

MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION AGENDA

Edna DeVries, Mayor

PLANNING COMMISSION
Doug Glenn, District 1
Richard Allen, District 2
Patricia Chesbro, District 3
Vacant, District 4
Chris Elder, District 5
Stafford Glashan, District 6
Vacant, District 7



Michael Brown, Borough Manager

PLANNING & LAND USE
DEPARTMENT
Alex Strawn, Planning & Land Use Director
Kim Sollien, Planning Services Manager
Jason Ortiz, Development Services
Manager
Fred Wagner, Platting Officer
Karol Riese, Planning Clerk

*Assembly Chambers of the
Dorothy Swanda Jones Building
350 E. Dahlia Avenue, Palmer*

January 17, 2022
REGULAR MEETING
6:00 p.m.

Ways to participate in the meeting:

IN PERSON: Should you wish to testify in person, please adhere to a 6-foot distance between yourself and others.

IN WRITING: You can submit written comments to the Planning Commission Clerk at msb.planning.commission@matsugov.us.

TELEPHONIC TESTIMONY:

(We are having intermittent technical difficulties with our software; if you would like to submit comments, please submit comments to the email address above by the Friday before the meeting.)

- Dial 1-855-290-3803; you will hear “joining conference” when you are admitted to the meeting.
- You will be automatically muted and able to listen to the meeting.
- When the Chair announces audience participation or a public hearing you would like to speak to, press *3; you will hear, “Your hand has been raised.” (There may be a delay, please be patient with the system.)
- When it is your turn to testify, you will hear, “Your line has been unmuted.”
- State your name for the record, spell your last name, and provide your testimony.

Ways to observe the meeting:

FACEBOOK LIVE at www.facebook.com/MatSuBorough

- Questions or comments will **not** be answered; please call the number above if you have a comment or concern.

I. CALL TO ORDER, ROLL CALL, AND DETERMINATION OF QUORUM

II. APPROVAL OF AGENDA

III. ELECTIONS

A. CHAIR

B. VICE-CHAIR

IV. PLEDGE OF ALLEGIANCE

V. CONSENT AGENDA

A. MINUTES

Regular Meeting Minutes: 12/06/21

B. INTRODUCTION FOR PUBLIC HEARING: QUASI-JUDICIAL MATTERS

C. INTRODUCTION FOR PUBLIC HEARING: LEGISLATIVE MATTERS

Resolution PC 22-01 A Resolution of the Matanuska-Susitna Borough Planning Commission recommending approval of an ordinance repealing 17.68 Outdoor Shooting Facilities. Public Hearing: February 7, 2022, (Staff: Jason Ortiz, Development Services Manager).

Resolution PC 22-02 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 20,000 cubic yards annually without a permit. Public Hearing: February 7, 2022, (Staff: Jason Ortiz, Development Services Manager).

Resolution PC 22-03 A Resolution of the Matanuska-Susitna Borough Planning Commission recommending approval of an ordinance exempting the Borough Landfill from earth materials extraction permit code requirements to allow gravel mining on the property, which has been designated as reserve use lands – Sanitary Landfill. Public Hearing: February 7, 2022, (Staff: Jason Ortiz, Development Services Manager).

VI. COMMITTEE REPORTS

VII. AGENCY/STAFF REPORTS

VIII. LAND USE CLASSIFICATIONS

IX. AUDIENCE PARTICIPATION (*three minutes per person, for items not scheduled for public hearing*)

- X. PUBLIC HEARING: QUASI-JUDICIAL MATTERS (*Commission members may not receive or engage in ex-parte contact with the applicant, other parties interested in the application, or members of the public concerning the application or issues presented in the application*).
- XI. PUBLIC HEARING: LEGISLATIVE MATTERS
- XII. CORRESPONDENCE & INFORMATION
 - A. Board of Adjustment and Appeals decision on Case No. 21-05; Appeal of Planning Commission Resolution No. 21-19, Denial of a Conditional Use Permit for Extraction of Earth Materials at Tax Parcel C001, Township 17 North, Range 2 West, Section 10, Seward Meridian, aka Sylvan Road Gravel Pit. (Appellants: Trust Land Office and Colaska dba QAP). **Decision: The BOAA affirmed the Planning Commission's decision in denying the conditional use permit.**
- XIII. UNFINISHED BUSINESS
- XIV. NEW BUSINESS
- XV. COMMISSION BUSINESS:
 - A. Upcoming Planning Commission Agenda Items
- XVI. DIRECTOR AND COMMISSIONER COMMENTS
- XVII. ADJOURNMENT (*Mandatory Midnight*)

Disabled persons needing reasonable accommodation in order to participate at a Planning Commission Meeting should contact the Borough ADA Coordinator at 861-8432 at least one week in advance of the meeting.

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MINUTES

December 6, 2020

(Pages 5 - 12)

MINUTES

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION MINUTES**

**REGULAR MEETING
December 6, 2021**

The regular meeting of the Matanuska-Susitna Borough Planning Commission was held on December 6, 2021, at the Matanuska-Susitna Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 6:00 p.m. by Chair Colleen Vague.

I. CALL TO ORDER, ROLL CALL, AND DETERMINATION OF QUORUM

Planning Commission members present and establishing a quorum:

Mr. Richard Allen, Assembly District #2
Ms. Patricia Chesbro, Assembly District #3
Ms. Colleen Vague, Assembly District #4, Chair
Mr. Stafford Glashan, Assembly District #6*

Planning Commission members absent and excused were:

Ms. Mary Anderson, Assembly District #1, Vice-Chair
Mr. Chris Elder, Assembly District #5
Mr. Sassan Mossanen, Assembly District #7

Staff in attendance:

Mr. Jason Ortiz, Development Services Manager
Ms. Shannon Bodolay, Assistant Borough Attorney
Mr. Joseph Metzger, LMD Specialist
Ms. Nancy Cameron, LMD Agent
Ms. Karol Riese, Planning Commission Clerk
Mr. Caleb Buist, Help Desk Specialist

*Indicates that the individual attended telephonically.

II. APPROVAL OF AGENDA

Chair Vague inquired if there were any changes to the agenda.

GENERAL CONSENT: The agenda was approved without objection.

III. PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by Nancy Cameron.

IV. CONSENT AGENDA

- A. Minutes
November 18, 2021, regular meeting minutes
- B. INTRODUCTION FOR PUBLIC HEARING: QUASI-JUDICIAL MATTERS
(None)
- C. INTRODUCTION FOR PUBLIC HEARING: LEGISLATIVE MATTERS
(None)

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION MINUTES**

**REGULAR MEETING
December 6, 2021**

GENERAL CONSENT: The consent agenda was approved without objection.

V. COMMITTEE REPORTS

(There were no committee reports.)

VI. AGENCY/STAFF REPORTS

(There were no Agency/Staff Reports.)

VII. LAND USE CLASSIFICATIONS

Resolution PC 21-31

A Resolution of the Matanuska-Susitna Borough Planning Commission recommending Assembly approval of Land Classification for six Borough-owned parcels for purpose of identifying and guiding future use and development of said parcels (MSB007763/MSB007766/MSB007767) (Staff: Nancy Cameron, Land Management Agent).

Chair Vague read the resolution title into the record.

Ms. Cameron provided a staff report:

- staff recommended approval of the resolution with conditions.

Commissioners questioned staff regarding:

- Caswell property

Chair Vague opened the public hearing.

There being no one to be heard, Chair Vague closed the public hearing and discussion moved to the Planning Commission.

MOTION: Commissioner Chesbro moved to approve Resolution PC 21-31. The motion was seconded.

Discussion ensued

VOTE: The motion passed without objection.

VIII. AUDIENCE PARTICIPATION (Three minutes per person.)

(no one to be heard)

IX. PUBLIC HEARING: QUASI-JUDICIAL MATTERS

(none)

X. PUBLIC HEARING LEGISLATIVE MATTERS

Resolution PC 21-30

Jonesville Public Use Area Management Plan: A Resolution supporting Assembly adoption under MSB 15.24.030(B) (Staff: Joe Metzger, Land Management Specialist).

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION MINUTES**

**REGULAR MEETING
December 6, 2021**

Chair Vague read the resolution title into the record.

Mr. Metzger provided a staff report:

- staff recommended approval of the resolution.

Commissioners questioned staff regarding:

- interviews or polls that were done in the valley
- consider vehicle use sizes

Chair Vague opened the public hearing.

The following person spoke in favor of Resolution PC 21-30: Brian Largent

The following person spoke against Resolution PC 21-30: Esther Huddleston

Chair Vague invited staff to respond to questions and statements from the audience.

Mr. Metzger responded to questions and statements from members of the audience.

Commissioner Allen asked question: Why did the Assembly sent it back to PC – more public outreach.

Commissioner Vague asked question: This was a similar process to Knik River Management Plan – what has been the ultimate result of the Knik Plan.

Mr. Metzger responded to questions and statements from the Commission.

There being no one else to be heard, Chair Vague closed the public hearing and discussion moved to the Planning Commission.

MOTION: Commissioner Glashan moved to approve Resolution PC 21-30. The motion was seconded.

Discussion ensued

VOTE: The motion passed without objection.

XI. CORRESPONDENCE AND INFORMATION

XII. UNFINISHED BUSINESS

(There was no unfinished business.)

XIII. NEW BUSINESS

(There was no new business.)

XIV. COMMISSION BUSINESS

A. Upcoming Planning Commission Agenda Items *(Staff: Jason Ortiz)*

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION MINUTES**

**REGULAR MEETING
December 6, 2021**

Mr. Ortiz read Proclamation into record for Commissioner Collen Vague; Commissioner Mary Anderson, and Commissioner Sassan Mossanen.

Commission Business was presented, and no comments were noted.

B. Approval of 2022 Planning Commission Meeting Schedule

MOTION: Commissioner Chesbro moved to approve 2022 Planning Commission Meeting Schedule. The motion was seconded.

Discussion ensued

VOTE: The motion passed without objection.

XV. DIRECTOR AND COMMISSIONER COMMENTS

Mr. Ortiz: We appreciate your service (Mary and Sasson are not here but we appreciate all you have done. As a former colleague of yours coming from the Planning Commission, you guys do a lot of work. The new commissioners that are going to be replacing you have a high bar to fill your shoes.

Commissioner Glashan: Classes of motorized trail use have changed recently in the last ten years; jeep clubs and side-by-side, there needs to be some consideration of traditional four-wheeler trails versus side-by-side trails – they require different things – bridge width, etc. if you don't accommodate both like we have seen at Moose Creek and some of the access roads there that were built for four-wheelers and then used by side-by-sides. It defeated the purpose of all the money and effort that went into that area like at the Moose Range. To the Chair, I was told you can't leave until you find a replacement so I hope we have someone new coming on that you have personally selected. I will miss you, it has been fun, but I won't miss being called Commissioner Chesbro.

Commissioner Chesbro: I echo what everyone else said. It has been a very good learning experience, this is not an easy thing, it takes a while to learn ... you, Mary, and Sasson have been very helpful to me as I learn to do better as a commissioner. We definitely will miss you. Commissioner Glashan will make a great chair.

Commissioner Vague: I am working on getting a new commissioner. When I came to the Borough, and I am a newcomer by a lot of people's standards, I have been here about 26 years, and the population was 45-47K people. These kinds of situations, like we have at Jonesville, were not as prevalent at that time because there was more wide open spaces, people did not have to congregate in small areas. They could drive 20 minutes and be in places like Jonesville, so it wasn't a problem as it is now. I think like everything that comes with the kind of rapid, expansive growth that the Borough has seen in the past 26 years. We need to be thinking about the future in a more declarative way. We can't just go: well, people should get to do what they want and slap a CUP on them and go on. I think there needs to be some serious planning, and I am going to say it since it is my last meeting, Zoning. We are well past the time where we have grown to that point, and we can't pretend to be belligerent teenagers anymore as the bedroom community of Anchorage. I think it would improve business and the lives of many people if we set up a structured, organized system

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION MINUTES**

**REGULAR MEETING
December 6, 2021**

so people felt secure as they develop their property. My time on the Borough, I have been on several boards. I have had a lot of fun on this board; I have learned a lot. When I first started, I sat next to an engineer. It is profoundly helpful - I respect what they put on the table. Long-standing community members who know the history of the Borough and what we have gone through, and Mary who is a voracious reader and literally reads every page of the packets. I think as a whole, we don't always agree on everything, and our votes have reflected that and yet we have always been very respectful of others' viewpoints. I think that is part of the reason we have been such a successful board. I don't think a planning department in the state surpasses what our planners do. They are always short-staffed and always provide us with the information we need to do the job. I appreciate everything that you have done.

XVI. ADJOURNMENT

The regular meeting adjourned at 6:55 p.m.

, Planning Commission Chair

ATTEST:

KAROL RIESE, Planning Commission Clerk

Minutes approved: _____

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INTRODUCTION FOR PUBLIC HEARING LEGISLATIVE

Resolution No. PC 22-01

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 20,000 CUBIC YARDS ANNUALLY WITHOUT A PERMIT.

(Pages 13 - 26)

INTRODUCTION FOR PUBLIC HEARING

MATANUSKA-SUSITNA BOROUGH INFORMATION MEMORANDUM IM No. 22-003



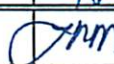

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.30 CONDITIONAL USE PERMIT FOR EARTH MATERIALS EXTRACTION ACTIVITIES TO ALLOW FOR AN EXEMPTION OF 20,000 CUBIC YARDS ANNUALLY WITHOUT A PERMIT.

AGENDA OF: December 7, 2021

ASSEMBLY ACTION:

MANAGER RECOMMENDATION: Refer to Planning Commission for 90 days and thereafter, introduce and set for public hearing.

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER: 

Route To:	Department/Individual	Initials	Remarks
	Originator	NS	for Assemblymember Tew
	Planning Director	J.O.	11/19/2021
	Finance Director		
	Borough Attorney		
	Borough Clerk	 11/29/21	

ATTACHMENT(S): Fiscal Note: YES ___ NO X
Ordinance Serial No. 22-002 (7 pp)

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 20,000 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 and 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 20,000 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 20,000 cubic yards. Therefore the administrative permitting process for earth materials extraction activities will be deleted from the code.

CODE ORDINANCE

Sponsored by: Assemblymember Tew
Introduced:
Public Hearing:
Action:

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 22-002**

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 20,000 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 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] 20,000 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] 20,000 cubic yards or less annually on any one parcel does not require [AN ADMINISTRATIVE 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.

(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.

Section 3. Amendment of section. MSB 17.30.030 is repealed as

follows:

[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.]

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 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] 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.

Section 5. Amendment of section. MSB 17.30.040 is repealed 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 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.]

Section 6. Amendment of section. MSB 17.30.060 is amended as follows:

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).

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 upon adoption.

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

EDNA DeVRIES, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

By: Jason Ortiz
Introduced: January 17, 2022
Public Hearing: February 7, 2022
Action:

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. PC 22-01**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION
RECOMMENDING APPROVAL OF AN ORDINANCE REPEALING 17.68 OUTDOOR
SHOOTING FACILITIES.

WHEREAS, On November 17, 2020 the Matanuska-Susitna Borough
Assembly adopted Ordinance Serial No. 20-025 establishing a
conditional use permitting process for Outdoor Shooting Ranges;
and

WHEREAS, the enactment process of the ordinance garnered
significant attention from the public and much debate; and

WHEREAS, as enacted, MSB 17.68 applies to the entire
Matanuska-Susitna Borough. With the varying and diverse nature of
the Matanuska-Susitna Borough, the "one size fits all" approach
does not work well for more rural and remote locations; and

WHEREAS, a broad brush regulation does not make sense for
most areas of the Matanuska-Susitna Borough and an ordinance
containing regulations could be applied only where the population
density warrants it.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna
Borough Planning Commission hereby recommends adoption of

ordinance 22-001, an ordinance of the Matanuska-Susitna Borough Assembly repealing MSB 17.68 Outdoor Shooting Ranges.

ADOPTED by the Matanuska-Susitna Borough Planning Commission
this ____ day of _____, 2022.

_____, Chair

ATTEST

KAROL RIESE, Planning Clerk

(SEAL)

YES:

NO:

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INTRODUCTION FOR PUBLIC HEARING LEGISLATIVE

Resolution No. PC 22-02

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 20,000 CUBIC YARDS ANNUALLY WITHOUT A PERMIT.

(Pages 27 - 40)

INTRODUCTION FOR PUBLIC HEARING

MATANUSKA-SUSITNA BOROUGH INFORMATION MEMORANDUM IM No. 22-001



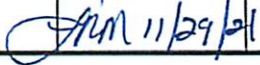

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY
REPEALING MSB 17.68 OUTDOOR SHOOTING FACILITIES.

AGENDA OF: December 7, 2021

ASSEMBLY ACTION:

MANAGER RECOMMENDATION: Refer to Planning Commission for 90 days
and thereafter, introduce and set for public hearing.

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER: 

Route To:	Department/Individual	Initials	Remarks
	Originator	NS	for Assemblymember Sumner
	Planning Director	J.O. (ACTING)	
	Finance Director		
	Borough Attorney		
	Borough Clerk	 11/29/21	

ATTACHMENT(S): Fiscal Note: YES ___ NO X
Ordinance Serial No. 22-001 (1 pp)
MSB 17.68 (6 pp)

SUMMARY STATEMENT: This ordinance is sponsored by Assemblymember
Sumner to repeal MSB 17.68 Outdoor Shooting Facilities.

On November 17, 2020, the Matanuska-Susitna Borough Assembly
adopted Ordinance Serial No. 20-025 with accompanying IM 20-047 to
establish a conditional use permitting process for outdoor
shooting ranges.

The enactment process of the ordinance garnered significant
attention from the public and much debate. As enacted, MSB 17.68
applies to the entire Matanuska-Susitna Borough. With the varying
and diverse nature of the Matanuska-Susitna Borough, the "one size
fits all" approach does not work well for more rural and remote
locations. If at all, an ordinance containing regulations could
be applied only where the population density warrants it. If there

are areas of the Matanuska-Susitna Borough where subdistricts within certain Special Land Use Districts have high density, a proposal could be brought to the Assembly to enact regulations to meet those specific local conditions. However, such a broad brush regulation simply doesn't make sense for most areas of the Matanuska-Susitna Borough.

CHAPTER 17.68: OUTDOOR SHOOTING FACILITIES

Section

[17.68.010 Intent](#)

[17.68.020 Definitions](#)

[17.68.030 Applicability](#)

[17.68.040 Application procedures](#)

[17.68.050 General standards](#)

[17.68.060 Operating standards](#)

[17.68.070 Appeals](#)

[17.68.080 Termination of permit](#)

[17.68.090 Transfer of permit](#)

[17.68.100 Nonconforming uses](#)

[17.68.110 Violations, enforcements, and penalties](#)

17.68.010 INTENT.

(A) It is the intent of this chapter to allow outdoor shooting facilities to operate within the borough while minimizing the likelihood that people, domestic animals, or properties will be jeopardized.

(Ord. 20-025, § 2, 2020)

17.68.020 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"Firing lane" means the expected path of gunfire from the firing position to the target.

"Firing line" means a line parallel to the targets behind which firearms are discharged.

"Firing position (point)" means an area where firearms are discharged, having a specified width and depth that is occupied by a shooter, their equipment and, if appropriate, an instructor.

"Outdoor shooting facility" means real property used for commercial, educational, or nonprofit shooting activities, typically involving rifles, shotguns, pistols, silhouettes, skeet, trap, or black powder.

"Surface danger zone (SDZ)" means a depiction of the mathematically predicted area a projectile will return to earth either by direct fire or by ricochet. The SDZ is the area extending from a firing point to a distance downrange based on the projectiles fired.

(Ord. 20-025, § 2, 2020)

17.68.030 APPLICABILITY.

(A) This chapter applies in all areas of the borough including special land use districts and residential land use districts. Where this chapter is in conflict with the conditions of a special land use district or residential land use district, the most restrictive conditions shall apply.

(B) This chapter does not apply within the cities of Houston, Palmer, or Wasilla.

(C) This chapter applies to all outdoor shooting facilities except outdoor shooting facilities that are used exclusively for:

- (1) archery or air guns;
- (2) law enforcement or United States military purposes; or
- (3) fully enclosed facilities designed to offer a completely controlled shooting environment.

(D) This chapter does not regulate the discharge of firearms on private property where the property is not open to the public on an education, nonprofit, or membership basis.

(Ord. 20-025, § 2, 2020)

17.68.040 APPLICATION PROCEDURES.

(A) An application for an outdoor shooting facility permit may be initiated by a property owner or the owner's authorized agent and shall be filed on a form provided by the borough.

- (1) The application for an outdoor shooting facility permit shall be accompanied by an appropriate filing fee as established by the assembly, payable to the borough.
- (2) The application shall include the following:
 - (a) a certified site plan drawn to scale showing a complete layout of the range including location of backstops, firing lanes, firing positions, firing lines, side berms, target areas, and baffles;

- (b) identification of all buildings within 1,000 feet of the firing positions;
- (c) dimensions and construction materials of all backstops, baffles, firing lanes, and side berms;
- (d) maximum caliber of firearm to be allowed at the range, if any;
- (e) certification by a professional civil engineer or other qualified professional registered in the state of Alaska under AS 08.48 that the facility is designed to meet the requirements of MSB 17.68.050(A)(3) and (4);
- (f) a site-specific environmental stewardship plan for managing shooting-associated materials, in accordance with EPA best management practices; and
- (g) surface danger zones as determined by a professional engineer registered in the state of Alaska under AS 08.48.

(B) The director or designated staff shall determine whether an application for an outdoor shooting facility is complete. The director shall provide the applicant with a written explanation of application deficiencies within ten working days of the date the application is received.

(C) Notification for outdoor shooting facilities shall be in accordance with MSB 17.03, Public Notification, except that the notification area will be one-half mile.

(D) Within 45 calendar days of receipt of a complete application, the director shall approve the permit upon determination that the standards of this chapter have been met.

(Ord. 20-025, § 2, 2020)

17.68.050 GENERAL STANDARDS.

(A) In granting a permit under this chapter, the director shall make findings that all of the following standards have been met:

- (1) Firing positions are located at least 1,000 feet from all habitable buildings which are not on the same parcel.
 - (a) This standard only applies to buildings which were in existence at the time that application was made for the outdoor shooting facility.
- (2) There are no habitable buildings within the surface danger zone.
- (3) The proposed backstops are:

- (a) impenetrable to all calibers used at the facility;
 - (b) designed to contain all projectiles within the designated shooting area;
 - (c) constructed of material that does not cause unintended ricochet of projectiles; and
 - (d) connected to each side berm.
- (4) The proposed side berms shall:
- (a) be constructed parallel to firing lanes;
 - (b) extend the length of the firing lanes, from the backstop to the firing line;
 - (c) be a minimum of eight feet in height;
 - (d) be designed to contain all projectiles within the designated shooting area;
 - (e) be impenetrable to all calibers used at the facility;
 - (f) be constructed of material that does not cause unintended ricochet of projectiles.
- (5) The director may waive the requirement for side berms if it is determined they are not necessary because of natural topographic features.
- (6) Shotgun-only ranges are exempt from subsections (A)(3) through (5) of this section.
- (7) Outdoor shooting facilities may not be designed in a manner that directs projectiles into or over waterbodies or wetlands.

(Ord. 20-025, § 2, 2020)

17.68.060 OPERATING STANDARDS.

- (A) Hours of operation shall not to exceed 8 a.m. to 9 p.m.
- (B) No sound resulting from the outdoor shooting facility is allowed to exceed 90 dB(a) as measured at the nearest building within the boundary of the property of the receiving land.

(Ord. 20-025, § 2, 2020)

17.68.070 APPEALS.

- (A) Appeals from a decision of the director granting or denying a permit under this chapter shall be filed and conducted in accordance with MSB 15.39.

(Ord. 20-025, § 2, 2020)

17.68.080 TERMINATION OF PERMIT.

(A) Except as otherwise specified by this code, a permit issued under this chapter will become null and void under the following conditions:

- (1) notification of termination of the permit for failure to comply with an order to correct violations of a permit;
- (2) failure to initiate the use for which the permit was issued within five years of the date of the permit issuance;
- (3) cessation of the use for which the permit was issued for a period exceeding five consecutive years.

(Ord. 20-025, § 2, 2020)

17.68.090 TRANSFER OF PERMIT.

(A) Except as otherwise specified by this code, the privileges and requirements of a permit issued under this chapter shall run with the land.

(B) Within 90 days of recording the transfer of ownership of the subject land, the new owner must provide written notification and a signed acknowledgment that the new owner assumes responsibility for compliance with the requirements of the permit.

(Ord. 20-025, § 2, 2020)

17.68.100 NONCONFORMING USES.

(A) Within the borough there may be commercial outdoor shooting facilities that have commenced actual construction or are in existence as of the effective date of the ordinance codified in this chapter. Such facilities which were lawful before the effective date of the ordinance codified in this chapter, but which would otherwise be prohibited, regulated or restricted under this chapter, are allowed to continue but shall not be expanded except as provided in this chapter.

(B) No nonconforming use shall be constructed or operated except in accordance with these regulations, except to the extent it was in existence or under actual construction as of the effective date of the ordinance codified herein or amendment thereto.

(Ord. 20-025, § 2, 2020)

17.68.110 VIOLATIONS, ENFORCEMENTS, AND PENALTIES.

(A) Remedies, enforcement actions, and penalties shall be consistent with the terms and provisions of MSB

1.45.

(B) In addition to other applicable penalties, failure to correct the violation of this code, after reasonable notice, may result in revocation of the permit.

(C) Complaints received by the borough of violations of state or federal law will be forwarded to the appropriate agency for enforcement.

(D) Authorized representatives of the borough shall be allowed to inspect the site and related records at reasonable times for the purpose of monitoring compliance with all permit conditions.

(E) The permittee shall assist and cooperate with authorized inspections upon reasonable notice from the borough.

(Ord. 20-025, § 2, 2020)

CODE ORDINANCE

Sponsored by: Assemblymember Sumner
Introduced:
Public Hearing:
Action:

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 22-001**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY REPEALING
MSB 17.68, OUTDOOR SHOOTING FACILITIES.

WHEREAS, the intent and rationale for this ordinance are found
in the accompanying Informational Memorandum No. 22-001.

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. Repeal of section. MSB 17.68 Outdoor Shooting
Facilities is hereby repealed.

Section 3. Effective date. This ordinance shall take effect
upon adoption.

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

EDNA DeVRIES, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

By: Jason Ortiz
Introduced: January 17, 2022
Public Hearing: February 7, 2022
Action:

MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. PC 22-02

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 20,000 CUBIC YARDS ANNUALLY WITHOUT A PERMIT.

WHEREAS, Currently, MSB 17.30 regulates earth materials extraction activities; and

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

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

WHEREAS, 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; 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, material prices will be lower which will benefit everyone in our community as we continue to experience the highest population growth rate in Alaska; and

WHEREAS, extraction activities which exceed an annual volume of 20,000 cubic yards should be required to obtain a conditional use permit from the Matanuska-Susitna Borough Planning Commission, regardless of duration; and

WHEREAS, earth materials extraction operations that do not extract 20,000 cubic yards annually should be exempt from MSB permitting requirements.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby recommends approval

ADOPTED by the Matanuska-Susitna Borough Planning Commission this ____ day of _____, 2022.

_____, Chair

ATTEST

KAROL RIESE, Planning Clerk

(SEAL)

YES:

NO:

DRAFT

INTRODUCTION FOR PUBLIC HEARING LEGISLATIVE

Resolution No. PC 22-03

**A RESOLUTION OF THE MATANUSKA-SUSITNA
BOROUGH PLANNING COMMISSION RECOMMENDING
APPROVAL OF AN ORDINANCE REPEALING 17.68
OUTDOOR SHOOTING FACILITIES.**

(Pages 41 -50)

INTRODUCTION FOR PUBLIC HEARING

MATANUSKA-SUSITNA BOROUGH INFORMATION MEMORANDUM IM No. 22-004

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY EXEMPTING THE BOROUGH LANDFILL FROM EARTH MATERIALS EXTRACTION PERMIT CODE REQUIREMENTS TO ALLOW GRAVEL MINING ON THE PROPERTY, WHICH HAS BEEN DESIGNATED AS RESERVE USE LANDS - SANITARY LANDFILL.



AGENDA OF: December 7, 2021

ASSEMBLY ACTION:

MANAGER RECOMMENDATION: Refer to Planning Commission for 90 days and thereafter, introduce, and set for public hearing.

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER:



Route To:	Department/Individual	Initials	Remarks
	Originator	DM DM	For: Assebmber Sumner
	Planning		
	Finance	CV	
	Borough Attorney	BS	
	Borough Clerk		

ATTACHMENT (S) : Fiscal Note: YES ____ NO X
Ordinance Serial No. 22-003 (2 pp)

SUMMARY STATEMENT: Matanuska-Susitna Borough (MSB) Planning Department seeks the support of the Assembly to exempt the Borough landfill from existing code requirements related to gravel mining on the property designated as Reserve-use Lands - Sanitary Landfill in 1989 in Resolution Serial No. 89-182. The exemption will provide authority to execute efficient cell construction and gravel disposal necessary for the operation of the landfill and will save an average of approximately one million dollars every two years or more than \$50 million over the useful life of the facility.

The ability to economically construct cells and manage gravel within the Palmer Central Landfill has a Borough-wide impact. Granting the Solid Waste Division the authority to manage excess gravel through material sales significantly reduces the capital infrastructure and operating costs of the landfill, which helps

keep waste disposal fees low.

Mining one cell at a time with separate permits and contracts is inefficient and more costly than systematically excavating and disposing of excess material. Authority to continuously dispose of the excess gravel allows a value-producing alternative to the landfill development process. Savings from gravel sales generate a \$2 to \$3 million reduction in the construction cost of each landfill cell. These sales help the Assembly slow the growth of disposal fees and provide cost savings to every resident, business, government and non-government organization in the Borough.

Recent events where obtaining small gravel mining permits was required by code resulted in the loss of a contract estimated to have a remaining savings value of over \$4.2 million. In 2016, the Land Management Division, at the request of the Solid Waste Division, put forth a request for an Interim Materials District (IMD) (see Ordinance Serial No. 16-090, IM No. 16-128) encompassing an area that would allow excavations to take place creating a new Construction and Demolition (C&D) cell (C&D Cell 2) and the next two Municipal Solid Waste (MSW) cells.

The IMD includes only a portion of the Central Landfill, effectively removing an area already approved by the Assembly and permitted by the State of Alaska for landfill use. Mining the remaining landfill cells would provide a construction cost savings and would earn gravel sales. Additionally, gravel reject, used extensively at the landfill for waste cover and road repair, could be mined and stockpiled as a valuable and useful material, saving additional money over time.

Should the Assembly waive the permit requirements for the Central Landfill, it would retain the authority to oversee cell construction and gravel disposal at the landfill through the contract award process. This action keeps decisions that impact every resident and business in the Borough at the Assembly level rather than allowing such wide-reaching decisions to be made at a lower level.

The Solid Waste Division will continue to develop the landfill property with cost efficiency, low impact on our neighbors and trail protection as top priorities. Costs continue to rise in the waste disposal business as regulatory requirements increase and as population growth results in more demand for waste disposal. Authorizing cost-efficient cell construction with excess gravel disposal will help reduce costs and keep rates low.

CODE ORDINANCE

Sponsored by: Assemblymember Sumner
Introduced:
Public Hearing:
Action:

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 22-003**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.30.020, CONDITIONAL USE PERMIT (CUP) FOR EARTH MATERIAL EXTRACTION ACTIVITIES (APPLICABILITY), TO EXCLUDE THE CUP REQUIREMENT WITHIN THE BOUNDARIES OF THE MSB CENTRAL LANDFILL.

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 as follows:

(I) This chapter does not apply within the boundaries of the Central Landfill as defined by MSB Resolution Serial No. 89-182.

Section 3. Repeal of subsection. MSB 17.28.090(12) is hereby repealed in its entirety.

[(12) CENTRAL LANDFILL, TOWNSHIP 17 NORTH, RANGE 01 EAST, SEWARD MERIDIAN, ALASKA, SECTION 1: SOUTH 1/2 SOUTHWEST 1/4, NORTHEAST 1/4 SOUTHWEST 1/4, CONTAINING 120 ACRES, MORE OR LESS. A PORTION OF THE DESCRIBED PARCEL NO. 2 ON WAIVER RESOLUTION APPROVED AND ADOPTED BY THE MATANUSKA-SUSITNA BOROUGH PLATTING BOARD ON OCTOBER 16, 1986, AS PLAT 87-6W.]

Section 4. Effective date. This ordinance shall take effect upon adoption.

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

EDNA DEVRIES, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

By: Jason Ortiz
Introduced: January 17, 2022
Public Hearing: February 7, 2022
Action:

MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. PC 22-03

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION RECOMMENDING APPROVAL OF AN ORDINANCE EXEMPTING THE BOROUGH LANDFILL FROM EARTH MATERIALS EXTRACTION PERMIT CODE REQUIREMENTS TO ALLOW GRAVEL MINING ON THE PROPERTY, WHICH HAS BEEN DESIGNATED AS RESERVE USE LANDS - SANITARY LANDFILL.

WHEREAS, exempting the landfill from permitting requirements for gravel extraction will provide authority to execute efficient cell construction and gravel disposal necessary for the operation of the landfill and will save an average of approximately one million dollars every two years or more than \$50 million over the useful life of the facility; and

WHEREAS, the ability to economically construct cells and manage gravel within the Palmer Central Landfill has a Borough-wide impact; and

WHEREAS, granting the Solid Waste Division the authority to manage excess gravel through material sales significantly reduces the capital infrastructure and operating costs of the landfill, which helps keep waste disposal fees low; and

WHEREAS, mining one cell at a time with separate permits and contracts is inefficient and more costly than systematically excavating and disposing of excess material; and

WHEREAS, authority to continuously dispose of the excess gravel allows a value-producing alternative to the landfill development process; and

WHEREAS, savings from gravel sales generate a \$2 to \$3 million reduction in the construction cost of each landfill cell. These sales help the Assembly slow the growth of disposal fees and provide cost savings to every resident, business, government and non-government organization in the Borough; and

WHEREAS, the MSB would retain the authority to oversee cell construction and gravel disposal at the landfill through the contract award process; and

WHEREAS, the Solid Waste Division will continue to develop the landfill property with cost efficiency, low impact on our neighbors and trail protection as top priorities; and

WHEREAS, costs continue to rise in the waste disposal business as regulatory requirements increase and as population growth results in more demand for waste disposal. Authorizing cost-efficient cell construction with excess gravel disposal will help reduce costs and keep rates low.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby recommends approval of ordinance 22-003 an ordinance of the Matanuska-Susitna Borough Assembly exempting the borough landfill from earth materials extraction permit code requirements to allow gravel mining on the property, which has been designated as reserve use lands - sanitary landfill.

ADOPTED by the Matanuska-Susitna Borough Planning Commission this ____ day of _____, 2022.

, Chair

ATTEST

KAROL RIESE, Planning Clerk

(SEAL)

YES:

NO:

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CORRESPONDENCE & INFORMATION

Board of Adjustment and Appeals decision on Case No. 21-05; Appeal of Planning Commission Resolution No. 21-19 (Appellants: Trust Land Office and Colaska dba QAP).

Pages 51 - 68

CORRESPONDENCE & INFORMATION

MATANUSKA-SUSITNA BOROUGH

BOARD OF ADJUSTMENT AND APPEALS

Appeal of Planning Commission)
Resolution No. 21-19, Denial of a)
Conditional Use Permit for Extraction)
of Earth Materials at Tax Parcel)
C001, Township 17 North, Range 2 West,)
Section 10, Seward Meridian, aka)
Sylvan Road Gravel Pit)
)
Trust Land Office, Appellant No. 1) BOAA Case No. 21-05
and)
Colaska dba QAP, Appellant No. 2)
)

NOTICE OF RIGHT TO APPEAL AND FINAL DECISION

NOTICE IS HEREBY GIVEN, that the Matanuska-Susitna Borough Board of Adjustment and Appeals, on December 22, 2021, rendered the following final decision regarding the appeal filed in the above captioned matter. **This final decision may be appealed to the Superior Court within 30 days of the date of this decision, pursuant to MSB 15.39.250 and the Alaska Rules of Appellate Procedure, Part 600.**

FINDINGS

1. Both appellants filed their appeal in a timely manner. By order of the Chairperson of the BOAA, the appeals were consolidated into a single appeal case.
2. On February 23, 2021, the appellant Colaska filed an application for conditional use permit (CUP) for earth materials extraction under MSB 17.30. R. 1-18

3. If the CUP was granted, according to the application material it would allow for the removal of approximately 2,000,000 cubic yards of earth materials from a 105-acre mining area within the parcel identified as Tax Parcel C001, Township 17 North, Range 2 West, Section 10, Seward Meridian. R. 2
4. The existing land use is a heavily forested land with no development on the subject parcel. The parcel contains wetlands, which bisect the northern two-thirds of the parcel from the southern one-third. Historical data indicates an unnamed stream on the parcel; staff did not observe a stream during the June 28, 2021, site visit. R. 13
5. The surrounding land use is developed with single-family homes to the north, east, and south of the subject parcel; these lots range in size from .17 acres to 20 acres, with the majority of them being 5 acres. Additional single-family homes are located to the west; these lots range in size from three to six acres. Within this subdivision, there are eight homes with direct access to an airstrip. The west/northwest lands are sandwiched between the Parks Highway and Sylvan Road and developed with commercial and industrial uses such as a truss plant, storage facilities, and restaurants. The lands to the north that abut the Parks Highway are primarily commercial. A charter school occupies a portion of a

commercial building located at the intersection of Sylvan Road and the Parks Highway. R. 18

6. Public comments were solicited from property owners within a half-mile radius of the proposed use as required by Borough code. A majority of the comments received were opposed to the CUP. Concerns expressed were:

- close proximity to residential homes;
- that the proposed use is in conflict with the existing use of residential homes;
- traffic danger to pedestrians and school bus stops;
- that Sylvan Road does not have shoulders or turn lanes and is unable to accommodate heavy commercial vehicles;
- that the intersection of Parks Highway and Sylvan Road is already overloaded with its current traffic load;
- negative impacts to health of residents;
- negative impact on land sales/property values;
- negative impacts on wells and septic systems;
- potential loss of habitat;
- potential impact on local business due to high volume commercial traffic;
- negative impact on the mental health of residents due to 24-hour operations;

- insufficient proposed noise barriers;
 - potential noise and air pollution; and
 - the lack of an environmental impact study for the proposed use.
7. The Borough's Public Works Department expressed concerns regarding potential damage to Sylvan Road due to high traffic volume and the weight of loaded trucks related to the proposed use. They suggested exploring the possibility of establishing a service area tax for the proposed use to pay for the repair and maintenance of Sylvan Road. R. 31
8. The proposed use is located within the Meadow Lakes Community Council boundaries and is therefore subject to the Meadow Lakes Comprehensive Plan (MLCP). The Borough's Comprehensive Development Plan is also applicable, as it is to all parcels within the Borough.
9. The MLCP lists Land Use Goal No. 3 as to establish a pedestrian oriented, mixed-use town center that will provide for public spaces to meet with friends and neighbors, venues for events and community meetings and commercial services such as a post office, financial institutions, grocery stores and restaurants. It is a goal to create a successful town center to improve the quality of life for residents, attract

- spending from those travelling through the community, and to develop a more positive image for the Meadow Lakes Community.
10. The MLCP lists Land Use Goal No. 4 as wanting to maintain the natural and rural character of the community and protect the quality of residential neighborhoods.
 11. It further states that the Community does recognize the value of creating opportunities for employment and increasing the local tax base. The balance point between these goals is to accept economic development activities, but also to establish rules to minimize the off-site impacts of such activities. This goal focuses on uses with significant impacts, such as large-scale resource development with the intent to limit impacts of more modest uses such as auto storage/junk yards.
 12. One of the plan's development standards states, "Impacts on environment - activities creating off-site impacts on surface and subsurface water quality and quantity and air quality are not permitted."
 13. The plan also identifies discouraged uses within the town center pedestrian core. It states, "Uses that disrupt opportunities to create a pedestrian-oriented commercial district. Uses that deaden a town center include large parcels devoted to a single function, e.g., large scale industrial

activities, auto sales, storage junkyards, and big box retail stores."

14. The Borough's comprehensive plan speaks to providing compatible development, protecting residential neighborhoods and property values, and to implementing regulations that protect residential development by separating incompatible uses.
15. MSB 8.52.010(A) states, "The Borough hereby finds and declares that noise, volume-enhanced sounds and their concomitant vibration are significant sources of environmental pollution, which represent a present and increasing threat to public peace and to the health, safety, and welfare of the residents of the Borough. Loud noise and amplified sounds have an adverse effect on the psychological and physiological well-being of persons. It is the intent of this chapter to provide for the prohibition of certain levels of noise and amplified sounds and their resulting vibration within the borough. It is also the intent of this chapter to mitigate the effects of incompatible land uses in accordance with the Matanuska-Susitna Borough Comprehensive Plan."
16. Earth material extraction activities are an industrial use that causes excessive noise, dust, and heavy truck traffic.

17. According to the Rutgers Noise and Technical Assistance Center (RNTAC), heavy trucks produce approximately 90 decibels when operating, which falls in the very loud category.
18. According to the RNTAC, a quiet to noisy home produces sound around 30-60 decibels, which falls in the faint and moderate categories
19. The CUP application states that the proposed use may operate seasonally, 24 hours a day and produce up to 1,000 daily vehicle trips.
20. The CUP application proposes a buffer that would include 25-feet of vegetation and a 10-foot tall earthen berm between the mining area and the north and east lot lines. The earthen berm would abut the section line easement to the west and south.
21. The traffic control plan submitted with the application states that the primary access to the proposed use would be directly across from Marigold Drive, which would eliminate a portion of the earthen berm.
22. The nearest residential structures to the primary access are approximately 25 and 40 feet to the north. Established quiet neighborhoods surround the proposed use on all sides.

23. The BOAA finds that production of sound levels such as 90 decibels in the center of quiet neighborhoods would have an adverse impact on its residents.
24. The *Alaska State Department of Environmental Conservation Best Management Practices for Gravel/Rock Aggregate Extraction Projects: Protecting Surface Water and Groundwater Quality in Alaska* notes established drinking water protection areas and recommended buffer zones for public water systems; this manual is available online and included in the record. It notes that there are public water system sources for water protection areas that have yet to be delineated. For those sources, it is recommended that excavation limits be restricted to areas outside public water system source buffer zones and that best management practices be used to prevent water contamination. R. 518-608
25. The manual states in part that some of the best ways to prevent mining impacts to surface and groundwater quality are to maintain distance between mining operations and the water to be protected and to also monitor water quality. It further recommends setbacks for mining operation from public water system source areas, surface water bodies, and the groundwater table. A detailed hydrogeological study performed by a qualified person is also recommended in order to evaluate

potential impacts and to design effective mitigation alternatives.

26. There has been no such study provided, nor has the appellant proposed to monitor the water quality.

27. This proposed use is within the State's recommended protection area for a community drinking water well.

R. 28-29

28. Sylvan Road is categorized as a residential collector. Residential collectors can typically accommodate average daily traffic (ADT) of 1,000 to 3,000. The Borough does not have any current traffic data for Sylvan Road as the last data collected was in 2011, which at that time was 512 ADT.

29. In the application material, it states, "Proposed driveway access located on the northwestern corner of the parcel is approximately 30-feet in width to accommodate safe entry and exit of haul trucks and vehicles." R. 8

30. The northwest corner of the parcel is nearest Marigold Drive. The driveway permit application and map attachment reflect that the approach would be nearest West Buttercup Drive, which is inconsistent with the CUP application. R. 264-265

31. In the response to the request for more information from the Borough, UMIAQ responded on April 7, 2021, and states in bullet 9. b. second paragraph, "Upon completion of phases I

and II, phase III would be opened, which may require a second Sylvan Road driveway access, south of the intersection with West Sun Ridge Circle, to ensure wetlands remain undisturbed." R. 6

32. The application material indicates that the proposed use will not operate in accordance with the State of Alaska's Best Management Practices Manual for Material Extraction, because mining within an identified Alaska State Department of Environmental Conservation Drinking Water Protection Area creates a risk of contamination. The risk of contamination can be minimized, but not completely eliminated, due to the size and proximity of the proposed operation.
33. The application material indicates that lighting will be located and shielded to direct light towards work areas to minimize light spillage onto adjacent property and upward into the night sky. The CUP application did not provide height and wattage for the light plants that would comply with the light standards in Borough code.
34. The appellant's are claiming that by the Planning Commission denying the conditional use permit, that it is usurping their legal right to develop and manage their lands. This is not accurate, as the denial of a conditional use permit does not prevent them from developing their lands, so long as they

meet all the requirements of Borough code, which they did not in this particular instance. The application failed to meet several of the requirements for the issuance of a conditional use permit.

35. In the transcript of the Planning Commission hearing, the applicant provided new and different information that conflicted with what was provided in the original application. R. 889 - 872

CONCLUSIONS

Based upon the above findings, the Board of Adjustment and Appeals makes the following conclusions:

1. The Board of Adjustment and Appeals has jurisdiction over this matter pursuant to MSB 15.39.030(A)(2).
2. MSB 15.39.210(A), states that the BOAA may exercise independent judgment on matters that relate to the interpretation or construction of ordinances or other provisions of law.
3. The BOAA may affirm, reverse, modify, in whole or in part, the appealed determination, decision, or order, or remand pursuant to MSB 15.39.220(A).
4. MSB 17.30.060(A)(1), states in part, (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.

5. Based on the above findings, the Planning Commission properly found that the proposed use is inconsistent with the applicable comprehensive plans and is supported by substantial evidence in the record.
6. MSB 17.30.060(A)(2), requires that the use will preserve the value, spirit, character, and integrity of the surrounding area.
7. Based on the above findings, the Planning Commission properly found that proposed use will detract from the value, character, and integrity of the surrounding area and is supported by substantial evidence in the record.
8. MSB 17.30.060(A)(4), requires that granting the permit will not be harmful to the public health, safety, and general welfare.
9. Based on the above findings, the Planning Commission properly found that the proposed use will be harmful to the public health, safety, convenience, and welfare and is supported by substantial evidence in the record.
10. MSB 17.30.060(A)(5), requires that sufficient setbacks, lot area, buffers, or other safeguards are being provided to meet the conditions in MSB 17.30.050(B).

11. Based on the above findings, the Planning Commission properly found that the proposed use does not provide sufficient setbacks, lot area, buffers, or other safeguards and is supported by substantial evidence in the record.
12. Pursuant to MSB 17.28.060(A)(5)(a), noise mitigation measures shall include a description of measures to be taken by the applicant to mitigate or lessen noise impacts to surrounding properties and shall include, but not be limited to, hours of operation of noise-producing equipment, erecting noise barriers (i.e., berms a minimum of ten feet in height) between noise-producing equipment and adjacent uses, location of noise-producing equipment (i.e., below grade in excavated pit areas), and measures to utilize equipment with noise reduction features. (a) no sound resulting from the earth materials extraction activities shall create a sound level that exceeds the limits set forth for the existing receiving land use category in Table 1 when measured at or within the property boundary of the receiving land use:

Table 1. Sound Levels by
Receiving Land Use

Receiving Land Use Category	Time	Sound Level Limit (dB(A))
Residential Use	7 a.m. – 10 p.m.	60
	10 p.m. – 7 a.m.	50
Commercial Use	7 a.m. – 10 p.m.	70
	10 p.m. – 7 a.m.	60
Industrial Use or Undeveloped Land	At all times	80

13. Based on the above findings the proposed noise mitigation measures, which include retaining vegetative buffers and erecting a 10-foot tall earthen berm, the Planning Commission properly determined that there will be insufficient sound mitigation measures due to access points and proximity to residential homes and that noise level will exceed the levels established in Borough code and is supported by substantial evidence in the record.
14. MSB 17.28.060(A)(6), states that lighting standards are: (a) exterior lighting shall be located and shielded to direct the light towards the ground, in order to minimize light spillage onto adjacent properties and upward into the night sky. (b) illumination or other fixtures mounted higher than 20-feet or 150 watts or more shall have downward directional shielding.

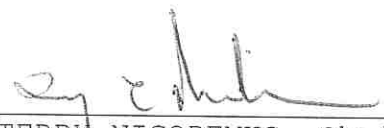
15. Based on the above findings, the Planning Commission properly determined that the applicant did not provide enough information to show compliance with the lighting standards established in Borough code and is supported by substantial evidence in the record.
16. The BOAA concludes that there was substantial evidence in the record to support that the Planning Commission denying the CUP application.

DECISION

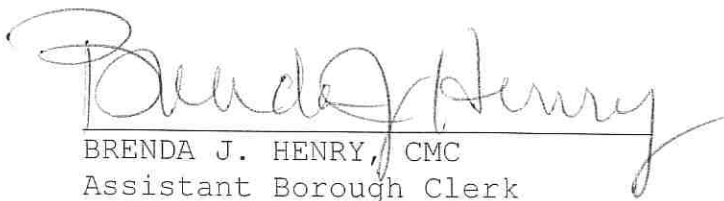
Based upon the above Findings and Conclusions, the Matanuska-Susitna Borough Board of Adjustment and Appeals affirms the Planning Commission's decision in denying the conditional use permit.

Dated this 22 day of December, 2021.

MATANUSKA-SUSITNA BOROUGH
BOARD OF ADJUSTMENT AND APPEALS


TERRY NICODEMUS, Chairperson

Attest:


BRENDA J. HENRY, CMC
Assistant Borough Clerk

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