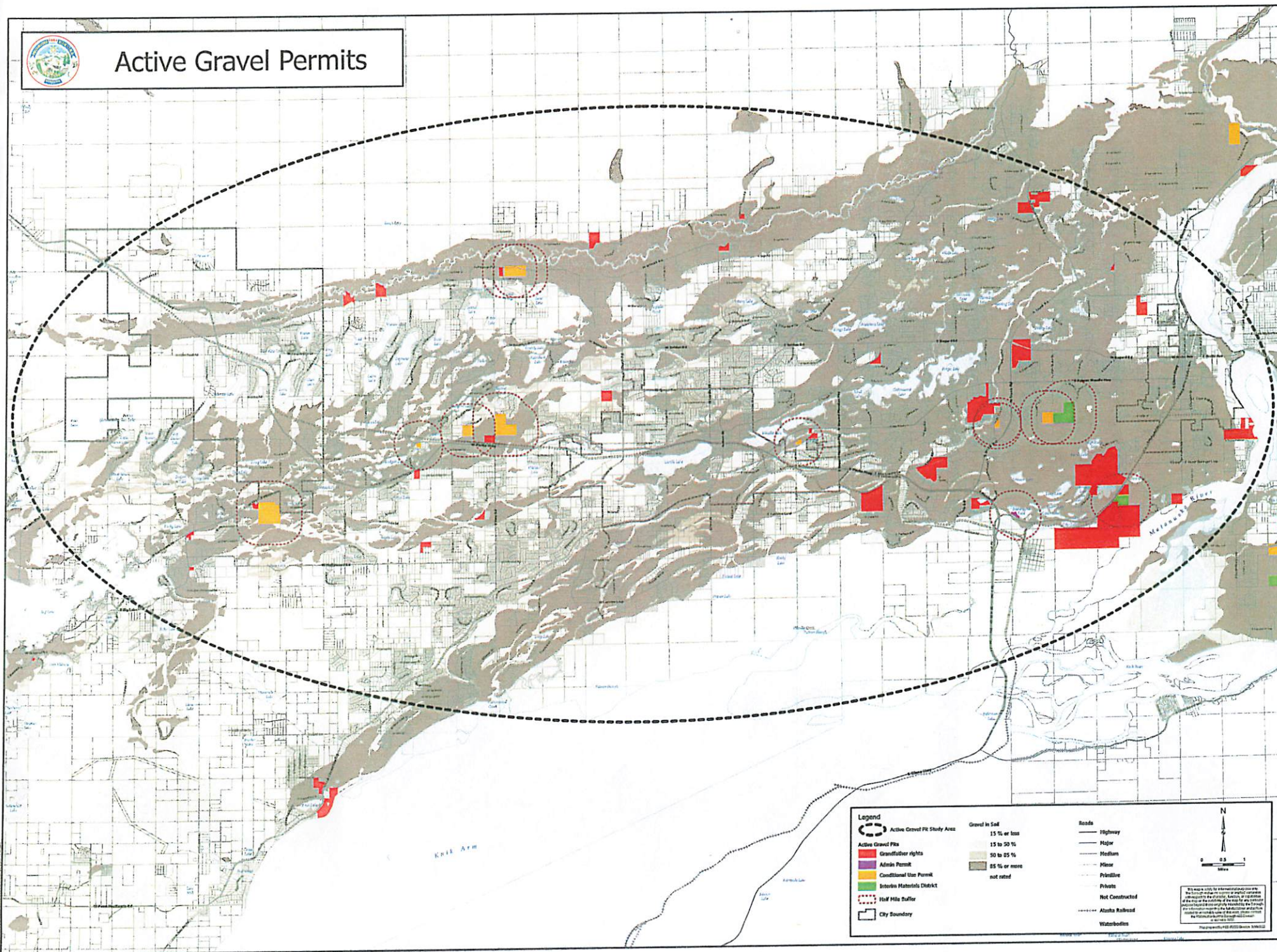
17.30.150 APPEAL PROCEDURES.

(A) The provisions of MSB 15.39 govern appeals from a decision of the planning commission granting, denying, modifying, or revoking a conditional use permit under this chapter. The provisions of MSB 15.39 govern an appeal of a planning department enforcement action or decision.

(Ord. 05-124(SUB)(AM), § 2 (part), 2005)



Active Gravel Permits



The changes to this amendment are highlighted in yellow below.

Assemblymember Yundt

AMENDMENT OR 22-131

The ordinance is attached showing the below changes.

I MOVE to amend Ordinance 22-131 as follows:

- Title – by striking the words “allow for an exemption of” and insert in their place the words “provide for a registration process of gravel extraction of 2,001 to;”
- Section 2, MSB 17.30.020(E), leave in the words “or administrative permit.”
- Section 1, MSB 17.30.020(H), do not delete the words “an administrative or;”
- Change the existing section (H) to section (G) and section (G) to section (H);
- Insert the words “Article 1 – Up to 2,000 Cubic Yards, above the new section (H);
- Insert Article II to read as follows:

ARTICLE II – 2,001 TO 10,000 Cubic Yards Annually

(I) Extraction of 2,001 to 10,000 cubic yards on any parcel requires
annual registration with the Borough for a fee of \$100. Annual registrations
cannot be filed more than 5 times. The following requirements apply:

(1) Hours of operation:

a. Monday through Friday, 8 a.m. to 6 p.m.

b. Saturday and Sunday, 9 a.m. to 5 p.m.

(2) The extraction site shall not be within one-half mile from
any other registered or permitted extraction site, excluding pits with
preexisting legal non-conforming status.

(3) Only extraction and screening of gravel products is
allowed. Further processing is prohibited.

(4) Extraction may not occur within 100 feet of any
waterbody or within 4 feet of the seasonal high water table.

(5) Slopes shall be graded to attain a maximum 50 percent
slope or the natural stabilized angle of repose of the existing earth material.

Introduced:
Public Hearing:
Action:

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 22-131**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.30 CONDITIONAL USE PERMIT FOR EARTH MATERIALS EXTRACTION ACTIVITIES TO ~~ALLOW FOR AN EXEMPTION OF~~ **PROVIDE FOR A REGISTRATION PROCESS OF GRAVEL EXTRACTION OF 2,001 TO 10,000 CUBIC YARDS** ANNUALLY WITHOUT A PERMIT.

WHEREAS, the intent and rationale for this ordinance are found in the accompanying Informational Memorandum No. 22-003.

BE IT ENACTED:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Borough Code.

Section 2. Amendment of section. MSB 17.30.020 is hereby amended to read as follows:

17.30.020 APPLICABILITY.

(A) This chapter applies to all private and public ~~lands in the borough except where the use is prohibited~~ by ordinance within a special land use district. Where a special land use district regulates earth materials extraction as a conditional use, the granting of a conditional use permit shall require compliance with this chapter. Where this chapter is in conflict with the conditional use permit conditions of the special land use district, the more restrictive conditions shall

operations proceed to within four feet of the water table.

ARTICLE I - Up to 2,000 Cubic Yards

(H) Extraction of 2,000 ~~10,000~~ cubic yards or less annually on any one parcel does not require an administrative or registration or a conditional use permit. Where a site is exempt under this subsection the exemption is revoked if operations proceed within four feet of the seasonal high water table.

ARTICLE II - 2,001 TO 10,000 Cubic Yards Annually

(I) Extraction of 2,001 to 10,000 cubic yards on any parcel requires annual registration with the Borough for a fee of \$100. Annual registrations cannot be filed more than 5 times. The following requirements apply:

(1) Hours of operation:

a. Monday through Friday, 8 a.m. to 6 p.m.

b. Saturday and Sunday, 9 a.m. to 5 p.m.

(2) The extraction site shall not be within one-half mile from any other registered or permitted extraction site, excluding pits with pre-existing legal non-conforming status.

(3) Only extraction and screening of gravel products is allowed. Further processing is prohibited.

(4) Extraction may not occur within 100 feet

(1) administrative permit - a use permit approved by the director with public notification may be issued if the proposed development meets the minimum thresholds for an administrative decision.

(2) Conditional use permit - a conditional use permit granted by the planning commission after a public hearing, when the proposed development goes beyond the minimum threshold for an administrative permit.

Section 4. Amendment of section. MSB 17.30.035 is amended as follows:

17.30.035 APPLICATION PROCEDURES.

(A) For all permits required under this chapter, the following shall be submitted to the department:

(1) a completed application form provided by the department;

(2) a site development plan in accordance with MSB 17.28.050 and 17.28.060;

(3) the fee in the amount designated in MSB 17.99; and

(4) reclamation plan in accordance with MSB 17.28.063.

(B) The director may reject any application which is incomplete or fails to meet the requirements of this section. The rejection shall be in writing and shall

calendar days from the date of public hearing, unless the applicant agrees to a time extension. In the granting of a conditional use permit, the planning commission shall state in writing the conditions of approval of the permit.

Section 5. Amendment of section. MSB 17.30.040 is amended as follows:

17.30.040 criteria to qualify for an administrative permit.

(A) to qualify for an administrative permit, all of the following criteria must be met:

(1) [repealed by ord. 16-102, § 11, 2016]

(2) extraction activities subject to the permit shall not exceed:

(a) twenty-four months. a one-time extension of six months may be granted administratively upon written request from the applicant; provided, that all conditions of the permit have been met; [OR]

[(B) ANNUAL VOLUME OF 7,000 CUBIC YARDS
(ONE CUBIC YARD EQUALS ONE AND ONE-HALF TONS) OR LESS;
AND

(3) ANY PROPOSED BATCH PLANT USE SHALL NOT EXCEED 24 MONTHS.]

(B) The director may also set basic conditions of approval for issuance of the administrative permit, as

(3) that the applicant has met all other requirements of this chapter pertaining to the use in question;

(4) that granting the permit will not be harmful to the public health, safety and general welfare; and

(5) that the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in MSB 17.30.050(B).

Section 7. Amendment of section. MSB 17.30.150 is amended as follows:

17.30.150 APPEAL PROCEDURES.

(A) The provisions of MSB 15.39 govern appeals from a decision of the planning commission granting, denying, modifying, or revoking a conditional use permit under this chapter. The provisions of MSB 15.39 govern an appeal of a planning department enforcement action or decision.

Section 8. Effective date. This ordinance shall take effect May 2, 2023. ~~upon adoption.~~

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2022.

EDNA DeVRIES, Borough Mayor

I MOVE to amend OR 22-131, Section 2, Article II, by inserting (I)(7) to read: Proposed developments may flatten topographical features to a useable surface, but shall not create a hole or depression in a manner that limits future development potential.

This amendment can only be moved when Assemblymember Yundts amendment is on the floor or has passed.

ASSEMBLYMEMBER NOWERS AMENDMENT OR 22-131

I move to amend Ordinance 22-131 as follows:

To insert a new standard under Article II to read as follows:

(I)(7) Visual screening, noise mitigation, lighting restrictions and road/access restrictions will be appropriate for surrounding development and in accordance with development standards referenced in MSB 17.28.060

To insert new sections (M) and (N) under Article II to read as follows:

(M) Operations for extraction activities registered under this section may not commence until the registration has been acknowledged and approved by the planning director.

Before issuing approval or denial or a registration, the planning director will:

(i) issue notification to surrounding property owners in accordance with MSB 17.03 public notification, except the notification will be one half mile; and

(ii) hold a public hearing within 30 days of receiving a signed registration statement to consider the applicant's ability to comply with the standards of operations.

(N) In issuing a decision acknowledging approving a registration, the planning director shall set visual screening, noise mitigation, lighting restrictions and road/access restrictions as appropriate for surrounding development and in accordance with development standards referenced in MSB 17.28.060. A decision by the planning director approving or denying registration is appealable as per MSB 15.39.

ASSEMBLYMEMBER McKEE AMENDMENTS OR 22-131

SECONDARY AMENDMENT #1

I move a secondary amendment under Article II Subsection (I)(1) to delete the words “Saturday and Sunday, 9 a.m. to 5 p.m.”

The effect of this amendment will be to not allow for operations on the weekends.

SECONDARY AMENDMENT #2

I move a secondary amendment under Article II Subsection (I)(2) to delete the words “one-half mile” and replace with the words “one mile.”

The effect of this amendment will be to require a separation distance of one mile from other registered or permitted pits.

SECONDARY AMENDMENT #3

I move a secondary amendment under Article II Subsection (I) to add a new part (7) to read:

(I)(7) Upon expiration of the registration, the site is required to be reclaimed in accordance with the reclamation standards of MSB 17.28.067.

The effect of this amendment is to require that after a permit expires, the site is reclaimed as per the standards already in Borough code.