

1 CODE ORDINANCE By: Borough Manager
2 Introduced:
3 Public Hearing:
4 Action:
5

6 **MATANUSKA-SUSITNA BOROUGH**
7 **ORDINANCE SERIAL NO. 10-018**
8

9 AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY REPEALING
10 MSB 17.28, INTERIM MATERIALS DISTRICT; REPEALING MSB 17.30,
11 CONDITIONAL USE PERMIT (CUP) FOR EARTH MATERIALS EXTRACTION
12 ACTIVITIES; ADOPTING MSB 28.10.025 PUBLIC NOTIFICATION; AMENDING
13 28.100, DEFINITIONS; AND AMENDING MSB 28.30 EARTH MATERIALS
14 EXTRACTION TO CREATE COMPREHENSIVE EARTH MATERIAL EXTRACTION
15 REGULATIONS INCLUDING PROVISIONS FOR REGULATING EXCAVATION INTO
16 THE SEASONAL HIGH WATER TABLE, RECLAMATION, AND PERFORMANCE
17 SECURITIES.

18
19 BE IT ENACTED:

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

23 Section 2. Repeal of chapter. MSB 17.28 is hereby repealed
24 in its entirety.

25 [CHAPTER 17.28: INTERIM MATERIALS DISTRICT

26 SECTION

27 17.28.010 INTENT AND PURPOSE

28 17.28.020 APPLICABILITY

29 17.28.025 NONCONFORMING USES

30 17.28.030 INTERIM MATERIALS DISTRICT (IMD)

31 17.28.040 REQUIRED COMPLIANCE WITH STATE AND FEDERAL

32 LAWS

1 17.28.050SITE DEVELOPMENT PLAN REQUIRED
2 17.28.060SITE DEVELOPMENT STANDARDS
3 17.28.070SETBACKS
4 17.28.080PROCEDURES FOR INITIATING AN INTERIM
5 MATERIALS DISTRICT (IMD)
6 17.28.090DISTRICTS DESIGNATED
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8 17.28.120FLOOD DAMAGE PREVENTION; APPLICATION AND
9 PROCEDURES
10 17.28.200VIOLATIONS, ENFORCEMENT, AND PENALTIES
11 17.28.210FEES
12 17.28.010INTENT AND PURPOSE.

13 (A)IT IS THE INTENT OF THE MATANUSKA-SUSITNA
14 BOROUGH TO RECOGNIZE THE VALUE AND IMPORTANCE OF
15 PROMOTING THE UTILIZATION OF NATURAL RESOURCES WITHIN
16 ITS BOUNDARIES. THE PURPOSE OF THIS CHAPTER IS TO
17 ESTABLISH AN INTERIM MATERIALS DISTRICT WITHIN THE
18 MATANUSKA-SUSITNA BOROUGH TO ALLOW RESOURCE EXTRACTION
19 ACTIVITIES AS AN INTERIM USE OF LAND WHILE PROMOTING
20 THE PUBLIC HEALTH, SAFETY, ORDER, PROSPERITY, AND
21 GENERAL WELFARE OF THE MATANUSKA-SUSITNA BOROUGH
22 THROUGH REGULATION OF LAND USE TO REDUCE THE ADVERSE
23 IMPACTS OF LAND USES AND DEVELOPMENT BETWEEN AND AMONG

1 PROPERTIES. IT IS THE FURTHER PURPOSE OF THIS CHAPTER
2 TO PROMOTE COMPATIBLE, ORDERLY DEVELOPMENT. THESE
3 PURPOSES ARE ACCOMPLISHED BY:

4 (1) DESIGNATING AREAS FOR THE EXTRACTION OF
5 EARTH MATERIALS IMPORTANT FOR THE DEVELOPMENT OF THE
6 MATANUSKA-SUSITNA BOROUGH;

7 (2) ENHANCING THE CHARACTER AND STABILITY OF
8 RESIDENTIAL, AGRICULTURAL, BUSINESS, COMMERCIAL, AND
9 INDUSTRIAL AREAS, AND PROMOTING THE ORDERLY AND
10 BENEFICIAL DEVELOPMENT OF SUCH AREAS BY THE
11 OWNER/PERMITTEE IN A MANNER THAT WILL NOT DEVALUE THE
12 EXTRACTION SITE OR NEIGHBORING PROPERTIES FOR FUTURE
13 BENEFICIAL USES UPON COMPLETION OF GRAVEL EXTRACTION;

14 (3) PROMOTING DIVERSIFIED LAND USE AND
15 ECONOMIC OPPORTUNITY;

16 (4) ENCOURAGING THE MOST APPROPRIATE USES OF
17 LAND;

18 (5) ENHANCING THE NATURAL, MANMADE, AND
19 HISTORICAL AMENITIES OF THE MATANUSKA-SUSITNA BOROUGH;

20 (6) RECOGNIZING AND PRESERVING TRADITIONAL
21 USES OF LAND WITHIN THE MATANUSKA-SUSITNA BOROUGH; AND

1 (7)PROTECTING AND ENHANCING THE QUALITY,
2 PEACE, QUIET AND SAFETY OF THE MATANUSKA-SUSITNA
3 BOROUGH NEIGHBORHOODS.

4 17.28.020APPLICABILITY.

5 (A)THIS DISTRICT SHALL BE ESTABLISHED ON PRIVATE
6 OR PUBLIC LANDS FOR EARTH MATERIALS EXTRACTION AND
7 PROCESSING ACTIVITIES ON 20 CONTIGUOUS ACRES OR
8 GREATER WHERE MATERIAL EXTRACTION IS INTENDED TO BE
9 FOR MORE THAN TWO YEARS IN ALL AREAS OF THE BOROUGH
10 EXCEPT WHERE THE USE IS PROHIBITED BY ORDINANCE WITHIN
11 A SPECIAL LAND USE DISTRICT. WHERE THIS CHAPTER IS IN
12 CONFLICT WITH THE CONDITIONS OF A SPECIAL LAND USE
13 DISTRICT, THE MOST RESTRICTIVE CONDITIONS SHALL APPLY.

14 (B)THIS CHAPTER DOES NOT APPLY WITHIN THE CITIES
15 OF HOUSTON, PALMER, OR WASILLA.

16 17.28.025NONCONFORMING USES.

17 (A)AT THE DATE OF ADOPTION OF THE ORDINANCE
18 CODIFIED IN THIS CHAPTER, OR AMENDMENTS THERETO, EARTH
19 MATERIALS EXTRACTION ACTIVITIES WHICH WERE IN
20 EXISTENCE BEFORE THE EFFECTIVE DATE OF APPLICABLE
21 REGULATIONS ARE PERMITTED TO CONTINUE SUBJECT TO THE
22 PROVISIONS OF THIS SECTION.

1 (B)NONCONFORMING STATUS WILL BE GRANTED
2 ADMINISTRATIVELY, UPON PROVISION OF THE FOLLOWING:

3 (1)APPLICATION FOR NONCONFORMING STATUS MUST
4 BE SUBMITTED WITHIN 12 MONTHS OF ADOPTION OF THE
5 ORDINANCE CODIFIED IN THIS CHAPTER. THE APPLICATION
6 SHALL CONTAIN:

7 (A)SITE DEVELOPMENT PLAN WHICH INCLUDES
8 THE FOLLOWING:

9 (I)IDENTIFICATION OF SURROUNDING
10 PROPERTY OWNERS, EXISTING LAND USES, AND WETLANDS AND
11 WATERBODIES WITHIN THE NOTIFICATION AREA;

12 (II)PLANNED LOCATION OF PERMANENT
13 AND SEMI-PERMANENT STRUCTURES FOR VERIFICATION OF
14 SETBACK REQUIREMENTS;

15 (III)PROPOSED PHASES OF MINING
16 ACTIVITIES;

17 (IV)NOISE MITIGATION PLAN,
18 CONSISTENT WITH MSB 17.28.060(A)(5); AND

19 (B)DOCUMENTATION OF REQUIRED COMPLIANCE
20 WITH STATE AND FEDERAL LAWS, CONSISTENT WITH MSB
21 17.28.040(A).

22 (C)FAILURE TO PROVIDE DOCUMENTATION OF
23 COMPLIANCE WITH EXISTING REQUIREMENTS OR VIOLATION OF

1 SUCH REQUIREMENTS WILL NULLIFY NONCONFORMING STATUS.
2 IF MATERIALS EXTRACTION ACTIVITY CEASES FOR 12
3 CONSECUTIVE MONTHS OR LONGER, NONCONFORMING STATUS
4 WILL EXPIRE.

5 17.28.030 INTERIM MATERIALS DISTRICT (IMD).

6 (A) THE EXTRACTION OF EARTH MATERIALS IS AN
7 INTERIM USE OF THE LAND IN THE MATANUSKA-SUSITNA
8 BOROUGH. AN INTERIM MATERIALS DISTRICT SHALL BE A
9 MINIMUM OF 20 CONTIGUOUS ACRES IN SIZE, MEET THE SITE
10 DEVELOPMENT STANDARDS SPECIFIED IN MSB 17.28.060, SITE
11 DEVELOPMENT STANDARDS, AND BE IN COMPLIANCE WITH OTHER
12 APPLICABLE REGULATIONS AS SHOWN IN MSB 17.28.040,
13 REQUIRED COMPLIANCE WITH STATE AND FEDERAL LAWS.

14 (B) ALLOWED USES. THE FOLLOWING PRINCIPAL USES ARE
15 ALLOWED IN THE INTERIM MATERIALS DISTRICT:

16 (1) REMOVAL OF SAND, GRAVEL, ROCK, SOIL, PEAT
17 MOSS, SPHAGNUM, STONE, PUMICE, CINDERS, CLAY OR OTHER
18 MINERALS INCLUDING BUT NOT LIMITED TO QUARRYING,
19 EXTRACTION, AND REMOVAL OF UNPROCESSED AND PROCESSED
20 MATERIALS TO AN OFF-SITE LOCATION; AND

21 (2) PROCESSING OF NATURAL RESOURCES SUCH AS
22 SAND, GRAVEL, ROCK, SOIL, PEAT MOSS, SPHAGNUM, STONE,
23 PUMICE, CINDERS AND CLAY OR OTHER MINERALS BY

1 SCREENING, WASHING, CRUSHING, GRINDING, MILLING,
2 CLASSIFICATION, STORAGE, RAIL OR TRUCK LOADING, TRUCK
3 SCALING, AND SALES.

4 (C) ACCESSORY USES.

5 (1) AGRICULTURE;

6 (2) MAINTENANCE SHOPS AND STORAGE BUILDINGS
7 ASSOCIATED WITH THE INTERIM USE;

8 (3) OFFICES OR BUILDINGS ASSOCIATED WITH
9 SALES AND MANAGEMENT OF THE INTERIM USE;

10 (4) TEMPORARY BATCH PLANTS AND ANCILLARY
11 FACILITIES ASSOCIATED WITH THE INTERIM USE;

12 (5) RECYCLING OF OTHER NATURAL RESOURCES
13 INCLUDING RECYCLED ASPHALT AND CONCRETE TO BE CRUSHED;

14 (6) RESIDENTIAL USE SOLELY FOR EMPLOYEE
15 HOUSING OR SECURITY; AND

16 (7) STORAGE OF EQUIPMENT ASSOCIATED WITH
17 MATERIALS EXTRACTION AND CONSTRUCTION.

18 (D) CONDITIONAL USES. PERMANENT BATCH PLANTS MAY
19 BE AUTHORIZED BY THE PLANNING COMMISSION AS A
20 CONDITIONAL USE WITHIN THE INTERIM MATERIALS DISTRICT.

21 (E) PROHIBITED USES. USES NOT MEETING THE
22 REQUIREMENTS OF THIS SECTION OR NOT ALLOWED AS A
23 CONDITIONAL USE ARE PROHIBITED.

1 17.28.040REQUIRED COMPLIANCE WITH STATE AND FEDERAL
2 LAWS.

3 (A)ALL APPLICANTS FOR INTERIM MATERIALS DISTRICT
4 DESIGNATION ARE REQUIRED TO DEMONSTRATE COMPLIANCE
5 WITH STATE AND FEDERAL LAW. PRIOR TO FINAL APPROVAL OF
6 THE INTERIM MATERIALS DISTRICT, THE APPLICANT OR AGENT
7 SHALL PROVIDE WRITTEN DOCUMENTATION OF COMPLIANCE WITH
8 THE FOLLOWING:

9 (1)MINING LICENSE AS REQUIRED BY THE ALASKA
10 STATE DEPARTMENT OF REVENUE, PURSUANT TO A.S. 42.65;

11 (2)MINING PERMIT AS REQUIRED BY THE ALASKA
12 STATE DEPARTMENT OF NATURAL RESOURCES (ADNR) IF
13 EXTRACTION ACTIVITIES ARE TO TAKE PLACE ON STATE LAND;

14 (3)RECLAMATION PLAN AS REQUIRED BY ADNR,
15 PURSUANT TO A.S. 27.19;

16 (4)NOTICE OF INTENT (NOI) FOR CONSTRUCTION
17 GENERAL PERMIT OR MULTI-SECTOR GENERAL PERMIT AND
18 STORM WATER POLLUTION PREVENTION PLAN, AND OTHER
19 ASSOCIATED PERMITS OR PLANS REQUIRED BY THE
20 ENVIRONMENTAL PROTECTION AGENCY (EPA) PURSUANT TO THE
21 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
22 (NPDES) REQUIREMENTS; AND

1 (5) UNITED STATES ARMY CORPS OF ENGINEERS
2 PERMIT PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT,
3 33 U.S.C. 1344, IF MATERIAL EXTRACTION ACTIVITY IS TO
4 TAKE PLACE WITHIN WETLANDS, LAKES AND STREAMS.

5 (B) IN ADDITION TO THE REQUIREMENTS IN SUBSECTION
6 (A) OF THIS SECTION, ALL ACTIVITY SHALL BE CONDUCTED
7 IN COMPLIANCE WITH STATE OR FEDERAL REGULATIONS
8 GOVERNING THE ITEMS LISTED BELOW. WRITTEN
9 DOCUMENTATION OF COMPLIANCE WITH THESE REGULATIONS IS
10 NOT REQUIRED. COMPLAINTS RECEIVED BY THE BOROUGH OF
11 VIOLATIONS OF REQUIREMENTS WITHIN THIS SECTION WILL BE
12 FORWARDED TO THE APPROPRIATE AGENCY FOR ENFORCEMENT.

13 (1) AIR QUALITY.

14 (A) EPA AIR QUALITY CONTROL PERMIT IS
15 REQUIRED FOR ASPHALT PLANTS AND CRUSHERS.

16 (B) ADNR BURN PERMIT IS REQUIRED FOR
17 BRUSH OR STUMP BURNING. COMBUSTIBLES SHALL BE
18 STOCKPILED SEPARATE FROM NONCOMBUSTIBLES, AND BURN
19 PERMIT REQUIREMENTS SHALL BE FOLLOWED.

20 (C) ADEC DUST CONTROL AND AIR QUALITY
21 REGULATIONS PERTAINING TO BURNING ACTIVITIES SHALL BE
22 FOLLOWED.

23 (2) WATER QUALITY.

1 (A)EPA AND ADEC REGULATIONS CONTROLLING
2 SPILLS, SPILL REPORTING, STORAGE AND DISPOSAL OF OIL,
3 ANTI-FREEZE, AND HYDROCARBONS.

4 (3)USE AND STORAGE OF HAZARDOUS MATERIALS,
5 WASTE AND EXPLOSIVES.

6 (A)EPA REGULATIONS CONTROLLING USE OF
7 HAZARDOUS MATERIALS SHALL BE FOLLOWED; AND

8 (B)FEDERAL BUREAU OF ALCOHOL, TOBACCO,
9 FIREARMS AND EXPLOSIVES (FBATFE) REGULATIONS SHALL BE
10 FOLLOWED WHEN STORING OR USING EXPLOSIVES.

11 (C)FAILURE TO COMPLY WITH ANY OF THE
12 REQUIREMENTS IN SUBSECTIONS (A) AND (B) OF THIS
13 SECTION IS A VIOLATION OF THE REGULATIONS OF THE
14 INTERIM MATERIALS DISTRICT, AND IS SUBJECT TO
15 ENFORCEMENT PURSUANT TO MSB 17.28.200.

16 17.28.050SITE DEVELOPMENT PLAN REQUIRED.

17 (A)THE APPLICATION FOR AN INTERIM MATERIALS
18 DISTRICT SHALL INCLUDE A SITE DEVELOPMENT PLAN. THE
19 SITE DEVELOPMENT PLAN SHALL INCLUDE, BUT NOT BE
20 LIMITED TO THE FOLLOWING, AS REQUIRED BY THE
21 CONDITIONS OF THE SITE, AND SHALL BE CONSISTENT WITH
22 THE STANDARDS IN MSB 17.28.060:

1 (1) IDENTIFICATION OF SURROUNDING
2 PROPERTY OWNERS, EXISTING LAND USES, AND WETLANDS AND
3 WATERBODIES WITHIN THE NOTIFICATION AREA;

4 (2) PLANNED LOCATION OF PERMANENT AND
5 SEMIPERMANENT STRUCTURES FOR VERIFICATION OF SETBACK
6 REQUIREMENTS;

7 (3) PROPOSED PHASES OF MINING
8 ACTIVITIES;

9 (4) ROADS AND ACCESS PLAN;

10 (5) VISUAL SCREENING MEASURES;

11 (6) NOISE MITIGATION MEASURES; AND

12 (7) PROPOSED LIGHTING.

13 17.28.060 SITE DEVELOPMENT STANDARDS.

14 (A) STANDARDS FOR THE INTERIM MATERIALS DISTRICT
15 SITE DEVELOPMENT PLAN ARE AS FOLLOWS:

16 (1) IDENTIFICATION OF SURROUNDING PROPERTY
17 OWNERS, EXISTING LAND USES, AND WETLANDS AND
18 WATERBODIES WITHIN ONE-QUARTER MILE OF THE SITE;

19 (2) PHASES OF PROPOSED MINING ACTIVITIES
20 INCLUDING A MAP SHOWING THE AREA TO BE MINED, A
21 DESCRIPTION OF THE TOPOGRAPHY AND VEGETATION,
22 APPROXIMATE TIME SEQUENCE FOR MINING AT PARTICULAR
23 LOCATIONS, AND GENERAL ANTICIPATED LOCATION OF SEMI-

1 PERMANENT EQUIPMENT SUCH AS CONVEYOR BELTS, CRUSHERS,
2 DREDGES, BATCH PLANTS, ETC.;

3 (3)THE ROAD AND ACCESS PLAN SHALL INCLUDE
4 ANTICIPATED ROUTES AND TRAFFIC VOLUMES, AND SHALL BE
5 APPROVED BY THE DIRECTOR. IF THE LEVEL OF ACTIVITY
6 EXCEEDS THE MINIMUM LEVELS SPECIFIED IN MSB 17.61.090,
7 TRAFFIC STANDARDS, A TRAFFIC CONTROL PLAN CONSISTENT
8 WITH STATE REGULATIONS MAY BE REQUIRED;

9 (A)ROAD MAINTENANCE MAY BE REQUIRED OF
10 PERMITTEE;

11 (4)VISUAL SCREENING MEASURES SHALL INCLUDE A
12 DETAILED DESCRIPTION OF THE TYPE OF VISUAL SCREENING
13 TO BE UTILIZED, AND SHALL BE MAINTAINED AS NECESSARY
14 DURING THE COURSE OF EXTRACTION ACTIVITIES. VISUAL
15 SCREENING MAY INCLUDE, BUT IS NOT LIMITED TO, BERMS,
16 NATURAL VEGETATION, SOLID FENCES, WALLS, EVERGREEN
17 HEDGES OR OTHER MEANS AS APPROVED BY THE COMMISSION.
18 IF MINING IS PLANNED TO BE CONDUCTED WITHIN 300 FEET
19 OF THE PROPERTY LINE, BERMS OR OTHER VISUAL SCREENING
20 METHODS SHALL BE A MINIMUM OF TEN FEET IN HEIGHT. IF
21 MINING IS PLANNED TO BE CONDUCTED GREATER THAN 300
22 FEET FROM THE PROPERTY LINE, THE APPLICANT SHALL
23 UTILIZE COMMISSION-APPROVED SCREENING METHODS TO

1 MINIMIZE VISUAL IMPACTS OF THE MINING OPERATION. THE
2 COMMISSION SHALL ADOPT POLICIES AND PROCEDURES TO
3 ASSIST APPLICANTS IN DEVELOPING SCREENING PLANS. IN
4 ITS DISCRETION, THE COMMISSION MAY WAIVE SCREENING
5 REQUIREMENTS WHERE THE TOPOGRAPHY OF THE PROPERTY OR
6 THE PLACEMENT OF NATURAL BARRIERS MAKES SCREENING NOT
7 FEASIBLE OR NOT NECESSARY. SCREENING REQUIREMENTS
8 SHALL BE REQUIRED IN CONSIDERATION OF AND IN
9 ACCORDANCE WITH EXISTING USES OF ADJACENT PROPERTY AT
10 THE TIME OF DESIGNATION OF THE INTERIM MATERIALS
11 DISTRICT. AN INTERIM MATERIALS DISTRICT SHALL NOT BE
12 REQUIRED TO SCREEN THE DISTRICT FROM USES WHICH ARISE
13 AFTER THE DESIGNATION OF THE INTERIM MATERIALS
14 DISTRICT;

15 (5) NOISE MITIGATION MEASURES SHALL INCLUDE A
16 DESCRIPTION OF MEASURES TO BE TAKEN BY THE APPLICANT
17 TO MITIGATE OR LESSEN NOISE IMPACTS TO SURROUNDING
18 PROPERTIES AND SHALL INCLUDE, BUT NOT BE LIMITED TO,
19 HOURS OF OPERATION OF NOISE-PRODUCING EQUIPMENT,
20 ERECTING NOISE BARRIERS (I.E., BERMS A MINIMUM OF TEN
21 FEET IN HEIGHT) BETWEEN NOISE-PRODUCING EQUIPMENT AND
22 ADJACENT USES, LOCATION OF NOISE-PRODUCING EQUIPMENT
23 (I.E., BELOW GRADE IN EXCAVATED PIT AREAS), AND

1 MEASURES TO UTILIZE EQUIPMENT WITH NOISE REDUCTION
2 FEATURES.

3 (A) NO SOUND RESULTING FROM THE EARTH
4 MATERIALS EXTRACTION ACTIVITIES SHALL CREATE A SOUND
5 LEVEL THAT EXCEEDS THE LIMITS SET FORTH FOR THE
6 EXISTING RECEIVING LAND USE CATEGORY IN TABLE 1 WHEN
7 MEASURED AT OR WITHIN THE PROPERTY BOUNDARY OF THE
8 RECEIVING LAND USE:

TABLE 1. SOUND LEVELS BY RECEIVING LAND USE		
RECEIVING LAND USE CATEGORY	TIME	SOUND LEVEL LIMIT (DB(A))
RESIDENTIAL AREA	7 A.M. – 10 P.M.	60
	10 P.M. – 7 A.M.	50
COMMERCIAL AREA	7 A.M. – 10 P.M.	70
	10 P.M. – 7 A.M.	60
INDUSTRIAL AREA	AT ALL TIMES	80

9 (B) IN THE CASE OF NEW RESIDENTIAL
10 DEVELOPMENT (DEFINED AS PLATTING ACTIONS FINALIZED
11 AFTER ADOPTION OF THIS SECTION) NEXT TO EXISTING EARTH
12 MATERIALS EXTRACTION OPERATIONS, IT SHALL BE THE
13 RESPONSIBILITY OF THE DEVELOPER (OR SUBDIVIDER) OF THE
14 NEW RESIDENTIAL DEVELOPMENT TO ERECT NOISE BUFFERS

1 SUFFICIENT TO ENSURE THE LEVELS ESTABLISHED IN TABLE
2 1;

3 (C)FOR ANY SOUND THAT IS OF SHORT
4 DURATION, BETWEEN THE HOURS OF 7 A.M. AND 7 P.M. THE
5 LEVELS ESTABLISHED IN TABLE 1 MAY BE INCREASED BY:

6 (I)FIVE DB(A) FOR A TOTAL OF 15
7 MINUTES IN ANY ONE HOUR; OR

8 (II)TEN DB(A) FOR A TOTAL OF FIVE
9 MINUTES IN ANY HOUR; OR

10 (III)FIFTEEN DB(A) FOR A TOTAL OF
11 ONE AND ONE-HALF MINUTES IN ANY ONE-HOUR PERIOD.

12 (6)LIGHTING STANDARDS ARE:

13 (A)EXTERIOR LIGHTING SHALL BE LOCATED
14 AND SHIELDED TO DIRECT THE LIGHT TOWARDS THE GROUND,
15 IN ORDER TO MINIMIZE LIGHT SPILLAGE ONTO ADJACENT
16 PROPERTIES AND UPWARD INTO THE NIGHT SKY.

17 (B)ILLUMINATION OR OTHER FIXTURES
18 MOUNTED HIGHER THAN 20 FEET OR 150 WATTS OR MORE SHALL
19 HAVE DOWNWARD DIRECTIONAL SHIELDING.

20 (7)WATER QUALITY PROTECTION SHALL BE ENSURED
21 BY REQUIRING THAT AN UNDISTURBED BUFFER SHALL BE LEFT
22 AND NO EARTH MATERIAL EXTRACTION ACTIVITIES SHALL TAKE
23 PLACE WITHIN 100 LINEAR FEET FROM A LAKE, RIVER,

1 STREAM, OR OTHER WATERBODY, INCLUDING WETLANDS (UNLESS
2 PERMITTED BY U.S. ARMY CORPS OF ENGINEERS 404 PERMIT,
3 MSB 17.28.040(A)(5)). THIS REGULATION SHALL NOT APPLY
4 TO MANMADE WATERBODIES BEING CONSTRUCTED DURING THE
5 COURSE OF THE MATERIALS EXTRACTION ACTIVITIES.

6 (8)GROUNDWATER QUALITY AND QUANTITY
7 PROTECTION SHALL BE ENSURED BY REQUIRING THAT A FOUR-
8 FOOT VERTICAL SEPARATION BETWEEN ALL EXCAVATION AND
9 THE SEASONAL HIGH WATER TABLE BE MAINTAINED. *

10 17.28.070SETBACKS.

11 (A)A 25-FOOT SETBACK IS REQUIRED FROM ALL
12 PROPERTY LINES FOR STRUCTURES, PERMANENT OR PORTABLE
13 FACILITIES, AND EQUIPMENT OR MATERIAL STORAGE.

14 17.28.080PROCEDURES FOR INITIATING AN INTERIM
15 MATERIALS DISTRICT (IMD).

16 (A)AN INTERIM MATERIALS DISTRICT MAY BE INITIATED
17 ON A PROPERTY WHICH MEETS THE STANDARDS FOR
18 DESIGNATION AS AN IMD BY:

19 (1)THE OWNER OF THE PROPERTY OR THEIR
20 AUTHORIZED REPRESENTATIVE;

21 (2)THE DEPARTMENT OF PLANNING AND LAND USE
22 UPON ITS OWN INITIATIVE;

1 (3)THE PLANNING COMMISSION, UPON ITS OWN
2 MOTION; OR

3 (4)THE ASSEMBLY, UPON ITS OWN MOTION.

4 (B)THE APPLICANT FOR AN INTERIM MATERIALS
5 DISTRICT DESIGNATION UNDER SUBSECTION (A)(1) OF THIS
6 SECTION SHALL SUBMIT THE FOLLOWING TO THE DEPARTMENT
7 OF PLANNING AND LAND USE:

8 (1)A COMPLETED APPLICATION ON A FORM
9 PROVIDED BY THE DEPARTMENT OF PLANNING AND LAND USE
10 (INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED);

11 (2)A SITE DEVELOPMENT PLAN IN ACCORDANCE
12 WITH MSB 17.28.050 AND 17.28.060; AND

13 (3)A FEE IN THE AMOUNT DESIGNATED IN MSB
14 17.99.

15 (C)THE PLANNING COMMISSION SHALL CONDUCT AT LEAST
16 ONE PUBLIC HEARING PRIOR TO MAKING A RECOMMENDATION TO
17 THE ASSEMBLY ON DESIGNATION OF AN INTERIM MATERIALS
18 DISTRICT.

19 (1)THE PUBLIC HEARING SHALL BE HELD IN
20 CONFORMANCE WITH MSB 15.04.016, AND NOTICE OF THE
21 HEARING SHALL BE MADE PURSUANT TO THE STANDARDS OF MSB
22 17.03, EXCEPT THAT THE NOTIFICATION AREA WILL BE ONE

1 MILE FROM THE EXTERIOR BOUNDARY OF THE SUBJECT
2 PROPERTY.

3 (2) THE COMMISSION SHALL REPORT TO THE
4 ASSEMBLY ON WHETHER THE APPLICANT HAS MET THE
5 STANDARDS DELINEATED IN MSB 17.28.050 AND 17.28.060
6 AND WHAT EFFECT THE PROPOSED INTERIM MATERIALS
7 DISTRICT WOULD HAVE ON THE PUBLIC HEALTH, SAFETY, AND
8 GENERAL WELFARE OF THE MATANUSKA-SUSITNA BOROUGH. THE
9 COMMISSION IN ITS REPORT TO THE ASSEMBLY SHALL
10 RECOMMEND TO THE ASSEMBLY APPROVAL, DENIAL,
11 MODIFICATIONS, OR CONDITIONS OF APPROVAL FOR THE
12 PROPOSED ACTION, AND SHALL INCLUDE FINDINGS ON THE
13 FOLLOWING:

14 (A) WHETHER THE PROPOSED INTERIM
15 MATERIALS DISTRICT IS COMPATIBLE WITH THE GOALS AND
16 OBJECTIVES OF THE COMPREHENSIVE PLAN;

17 (B) WHETHER THE PROPOSED INTERIM
18 MATERIALS DISTRICT NEGATIVELY AFFECTS PUBLIC HEALTH,
19 SAFETY OR GENERAL WELFARE; AND

20 (C) WHETHER THE PROPOSED INTERIM
21 MATERIALS DISTRICT HAS MET THE SITE DEVELOPMENT
22 STANDARDS OF THIS CHAPTER INCLUDING COMPLIANCE WITH
23 ALL REQUIRED LOCAL, STATE, AND FEDERAL LAWS.

1 (D)THE ASSEMBLY SHALL REVIEW THE
2 RECOMMENDATION OF THE PLANNING COMMISSION, HOLD A
3 PUBLIC HEARING AND VOTE ON WHETHER TO DESIGNATE THE
4 PROPOSED AREA AS AN INTERIM MATERIALS DISTRICT.

5 17.28.090DISTRICTS DESIGNATED.

6 (A)THE FOLLOWING DISTRICTS ARE INTERIM MATERIALS
7 DISTRICTS SUBJECT TO THE PROVISIONS OF THIS CHAPTER:

8 (1)ALASKA RAILROAD CURRY QUARRY, WITHIN
9 TOWNSHIP 29 NORTH, RANGE 4 WEST, SECTIONS 10 AND 15,
10 SEWARD MERIDIAN.

11 (2)PORT INDUSTRIAL DISTRICT WITHIN THE POINT
12 MACKENZIE PORT SPECIAL LAND USE DISTRICT, WITHIN
13 TOWNSHIP 14 NORTH, RANGE 4 WEST, SECTION 26, SEWARD
14 MERIDIAN.

15 17.28.100VARIANCES.

16 (A)APPLICATIONS AND PROCEDURES FOR OBTAINING
17 VARIANCES FROM STANDARDS OF THIS CHAPTER SHALL BE AS
18 PRESCRIBED IN MSB 17.65.

19 17.28.120FLOOD DAMAGE PREVENTION; APPLICATION AND
20 PROCEDURES.

21 (A)APPLICATIONS AND PROCEDURES FOR OBTAINING A
22 DEVELOPMENT PERMIT WITHIN ANY DESIGNATED SPECIAL FLOOD

1 HAZARD AREA UNDER THIS CHAPTER SHALL BE AS PRESCRIBED
2 IN MSB 17.29.

3 17.28.200VIOLATIONS, ENFORCEMENT, AND PENALTIES.

4 (A)UNLESS SPECIFIED OTHERWISE, ANY VIOLATION OF
5 THIS CHAPTER IS AN INFRACTION.

6 (B)ENFORCEMENT OF THE PROVISIONS OF THIS CHAPTER
7 AND ASSOCIATED PENALTIES SHALL BE CONSISTENT WITH THE
8 TERMS AND CONDITIONS OF MSB 1.45.

9 17.28.210FEES.

10 (A)FEES REQUIRED UNDER THIS CHAPTER WILL BE
11 ESTABLISHED IN ACCORDANCE WITH MSB 17.99.]

12 Section 3. Repeal of chapter. MSB 17.30 is hereby repealed
13 in its entirety.

14 [CHAPTER 17.30: CONDITIONAL USE PERMIT (CUP) FOR EARTH
15 MATERIALS EXTRACTION ACTIVITIES
16 SECTION

17 17.30.010INTENT AND PURPOSE

18 17.30.020APPLICABILITY

19 17.30.025NONCONFORMING USES

20 17.30.030TYPES OF PERMITS AVAILABLE

21 17.30.035APPLICATION PROCEDURES

22 17.30.040CRITERIA TO QUALIFY FOR AN ADMINISTRATIVE
23 PERMIT

1 17.30.050CRITERIA TO QUALIFY FOR A CONDITIONAL USE
2 PERMIT
3 17.30.055REQUIRED COMPLIANCE WITH STATE AND FEDERAL
4 LAWS
5 17.30.060GENERAL STANDARDS FOR APPROVAL
6 17.30.110AMENDMENT OF CONDITIONAL USE PERMIT
7 17.30.120TRANSFER OF A CONDITIONAL USE PERMIT
8 17.30.130TERMINATION OF PERMIT
9 17.30.140VIOLATIONS, ENFORCEMENT, AND PENALTIES
10 17.30.150APPEAL PROCEDURES
11 17.30.010INTENT AND PURPOSE.

12 (A)IT IS THE INTENT OF THE MATANUSKA-SUSITNA
13 BOROUGH TO RECOGNIZE THE VALUE AND IMPORTANCE OF
14 PROMOTING THE UTILIZATION OF NATURAL RESOURCES WITHIN
15 ITS BOUNDARIES. THE PURPOSE OF THIS CHAPTER IS TO
16 ALLOW RESOURCE EXTRACTION ACTIVITIES WHILE PROMOTING
17 THE PUBLIC HEALTH, SAFETY, ORDER, PROSPERITY, AND
18 GENERAL WELFARE OF THE MATANUSKA-SUSITNA BOROUGH
19 THROUGH REGULATION OF LAND USE TO REDUCE THE ADVERSE
20 IMPACTS OF LAND USES AND DEVELOPMENT BETWEEN AND AMONG
21 PROPERTIES. IT IS THE FURTHER PURPOSE OF THIS CHAPTER
22 TO PROMOTE COMPATIBLE, ORDERLY DEVELOPMENT. THESE
23 PURPOSES ARE ACCOMPLISHED BY:

1 (1)ALLOWING FOR A PUBLIC REVIEW PROCESS FOR
2 EARTH MATERIALS EXTRACTION ACTIVITIES IN THE
3 MATANUSKA-SUSITNA BOROUGH;

4 (2)ENHANCING THE CHARACTER AND STABILITY OF
5 RESIDENTIAL, AGRICULTURAL, BUSINESS, COMMERCIAL, AND
6 INDUSTRIAL AREAS, PROMOTING THE ORDERLY AND BENEFICIAL
7 DEVELOPMENT OF SUCH AREAS BY THE OWNER/PERMITTEE IN A
8 MANNER THAT WILL NOT DEVALUE THE EXTRACTION SITE OR
9 NEIGHBORING PROPERTIES FOR FUTURE BENEFICIAL USES UPON
10 COMPLETION OF GRAVEL EXTRACTION;

11 (3)PROMOTING DIVERSIFIED LAND USE AND
12 ECONOMIC OPPORTUNITY;

13 (4)ENCOURAGING THE MOST APPROPRIATE USES OF
14 LAND;

15 (5)ENHANCING THE NATURAL, MANMADE, AND
16 HISTORICAL AMENITIES OF THE MATANUSKA-SUSITNA BOROUGH;

17 (6)RECOGNIZING AND PRESERVING TRADITIONAL
18 USES OF LAND WITHIN THE MATANUSKA-SUSITNA BOROUGH; AND

19 (7)PROTECTING AND ENHANCING THE QUALITY,
20 PEACE, QUIET AND SAFETY OF THE MATANUSKA-SUSITNA
21 BOROUGH NEIGHBORHOODS.

22 17.30.020APPLICABILITY.

1 (A) THIS CHAPTER APPLIES TO ALL PRIVATE AND PUBLIC
2 LANDS IN THE BOROUGH EXCEPT WHERE THE USE IS
3 PROHIBITED BY ORDINANCE WITHIN A SPECIAL LAND USE
4 DISTRICT. WHERE A SPECIAL LAND USE DISTRICT REGULATES
5 EARTH MATERIALS EXTRACTION AS A CONDITIONAL USE, THE
6 GRANTING OF A CONDITIONAL USE PERMIT SHALL REQUIRE
7 COMPLIANCE WITH THIS CHAPTER. WHERE THIS CHAPTER IS IN
8 CONFLICT WITH THE CONDITIONAL USE PERMIT CONDITIONS OF
9 THE SPECIAL LAND USE DISTRICT, THE MORE RESTRICTIVE
10 CONDITIONS SHALL APPLY.

11 (B) THIS CHAPTER DOES NOT APPLY WITHIN THE CITIES
12 OF HOUSTON, PALMER, OR WASILLA.

13 (C) THIS CHAPTER APPLIES TO COMMERCIAL EARTH
14 MATERIALS EXTRACTION ACTIVITIES LESS THAN 40
15 CONTIGUOUS ACRES IN SIZE WHERE THE PRINCIPAL ACTIVITY
16 OF USE OF THE PROPERTY IS THE EXTRACTION OF EARTH
17 MATERIALS.

18 (D) THIS CHAPTER DOES NOT APPLY WHEN EARTH
19 MATERIAL EXTRACTION ACTIVITY IS NOT INTENDED FOR SALE
20 OR BARTER.

21 (E) AN OWNER OF LESS THAN 40 CONTIGUOUS ACRES
22 WHERE EARTH MATERIALS EXTRACTION IS NOT IN EXISTENCE
23 AS OF THE DATE OF THE ENACTMENT OF THIS CHAPTER IS

1 REQUIRED TO OBTAIN A CONDITIONAL USE PERMIT OR
2 ADMINISTRATIVE PERMIT, OR APPLY FOR DESIGNATION AS AN
3 INTERIM MATERIALS DISTRICT IN ACCORDANCE WITH MSB
4 17.28.

5 (F)EXTRACTION OF 2,000 CUBIC YARDS OR LESS
6 ANNUALLY ON ANY ONE PARCEL DOES NOT REQUIRE AN
7 ADMINISTRATIVE OR CONDITIONAL USE PERMIT.
8 17.30.025NONCONFORMING USES.

9 (A)AT THE DATE OF ADOPTION OF THE ORDINANCE
10 CODIFIED IN THIS CHAPTER, OR AMENDMENTS THERETO, EARTH
11 MATERIALS EXTRACTION ACTIVITIES OF LESS THAN 40
12 CONTIGUOUS ACRES WHICH WERE IN EXISTENCE BEFORE THE
13 EFFECTIVE DATE OF APPLICABLE REGULATIONS ARE PERMITTED
14 TO CONTINUE SUBJECT TO THE PROVISIONS OF THIS SECTION.

15 (B)NONCONFORMING STATUS WILL BE GRANTED
16 ADMINISTRATIVELY, UPON PROVISION OF THE FOLLOWING:

17 (1)APPLICATION FOR NONCONFORMING STATUS MUST
18 BE SUBMITTED WITHIN 12 MONTHS OF ADOPTION OF THE
19 ORDINANCE CODIFIED IN THIS CHAPTER. THE APPLICATION
20 SHALL CONTAIN:

21 (A)SITE DEVELOPMENT PLAN WHICH INCLUDES
22 THE FOLLOWING:

1 (I) IDENTIFICATION OF SURROUNDING
2 PROPERTY OWNERS, EXISTING LAND USES, AND WETLANDS AND
3 WATERBODIES WITHIN THE NOTIFICATION AREA;

4 (II) PLANNED LOCATION OF PERMANENT
5 AND SEMI-PERMANENT STRUCTURES FOR VERIFICATION OF
6 SETBACK REQUIREMENTS;

7 (III) PROPOSED PHASES OF MINING
8 ACTIVITIES; AND

9 (IV) NOISE MITIGATION PLAN,
10 CONSISTENT WITH MSB 17.28.060(A)(5);

11 (B) DOCUMENTATION OF REQUIRED COMPLIANCE
12 WITH STATE AND FEDERAL LAWS, CONSISTENT WITH MSB
13 17.28.040(A).

14 (C) FAILURE TO PROVIDE DOCUMENTATION OF
15 COMPLIANCE WITH EXISTING REQUIREMENTS OR VIOLATION OF
16 SUCH REQUIREMENTS WILL NULLIFY NONCONFORMING STATUS.
17 IF MATERIALS EXTRACTION ACTIVITY CEASES FOR 12
18 CONSECUTIVE MONTHS OR LONGER, NONCONFORMING STATUS
19 WILL EXPIRE.

20 17.30.030 TYPES OF PERMITS AVAILABLE.

21 (A) THERE ARE TWO TYPES OF PERMITS AVAILABLE FOR
22 EARTH MATERIALS EXTRACTION:

1 (1)ADMINISTRATIVE PERMIT - A USE PERMIT
2 APPROVED BY THE DIRECTOR WITH PUBLIC NOTIFICATION MAY
3 BE ISSUED IF THE PROPOSED DEVELOPMENT MEETS THE
4 MINIMUM THRESHOLDS FOR AN ADMINISTRATIVE DECISION.

5 (2)CONDITIONAL USE PERMIT - A CONDITIONAL
6 USE PERMIT GRANTED BY THE PLANNING COMMISSION AFTER A
7 PUBLIC HEARING, WHEN THE PROPOSED DEVELOPMENT GOES
8 BEYOND THE MINIMUM THRESHOLD FOR AN ADMINISTRATIVE
9 PERMIT.

10 17.30.035APPLICATION PROCEDURES.

11 (A)THE APPLICANT FOR AN ADMINISTRATIVE PERMIT OR
12 A CONDITIONAL USE PERMIT FOR A MATERIALS EXTRACTION
13 SITE SHALL SUBMIT THE FOLLOWING TO THE DEPARTMENT:

14 (1)A COMPLETED APPLICATION FORM PROVIDED BY
15 THE DEPARTMENT (INCOMPLETE APPLICATIONS WILL NOT BE
16 ACCEPTED);

17 (2)A SITE DEVELOPMENT PLAN IN ACCORDANCE
18 WITH MSB 17.28.050 AND 17.28.060; AND

19 (3)THE FEE IN THE AMOUNT DESIGNATED IN MSB
20 17.99.

21 (B)THE DIRECTOR MAY REJECT ANY APPLICATION WHICH
22 IS INCOMPLETE OR FAILS TO MEET THE REQUIREMENTS OF
23 THIS SECTION. THE REJECTION SHALL BE IN WRITING AND

1 SHALL STATE THE DEFICIENT ITEMS. ONCE THE DEFICIENCIES
2 HAVE BEEN CORRECTED, THE COMPLETE APPLICATION WILL BE
3 PROCESSED.

4 (C)IF THE MINIMUM CRITERIA FOR AN ADMINISTRATIVE
5 PERMIT CAN BE MET, THE DIRECTOR WILL NOTIFY
6 SURROUNDING PROPERTY OWNERS IN ACCORDANCE WITH MSB
7 17.03, PUBLIC NOTIFICATION, EXCEPT THAT THE
8 NOTIFICATION AREA WILL BE ONE-HALF MILE. WITHIN 30
9 DAYS OF ACCEPTANCE OF THE APPLICATION, THE
10 ADMINISTRATIVE PERMIT WILL BE ISSUED WITH CONDITIONS
11 TO ADDRESS CONCERNS RAISED BY NEIGHBORING PROPERTY
12 OWNERS, AND AS DEEMED APPROPRIATE BY THE DIRECTOR, TO
13 PROTECT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE.

14 (D)IF THE APPLICANT DISAGREES WITH THE
15 DETERMINATION OF THE DIRECTOR ON THE ADMINISTRATIVE
16 PERMIT, THEY MAY REQUEST THAT THE APPLICATION BE
17 ELEVATED TO THE PLANNING COMMISSION FOR CONSIDERATION
18 OF GRANTING A CONDITIONAL USE PERMIT.

19 (E)IF THE APPLICATION IS ELEVATED OR IF THE
20 PROPOSED DEVELOPMENT EXCEEDS THE MINIMUM CRITERIA FOR
21 AN ADMINISTRATIVE PERMIT, A PUBLIC HEARING BEFORE THE
22 PLANNING COMMISSION SHALL BE CONDUCTED WITHIN 45
23 CALENDAR DAYS OF THE ACCEPTANCE OF A COMPLETE

1 APPLICATION OR ELEVATION OF AN ADMINISTRATIVE PERMIT,
2 IN ACCORDANCE WITH MSB 17.03, PUBLIC NOTIFICATION,
3 EXCEPT THAT THE NOTIFICATION AREA WILL BE ONE-HALF
4 MILE. THE APPLICANT MAY WAIVE THE 45-DAY LIMIT.

5 (F)THE PLANNING COMMISSION SHALL HEAR ANY
6 INTERESTED PARTIES AND SHALL RENDER A DECISION ON THE
7 APPLICATION FOR A CONDITIONAL USE PERMIT WITHIN 30
8 CALENDAR DAYS FROM THE DATE OF PUBLIC HEARING, UNLESS
9 THE APPLICANT AGREES TO A TIME EXTENSION. IN THE
10 GRANTING OF A CONDITIONAL USE PERMIT, THE PLANNING
11 COMMISSION SHALL STATE IN WRITING THE CONDITIONS OF
12 APPROVAL OF THE PERMIT.

13 17.30.040CRITERIA TO QUALIFY FOR AN ADMINISTRATIVE
14 PERMIT.

15 (A)TO QUALIFY FOR AN ADMINISTRATIVE PERMIT, ALL
16 OF THE FOLLOWING CRITERIA MUST BE MET:

17 (1)THE CUMULATIVE CONTINUOUS ACTIVITY IS
18 LESS THAN 40 ACRES IN SIZE;

19 (2)EXTRACTION ACTIVITIES SUBJECT TO THE
20 PERMIT SHALL NOT EXCEED:

21 (A)TWENTY-FOUR MONTHS. A ONE-TIME
22 EXTENSION OF SIX MONTHS MAY BE GRANTED
23 ADMINISTRATIVELY UPON WRITTEN REQUEST FROM THE

1 APPLICANT; PROVIDED, THAT ALL CONDITIONS OF THE PERMIT
2 HAVE BEEN MET; OR

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

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

8 (B)THE DIRECTOR MAY ALSO SET BASIC CONDITIONS OF
9 APPROVAL FOR ISSUANCE OF THE ADMINISTRATIVE PERMIT, AS
10 APPROPRIATE FOR THE AREA IN WHICH THE DEVELOPMENT IS
11 SITED, FOR THE FOLLOWING:

12 (1)SETBACKS (NO LESS THAN MINIMUM SETBACK
13 REQUIREMENTS AS ESTABLISHED IN MSB 17.55; HOWEVER, MAY
14 BE INCREASED AS APPROPRIATE FOR EXISTING SURROUNDING
15 DEVELOPMENT);

16 (2)VISUAL SCREENING, NOISE MITIGATION,
17 LIGHTING RESTRICTIONS AND ROADS/ACCESS RESTRICTIONS AS
18 APPROPRIATE FOR SURROUNDING DEVELOPMENT AND IN
19 ACCORDANCE WITH DEVELOPMENT STANDARDS REFERENCED IN
20 MSB 17.28.060, SITE DEVELOPMENT STANDARDS; AND

21 (3)ROAD MAINTENANCE MAY BE REQUIRED BY
22 PERMITTEE.

1 17.30.050CRITERIA TO QUALIFY FOR A CONDITIONAL USE
2 PERMIT.

3 (A)TO QUALIFY FOR A CONDITIONAL USE PERMIT, ALL
4 OF THE FOLLOWING CRITERIA MUST BE MET:

5 (1)THE CUMULATIVE CONTINUOUS ACTIVITY IS
6 LESS THAN 40 ACRES IN SIZE; AND

7 (2)EXTRACTION ACTIVITIES MAY BE ONGOING.

8 (B)THE COMMISSION MAY SET CONDITIONS OF APPROVAL
9 FOR ISSUANCE OF THE CONDITIONAL USE PERMIT, AS
10 APPROPRIATE FOR THE AREA IN WHICH THE DEVELOPMENT IS
11 SITED, FOR THE FOLLOWING:

12 (1)SETBACKS (NO LESS THAN MINIMUM SETBACK
13 REQUIREMENTS AS ESTABLISHED IN MSB 17.55; HOWEVER, MAY
14 BE INCREASED AS APPROPRIATE FOR EXISTING SURROUNDING
15 DEVELOPMENT);

16 (2)VISUAL SCREENING, NOISE MITIGATION,
17 LIGHTING RESTRICTIONS AND ROADS/ACCESS RESTRICTIONS AS
18 APPROPRIATE FOR SURROUNDING DEVELOPMENT AND IN
19 ACCORDANCE WITH DEVELOPMENT STANDARDS REFERENCED IN
20 MSB 17.28.060, SITE DEVELOPMENT STANDARDS;

21 (3)ROAD MAINTENANCE MAY BE REQUIRED OF THE
22 PERMITTEE; AND

1 (4)LENGTH OF TIME OF OPERATION AND LOCATION
2 OF BATCH PLANTS.

3 17.30.055REQUIRED COMPLIANCE WITH STATE AND FEDERAL
4 LAWS.

5 (A)ALL APPLICANTS FOR PERMITS FOR EARTH MATERIALS
6 EXTRACTION ARE REQUIRED TO DEMONSTRATE COMPLIANCE WITH
7 STATE AND FEDERAL LAW. PRIOR TO FINAL APPROVAL OF THE
8 PERMIT, THE APPLICANT OR AGENT SHALL PROVIDE WRITTEN
9 DOCUMENTATION OF COMPLIANCE WITH THE FOLLOWING:

10 (1)MINING LICENSE AS REQUIRED BY THE ALASKA
11 STATE DEPARTMENT OF REVENUE, PURSUANT TO A.S. 43.65;

12 (2)MINING PERMIT AS REQUIRED BY THE ALASKA
13 STATE DEPARTMENT OF NATURAL RESOURCES (ADNR) IF
14 EXTRACTION ACTIVITIES ARE TO TAKE PLACE ON STATE LAND;

15 (3)RECLAMATION PLAN AS REQUIRED BY ADNR,
16 PURSUANT TO A.S. 27.19;

17 (4)NOTICE OF INTENT FOR CONSTRUCTION GENERAL
18 PERMIT OR MULTI-SECTOR GENERAL PERMIT AND STORM WATER
19 POLLUTION PREVENTION PLAN, AND OTHER ASSOCIATED
20 PERMITS OR PLANS REQUIRED BY THE ENVIRONMENTAL
21 PROTECTION AGENCY (EPA) PURSUANT TO THE NATIONAL
22 POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
23 REQUIREMENTS; AND

1 (5) UNITED STATES ARMY CORPS OF ENGINEERS
2 PERMIT PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT,
3 33 U.S.C. 1344, IF MATERIAL EXTRACTION ACTIVITY IS TO
4 TAKE PLACE WITHIN WETLANDS, LAKES AND STREAMS.

5 (B) IN ADDITION TO THE REQUIREMENTS IN SUBSECTION
6 (A) OF THIS SECTION, ALL ACTIVITY SHALL BE CONDUCTED
7 IN COMPLIANCE WITH STATE OR FEDERAL REGULATIONS
8 GOVERNING THE ITEMS LISTED BELOW. WRITTEN
9 DOCUMENTATION OF COMPLIANCE WITH THESE REGULATIONS IS
10 NOT REQUIRED. COMPLAINTS RECEIVED BY THE BOROUGH OF
11 VIOLATIONS OF REQUIREMENTS WITHIN THIS SECTION WILL BE
12 FORWARDED TO THE APPROPRIATE AGENCY FOR ENFORCEMENT.

13 (1) AIR QUALITY.

14 (A) EPA AIR QUALITY CONTROL PERMIT IS
15 REQUIRED FOR ASPHALT PLANTS AND CRUSHERS.

16 (B) ADNR BURN PERMIT IS REQUIRED FOR
17 BRUSH OR STUMP BURNING. COMBUSTIBLES SHALL BE
18 STOCKPILED SEPARATE FROM NONCOMBUSTIBLES, AND BURN
19 PERMIT REQUIREMENTS SHALL BE FOLLOWED.

20 (C) ADEC DUST CONTROL AND AIR QUALITY
21 REGULATIONS PERTAINING TO BURNING ACTIVITIES SHALL BE
22 FOLLOWED.

23 (2) WATER QUALITY.

1 (A)EPA OR ADEC REGULATIONS CONTROLLING
2 SPILLS, SPILL REPORTING, STORAGE AND DISPOSAL OF OIL,
3 ANTI-FREEZE AND HYDROCARBONS.

4 (3)USE AND STORAGE OF HAZARDOUS MATERIALS,
5 WASTE AND EXPLOSIVES.

6 (A)EPA REGULATIONS CONTROLLING USE OF
7 HAZARDOUS MATERIALS SHALL BE FOLLOWED.

8 (B)FEDERAL BUREAU OF ALCOHOL, TOBACCO,
9 FIREARMS AND EXPLOSIVES (FBATFE) REGULATIONS SHALL BE
10 FOLLOWED WHEN STORING OR USING EXPLOSIVES.

11 (C)FAILURE TO COMPLY WITH ANY OF THE REQUIREMENTS
12 IN SUBSECTIONS (A) AND (B) OF THIS SECTION IS A
13 VIOLATION OF THE PERMIT, AND IS SUBJECT TO ENFORCEMENT
14 PURSUANT TO MSB 17.30.140.

15 17.30.060GENERAL STANDARDS FOR APPROVAL.

16 (A)IN GRANTING AN ADMINISTRATIVE PERMIT OR A
17 CONDITIONAL USE PERMIT, THE DIRECTOR OR COMMISSION
18 MUST MAKE THE FOLLOWING FINDINGS:

19 (1)THAT THE USE IS NOT INCONSISTENT WITH THE
20 APPLICABLE COMPREHENSIVE PLAN;

21 (2)THAT THE USE WILL PRESERVE THE VALUE,
22 SPIRIT, CHARACTER, AND INTEGRITY OF THE SURROUNDING
23 AREA;

1 (3) THAT THE APPLICANT HAS MET ALL OTHER
2 REQUIREMENTS OF THIS CHAPTER PERTAINING TO THE USE IN
3 QUESTION;

4 (4) THAT GRANTING THE PERMIT WILL NOT BE
5 HARMFUL TO THE PUBLIC HEALTH, SAFETY AND GENERAL
6 WELFARE; AND

7 (5) THAT THE SUFFICIENT SETBACKS, LOT AREA,
8 BUFFERS OR OTHER SAFEGUARDS ARE BEING PROVIDED TO MEET
9 THE CONDITIONS LISTED IN MSB 17.30.050(B).
10 17.30.110 AMENDMENT OF CONDITIONAL USE PERMIT.

11 (A) A CONDITIONAL USE PERMIT MAY BE AMENDED BY
12 APPLICATION TO THE DEPARTMENT AND APPROVAL BY THE
13 PLANNING COMMISSION. THE APPLICANT SHALL PROVIDE THE
14 DEPARTMENT AN UPDATE OF ALL INFORMATION REQUIRED IN
15 THE ORIGINAL PERMIT, SHALL DESCRIBE THE PROPOSED
16 CHANGES IN DETAIL, AND SHALL PROVIDE COPIES OF ANY
17 ADDITIONAL STATE AND FEDERAL PERMITS WHICH THE
18 AMENDMENTS MAY REQUIRE. THE NOTICE AND HEARING
19 PROVISIONS OF THIS CHAPTER SHALL APPLY TO AN AMENDMENT
20 TO THE PERMIT.

21 17.30.120 TRANSFER OF A CONDITIONAL USE PERMIT.

22 (A) A PERMIT MAY BE TRANSFERRED SUBJECT TO THE
23 CONDITIONS OF MSB 17.60.180.

1 17.30.130TERMINATION OF PERMIT.

2 (A)A PERMIT SHALL TERMINATE UNDER THIS CHAPTER
3 SUBJECT TO THE CONDITIONS IN MSB 17.60.190.

4 17.30.140VIOLATIONS, ENFORCEMENT, AND PENALTIES.

5 (A)UNLESS OTHERWISE SPECIFIED, ANY VIOLATION OF
6 THIS CHAPTER IS AN INFRACTION.

7 (B)IT IS A VIOLATION TO CONDUCT COMMERCIAL EARTH
8 MATERIAL EXTRACTION ACTIVITIES ON LESS THAN 40
9 CONTIGUOUS ACRES WITHOUT A PERMIT ISSUED UNDER THIS
10 CHAPTER UNLESS DESIGNATED AS AN INTERIM MATERIALS
11 DISTRICT IN ACCORDANCE WITH MSB 17.28.

12 (C)IT IS A VIOLATION TO OPERATE WITH A PERMIT
13 ISSUED UNDER THIS CHAPTER BUT IN VIOLATION OF ANY
14 CRITERIA OR CONDITION WHICH WAS NECESSARY FOR THE
15 ISSUANCE OF THE PERMIT.

16 (D)ENFORCEMENT OF THE PROVISIONS OF THIS CHAPTER
17 AND ASSOCIATED PENALTIES SHALL BE CONSISTENT WITH THE
18 TERMS AND CONDITIONS OF MSB 1.45.

19 17.30.150APPEAL PROCEDURES.

20 (A)THE PROVISIONS OF MSB 15.39 GOVERN APPEALS
21 FROM A DECISION OF THE PLANNING COMMISSION GRANTING,
22 DENYING, MODIFYING, OR REVOKING A CONDITIONAL USE
23 PERMIT UNDER THIS CHAPTER. THE PROVISIONS OF MSB 15.39

1 GOVERN AN APPEAL OF A PLANNING DEPARTMENT ENFORCEMENT
2 ACTION OR DECISION.]

3 Section 4. Adoption of section. MSB 28.10.025 is hereby
4 adopted to read:

5 28.10.025 PUBLIC NOTIFICATION.

6 (A) Notice of any public hearing required under
7 this title or any decision by the Director to approve
8 or deny an administrative permit shall be given in
9 accordance with this section;

10 (B) All public notices shall be provided at
11 least fifteen (15) days prior to a public hearing, or
12 decision by the Director , Manager or other entity;

13 (C) Forms of notices shall be as follows:

14 (1) Publication in a newspaper of general
15 circulation in the borough 15 days prior to the date
16 of the decision or public hearing;

17 (2) Posted on the Matanuska-Susitna
18 Borough's website or by other electronic means;

19 (3) Mailing to all owners of property
20 within a distance of one-half mile of the exterior
21 boundary of the property that is the subject of the
22 application, or to the property owners of the five tax
23 parcels nearest the property that is the subject of

1 the application, whichever is the greater number of
2 persons.

3 (a) if the public hearing or decision
4 by the director is for a conditional use or
5 administrative permit within a recorded subdivision,
6 property owners within that subdivision shall be
7 mailed a notice.

8 (b) The failure of any person to
9 receive any notice required under this section, where
10 the records of the borough indicate the notice was
11 provided in a timely and proper manner, shall not
12 affect the validity of any proceeding under this
13 title.

14 (D) All public notices shall be mailed to
15 members of the borough's real property asset
16 management board.

17 (E) A copy of the public notice shall be mailed
18 to the following entities if the exterior boundary of
19 the property that is the subject of the application is
20 within a distance of one-half mile of the boundary of:

- 21 (1) city;
22 (2) community council;
23 (3) road service area board;

1 (4) fire service area board; and

2 (5) post office.

3 (F) The public notice area, time, or persons and
4 organizations receiving notice may be expanded at the
5 discretion of the director where additional notice is
6 required based on the extent of the potential impacts
7 of the proposed activity. The applicant shall not be
8 required to pay for the expanded notification.

9 (G) All the following items shall appear in the
10 public notice:

11 (1) legal, aliquot part description, or
12 borough tax identification number of the property or
13 parent parcel affected by the application;

14 (2) brief description of the proposed
15 action;

16 (3) names of applicant and owner of the
17 subject property;

18 (4) vicinity map and location map showing
19 the parcel(s) affected;

20 (5) date and location for written public
21 comments to be received;

22 (6) if applicable, the date, location and
23 time of the public hearing.

1 (7) identification of the location where
2 the application and other supporting material will be
3 available for public inspection; and

4 (8) identification of the planning
5 department's telephone number.

6 (H) prior to the date of the public hearing, the
7 applicant shall pay the cost of all mailings or
8 advertisements required by ordinance specific to that
9 action.

10 Section 5. Adoption of section. MSB 28.30.010 is hereby
11 adopted to read:

12 28.30.010 INTENT AND PURPOSE

13 (A) It is the intent of the Matanuska-Susitna
14 Borough to recognize the value and importance of
15 promoting the utilization of natural resources within
16 its boundaries and to recognize the important and
17 essential contribution of earth material extraction.
18 The purpose of this chapter is to allow resource
19 extraction activities while promoting the public
20 health, safety, order, prosperity, and general welfare
21 of the Matanuska-Susitna Borough through regulation of
22 land use to reduce the adverse impacts of land uses
23 and development between and among properties. It is

1 the further purpose of this chapter to promote
2 compatible, orderly development. These purposes are
3 accomplished by:

4 (1) allowing for a public review process
5 for earth materials extraction activities in the
6 Matanuska-Susitna Borough;

7 (2) enhancing the character and stability
8 of residential, agricultural, business, commercial,
9 and industrial areas, promoting the orderly and
10 beneficial development of such areas by the
11 responsible party in a manner that will not devalue
12 the extraction site or neighboring properties for
13 future beneficial uses upon completion of gravel
14 extraction;

15 (3) promoting diversified land use and
16 economic opportunity;

17 (4) encouraging the most appropriate uses
18 of land;

19 (5) enhancing the natural, manmade, and
20 historical amenities of the Matanuska-Susitna Borough;

21 (6) recognizing and preserving traditional
22 uses of land within the Matanuska-Susitna Borough;

1 (7) protecting and enhancing the quality,
2 peace, quiet and safety of the Matanuska-Susitna
3 Borough neighborhoods;

4 (8) monitoring and controlling operations
5 in the water table to protect public health and
6 safety; and

7 (9) protecting environmental quality
8 including air, water, soils, vegetation, fish and
9 wildlife habitat.

10 Section 6. Adoption of section. MSB 28.30.020 is hereby
11 adopted to read:

12 28.30.020 APPLICABILITY.

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

1 (B) This chapter applies within the cities of
2 Houston, Palmer, or Wasilla.

3 (C) This chapter applies to all commercial earth
4 materials extraction activities.

5 (D) This chapter does not apply when extracted
6 earth material is not intended for sale or barter.

7 (E) Annual extraction of 2,000 cubic yards or
8 more from any one parcel or from two or more adjacent
9 parcels with the same owner requires an administrative
10 permit or a conditional use permit.

11 (F) Extraction of any amount of material for
12 commercial sale from within four feet vertical of the
13 seasonal high water table material requires a
14 conditional use permit in accordance with this
15 chapter.

16 (G) This chapter does not apply to development
17 and production of locatable minerals such as gold,
18 silver, and copper or to leasable minerals such as
19 coal and limestone.

20 Section 7. Adoption of section. MSB 28.30.030 is
21 hereby adopted to read:

22 28.30.030 NONCONFORMING USES.

1 (A) Operations granted pre-existing legal
2 nonconforming status prior to the date of adoption of
3 this chapter are allowed to continue subject to the
4 conditions and contents of the approved application
5 and determination of legal pre-existing use rights and
6 the provisions of this section.

7 (B) Earth materials extraction activities
8 authorized by an administrative permit or conditional
9 use permit under MSB 17.30 before the effective date
10 of adoption of this chapter are allowed to continue
11 subject to the conditions and contents of the approved
12 application, permit, resolution and this section.
13 Those activities are considered to have pre-existing
14 legal nonconforming status as a result of the repeal
15 of MSB 17.30.

16 (C) Designated interim material districts are
17 allowed to continue subject to the conditions and
18 contents of the approved application, record and this
19 section. Those districts are considered to have pre-
20 existing legal nonconforming status as a result of the
21 repeal of MSB 17.28.

22 (D) Any operation with pre-existing legal
23 nonconforming status shall be required to come into

1 compliance with this chapter if expansion to the
2 horizontal limits are proposed. Changes in noise or
3 lighting that exceeds the standards outlined in MSB
4 28.30.070.

5 (E) Within one year of the date of adoption of
6 this chapter, operations with pre-existing legal
7 nonconforming status shall provide a site plan with
8 map(s) drawn to scale, certified by a registered land
9 surveyor, clearly indicating:

10 (1) the extent of excavation within each
11 phase of mining activity to include the vertical and
12 horizontal limits prior to the date of adoption of
13 this chapter as well as the projected extent of
14 excavation of each phase of mining activity upon
15 completion of excavation activity; and

16 (2) the volume of material extracted from
17 each phase prior to the date of adoption of this
18 chapter as well as the total volume of material
19 extracted upon completion of excavation activity.

20 (F) Reclamation standards outlined in MSB
21 28.30.090 shall apply to all phases of earth material
22 extraction operations where extraction has not

1 commenced prior to the date of adoption of this
2 chapter.

3 (G) Mining phases commenced prior to the date of
4 adoption of this chapter shall provide sufficient
5 measures, within two years of completion of a phase,
6 to prevent erosion and sedimentation in accordance
7 with applicable best management practices for drainage
8 control as described by the current publication of the
9 State of Alaska's User Manual Best Management
10 Practices for Gravel Pits. The current publication
11 will be maintained at the borough planning department
12 and shall be available on request;

13 (H) Operations with pre-existing legal
14 nonconforming status which have been specifically
15 authorized to extract material within four feet of the
16 seasonal high water table shall conduct operations in
17 accordance with the requirements outlined in MSB
18 28.30.160.

19 (1) Nonconforming uses may extract material
20 from within the setbacks specified in 28.30.160 but no
21 closer than 65 feet from the property line.

22 (2) Nonconforming uses that fail to comply
23 with the operational standards outlined in MSB

1 28.30.160 shall be subject to enforcement actions and
2 penalties as outlined in MSB 28.30.350.

3 Section 8. Adoption of section. MSB 28.30.040 is hereby
4 adopted to read:

5 28.30.040 TYPES OF PERMITS AVAILABLE.

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

8 (1) Administrative permit - a use permit
9 reviewed by the director with public notification may
10 be issued if the proposed development meets the
11 minimum thresholds for an administrative decision.

12 (2) Conditional use permit - a conditional
13 use permit reviewed by the planning commission after a
14 public hearing, if the proposed development goes
15 beyond the threshold for an administrative permit or
16 if the proposed development includes plans to extract
17 earth material from within four feet or below the
18 seasonal high water table.

19 (B) A conditional use permit shall be required
20 for all commercial earth material extraction
21 operations exceeding 2000 cubic yards per year which
22 do not qualify for an administrative permit.

1 Section 9. Adoption of section. MSB 28.30.050 is hereby
2 adopted to read:

3 28.30.050 CRITERIA TO QUALIFY FOR AN ADMINISTRATIVE
4 PERMIT.

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

7 (1) the cumulative contiguous extraction
8 and earth material processing area on any one or more
9 parcels is less than 40 acres in size;

10 (2) extraction and earth material
11 processing activities subject to the permit shall not
12 exceed:

13 (a) twenty-four months; or

14 (b) annual volume of 7,000 cubic yards
15 (one cubic yard equals one and one-half tons) or less;
16 and

17 (3) any proposed on-site batch plant use
18 shall not exceed 24 months.

19 (B) No more than one administrative permit may be
20 issued for a site.

21 Section 10. Adoption of section. MSB 28.30.060 is hereby
22 adopted to read:

23 28.30.060 SITE DEVELOPMENT PLAN

1 (A) Application for an administrative permit or
2 a conditional use permit shall include a site
3 development plan. The site development plan shall
4 include, but not be limited to the following, as
5 required by the conditions of the site, and shall be
6 consistent with the standards in MSB 28.30.070:

7 (1) identification of existing land uses
8 within one-quarter mile of the boundaries of the
9 operations area;

10 (2) mining plan;

11 (3) site plan;

12 (4) roads and access plan;

13 (5) visual screening measures;

14 (6) noise mitigation measures;

15 (7) proposed lighting;

16 (8) dust management plan;

17 (9) drainage plan;

18 (10) a list of earth handling equipment to
19 be used on site;

20 (11) Estimated annual production of earth
21 materials to be extracted; and

22 (12) Types of earth material processing
23 activities.

1 Section 11. Adoption of section. MSB 28.30.070 is hereby
2 adopted to read:

3 28.30.070 SITE DEVELOPMENT STANDARDS.

4 (A) Site development standards for an
5 administrative permit or conditional use permit shall
6 include:

7 (1) identification of wetlands and
8 waterbodies within one-half mile of the site;

9 (2) a mining plan illustrating the pattern,
10 direction, and phases of proposed mining activities
11 and including estimated quantities of each material to
12 be removed presently located on the property and
13 map(s) drawn to scale, certified by a registered land
14 surveyor, clearly indicating:

15 (a) the extraction area which includes
16 (i) area of excavation,
17 (ii) earth material processing
18 area,
19 (iii) stockpile site.

20 (b) existing and proposed topography
21 carried 100 feet beyond limits of the extraction area;

22 (c) pre-mining and post-mining
23 drainage patterns;

1 (d) approximate time sequence for
2 mining at particular locations;

3 (e) existing and planned location and
4 type of permanent and temporary structures; and

5 (f) date of completion

6 (3) a site plan with map(s) drawn to scale,
7 certified by a registered land surveyor, clearly
8 indicating:

9 (a) all site boundaries;

10 (b) other developments on site
11 including the location, size, depth, extraction
12 volume, and purpose of any waterbody, impoundment, or
13 wells to be used or created;

14 (c) means of access;

15 (d) screening and fencing;

16 (e) location of monitoring wells and
17 test pits if applicable;

18 (f) adjacent and on-site public
19 easements and rights-of-way.

20 (4) a road and access plan including
21 anticipated routes and traffic volumes. If the level
22 of activity exceeds the minimum levels specified in
23 MSB 17.61.090, traffic standards, a traffic control

1 plan consistent with the current Federal Highway
2 Administration's Alaska Traffic Manual may be
3 required;

4 (a) road maintenance and improvements
5 may be required of responsible party;

6 (b) measures to reduce and mitigate
7 incidental deposits of earth material on public roads
8 may be required of responsible party.

9 (5) a visual screening plan if the
10 operation is visible from neighboring parcels not
11 owned by the responsible party, or visible from a
12 public right-of-way. The plan shall include a detailed
13 description of the type of visual screening to be
14 utilized and maintained as necessary to obscure the
15 operation from view during the course of extraction
16 activities. Visual screening may include, but is not
17 limited to, vegetated and stable berms, natural
18 vegetation, solid fences, walls, evergreen hedges or
19 other means as approved by the director or commission.

20 (a) Where visual screening will have no
21 appreciable benefit in obscuring the operation, or
22 cannot be reasonably be accomplished due to topography
23 the director or commission may waive the requirement.

1 (b) Screening requirements shall be
2 required in consideration of and in accordance with
3 existing and planned uses of adjacent property at the
4 time of permit application.

5 (c) Visual screening measures shall be
6 implemented prior to extraction of earth materials;

7 (6) noise mitigation measures including a
8 description of measures to be taken by the applicant
9 to mitigate or lessen noise impacts to surrounding
10 properties that shall include, but not be limited to,
11 limiting the hours of operation of noise-producing
12 equipment, erecting noise barriers (i.e., vegetated
13 and stable berms a minimum of ten feet in height)
14 between noise-producing equipment and adjacent uses,
15 locating noise-producing equipment (i.e., below grade
16 in excavated pit areas), and implementing measures to
17 utilize equipment with noise reduction features.

18 (a) no sound resulting from the earth
19 materials extraction activities shall create a sound
20 level that exceeds the limits set forth for the
21 existing receiving land use category in Table 1 when
22 measured at or within the property boundary of the
23 receiving land use:

1

Table 1. Sound Levels by Receiving Land Use

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

2

3

(b) for any sound that is of short duration, between the hours of 7 a.m. and 7 p.m. the levels established in Table 1 may be increased by:

4

5

6

(i) five dB(A) for a total of 15 minutes in any one hour; or

7

8

(ii) ten dB(A) for a total of five minutes in any hour; or

9

10

(iii) fifteen dB(A) for a total of one and one-half minutes in any one-hour period.

11

12

13

(7) exterior lighting standards in accordance with MSB ordinances such that:

14

15

(a) Any luminaire with a lamp or lamps rated at a total of more than 1800 lumens, and all

16

1 flood or spot luminaires with a lamp or lamps rated at
2 a total of more than 900 lumens, shall be fully
3 shielded, not emitting any direct light above a
4 horizontal plane through the lowest direct-light-
5 emitting part of the luminaire. Luminaires shall not
6 aim, direct, or focus direct light toward residential
7 buildings on adjacent or nearby property, or create
8 glare to motorists or cyclists on public ways;

9 (8) a dust management plan including a
10 description of how dust will be controlled on site
11 throughout the duration of the permit. Dust control
12 measures may include:

- 13 (a) limiting the cleared area;
- 14 (b) physical barriers;
- 15 (c) site traffic control;
- 16 (d) water spraying;
- 17 (e) soil compaction;
- 18 (f) vegetative stabilization;
- 19 (g) chemical stabilization;
- 20 (h) pile configuration;
- 21 (i) hauled material management;
- 22 (j) site access controls;
- 23 (k) off-site street sweeping; and

1 (1) off-site gravel road dust
2 abatement.

3 (9) a drainage plan including a description
4 of anticipated drainage patterns with maps showing
5 sediment control device types and locations. Sediment
6 control and erosion protection is required to protect
7 lakes, ponds, and streams as well as adjacent
8 properties. The drainage plan shall include applicable
9 best management practices for drainage control as
10 described by the current publication of the State of
11 Alaska's User Manual Best Management Practices for
12 Gravel Pits.

13 (10) a soil management plan including the
14 salvage of a sufficient volume of non-contaminated
15 surface materials to complete reclamation. To preserve
16 soil integrity, crops to minimize the growth of weeds
17 shall be established on the topsoil salvage piles.
18 These plants shall be consistent with, and not
19 compete, with the planned post-mine revegetation.

20 (B) Groundwater quality and quantity shall be
21 ensured by requiring that a four-foot vertical
22 separation between all excavation and the seasonal
23 high water table be maintained. Material extraction

1 operations shall cease when the water table elevation
2 rises to within four-feet of the bottom of the
3 excavation.

4 (1) the applicant may be required to retain
5 the services of a qualified professional, to determine
6 the seasonal high water table elevation as a condition
7 of approval.

8 (2) excavation into the four-foot vertical
9 separation buffer or below the seasonal high water
10 table for commercial sale may be conditionally
11 permitted. Such excavation is permitted only upon the
12 issuance of a conditional use permit, as provided in
13 this chapter. Unless such use is maintained under, and
14 in accordance with a lawfully issued permit, such use
15 is declared to be a public nuisance and is prohibited.

16 Section 12. Adoption of section. MSB 28.30.080 is hereby
17 adopted to read:

18 28.30.080 RECLAMATION PLAN

19 (A) Application for an administrative permit or
20 a conditional use permit shall include a reclamation
21 plan which clearly defines steps the applicant will
22 take to restore and revegetate the site in accordance
23 with the reclamation standards outlined in this

1 section.

2 (B) The reclamation plan shall include an
3 approximate time sequence for reclamation at
4 particular locations.

5 (C) The reclamation plan shall include a
6 detailed cost estimate for each of the steps the
7 applicant will take to restore and revegetate the site
8 in accordance with the reclamation standards outlined
9 in this section.

10 Section 13. Adoption of section. MSB 28.30.090 is hereby
11 adopted to read:

12 28.30.090 RECLAMATION STANDARDS

13 (A) Standards for surface reclamation following
14 earth materials extraction are as follows:

15 (1) Reclamation of each phase of operation
16 shall be completed in accordance with this chapter
17 within two growing seasons of a phase becoming
18 complete as described in the mining plan.

19 (2) Reclamation is not required for those
20 portions of mining phases that overlie subsequent
21 phases.

22 (3) Remove all materials, waste and
23 pollutants in accordance with MSB 8.50;

1 (4) Grade all slopes to attain a maximum 35
2 percent slope;

3 (a) Site soils more susceptible to
4 erosion or liquefaction require a slope adequate to
5 ensure stabilization;

6 (b) slopes shall graded to blend with
7 the surrounding undisturbed topography.

8 (5) Protect surface water quality by
9 implementing applicable Best Management Practices
10 described in the current publication of the State of
11 Alaska's User Manual Best Management Practices for
12 Gravel Pits.

13 (6) Cover all disturbed areas with a
14 minimum of eight inches of topsoil.

15 (a) natural substances that have water
16 and nutrient holding capacity conducive to plant
17 growth with a silt loam or loam texture and less than
18 fifteen percent gravel or cobble content by volume may
19 be used as a substitute for topsoil.

20 (7) Stabilize and protect all surface areas
21 to effectively control erosion;

22 (8) Establish and maintain vegetative
23 cover, in conformance with the current Alaska State

1 Department of Natural Resources, Division of
2 Agriculture, Revegetation Manual for Alaska, over all
3 disturbed areas on the material extraction site. The
4 current manual will be maintained at the borough
5 planning department and shall be available on request.
6 60 percent live plant cover of the entire restored
7 area shall be achieved by the end of two growing
8 seasons.

9 (9) Areas shall not exceed one percent
10 coverage of those noxious weeds or undesirable plant
11 species identified in the current North American Weed
12 Free Forage Certification Standards List and those
13 weeds declared noxious in 11 AAC 34.020, Prohibited
14 and Restricted Noxious Weeds, upon completion of
15 reclamation.

16 (10) Areas covered by buildings, paved
17 driveways, roads, and parking lots are exempt from the
18 reclamation standards outlined in paragraphs six
19 through nine of this subsection.

20 (B) Standards for reclamation below the seasonal
21 high water table upon completion of earth materials
22 extraction are as follows:

23 (1) The first 20 feet of slope below the

1 water table shall not exceed ten percent to create a
2 benthic zone.

3 (2) The remaining slope within the water
4 table shall not exceed the stabilized angle of repose.

5 Section 14. Adoption of section. MSB 28.30.100 is hereby
6 adopted to read:

7 28.30.100 RECLAMATION PERFORMANCE SECURITY

8 (A) The amount of performance security shall be
9 determined using the Reclamation Cost Estimate
10 Worksheet provided by the Department and shall
11 reasonably provide sufficient funding for the Borough
12 to reclaim the disturbed area.

13 (B) The performance security shall be in a form
14 outlined in 28.30.180.

15 (C) The responsible party may file a written
16 request with the director for the release of all or
17 part of the responsible party's performance security.

18 (D) By the end of the following growing season
19 after receipt of a request under (C) of this section
20 the director shall inspect and evaluate the
21 reclamation work involved. Within 60 days inspection
22 and evaluation, the director shall notify the
23 responsible party, in writing, of the decision to

1 release or not to release all or part of the
2 performance security.

3 (E) The director shall release all or part of
4 the performance security in accordance with the
5 Reclamation Cost Estimate Worksheet if the director is
6 satisfied that the reclamation or the part of the
7 reclamation covered by the bond or deposit has been
8 accomplished as required by this chapter.

9 Section 15. Adoption of section. MSB 28.30.110 is hereby
10 adopted to read:

11 28.30.110 SETBACKS

12 (A) In addition to adherence with setback
13 requirements established in MSB 17.55, a 25-foot
14 setback is required from all property lines for
15 structures, permanent or portable facilities, and
16 equipment or material storage. Where earth material
17 extraction operations encompass one or more contiguous
18 parcels and storage of material is proposed across
19 adjoining lot lines this setback shall not apply.

20 (B) Excavation shall not occur within 50 feet of
21 the property line or right-of-way to reduce the impact
22 to neighboring properties. Where earth material
23 extraction operations encompass one or more contiguous

1 parcels and extraction of material is proposed across
2 adjoining lot lines this setback shall not apply.

3 (C) A 100-foot setback is required from lakes,
4 rivers, streams, or other waterbodies, including
5 wetlands, except as allowed by permit.

6 Section 16. Adoption of section. MSB 28.30.120 is
7 hereby adopted to read:

8 28.30.120 DOCUMENTATION OF COMPLIANCE WITH LOCAL STATE
9 AND FEDERAL LAWS.

10 (A) The responsible party shall provide and
11 maintain current copies of all local, state and
12 federal permits, plans, or other documents obtained to
13 conduct the activity to the borough.

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

17 (C) The responsible party shall notify the
18 Borough in writing within 30 days if any of the
19 permitting agencies initiates an enforcement action,
20 or if a situation arises where the responsible party
21 is required to make a report to an agency.

22 Section 17. Adoption of section. MSB 28.30.130 is hereby
23 adopted to read:

1 28.30.130 APPLICATION PROCEDURES FOR AN ADMINISTRATIVE
2 PERMIT

3 (A) An application for an administrative permit
4 for earth materials extraction shall be submitted by
5 the owner of the property concerned or authorized
6 agent designated in writing by the property owner to
7 the department and shall include the following:

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

10 (2) a site development plan and reclamation
11 plan in accordance with this chapter;

12 (3) a copy of application for water rights
13 if applicable; and

14 (4) The fee in the amount designated in MSB
15 28.10.040.

16 (B) The application shall be accepted or
17 rejected for failure to meet the requirements of
18 subsection (A) of this section. The rejection shall be
19 in writing and shall state the deficient items. Once
20 the deficiencies are corrected, the application shall
21 be accepted as complete.

22 (C) The director shall approve or disapprove the
23 permit within 45 calendar days upon acceptance of a

1 complete administrative permit application, unless the
2 45 calendar day limit is waived by the applicant.

3 (D) In granting or denying an administrative
4 permit, the director shall issue written findings of
5 fact and determinations of law and shall include
6 conditions as deemed appropriate to protect the public
7 health, safety and general welfare.

8 (E) The director or commission may also set basic
9 conditions of approval for issuance of the
10 administrative or condition use permit, taking into
11 consideration surrounding development, including but
12 not limited to conditions that:

13 (1) ensure that structures and excavation areas
14 proposed are arranged and screened in such a manner
15 that they are not detrimental to an existing
16 neighborhood;

17 (2) require additional access roads which
18 circumvent residential areas;

19 (3) increase setback or yard dimensions;

20 (4) control the location and number of vehicular
21 access points;

22 (5) require and designate the location,
23 screening, drainage, surfacing or other improvements

- 1 (6) limit hours of operation;
- 2 (7) modify required visual screening, noise
3 mitigation, lighting restrictions and roads/access
4 restrictions as appropriate for surrounding
5 development and in accordance with development
6 standards referenced in MSB 28.30.070, site
7 development standards;
- 8 (8) require increased reclamation standards; and
- 9 (9) other conditions appropriate under the
10 circumstances.

11 Section 18. Adoption of section. MSB 28.30.140 is hereby adopted
12 to read:

13 28.30.140 APPLICATION PROCEDURES FOR A CONDITIONAL USE
14 PERMIT

15 (A) An application for a conditional use permit
16 for earth materials extraction shall be submitted by
17 the owner of the property concerned or authorized
18 agent designated in writing by the property owner to
19 the department, and shall include the following:

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

22 (2) a site development plan and reclamation
23 plan in accordance with this chapter;

1 (3) a copy of application for water rights
2 if applicable;

3 (4) the fee required under this chapter as
4 established by MSB 28.10.040.

5 (B) The application shall be accepted or
6 rejected for failure to meet the requirements of
7 subsection (A) of this section. The rejection shall be
8 in writing and shall state the deficient items. Once
9 the deficiencies are corrected, the application shall
10 be accepted as complete.

11 (C) A public hearing shall be scheduled before
12 the planning commission within 60 calendar days of the
13 acceptance of a complete conditional use permit
14 application, unless the 60 calendar day limit is
15 waived by the applicant.

16 (D) The planning commission shall hear any
17 interested parties and shall render a decision and
18 issue written findings for its decision on the
19 application for a conditional use permit within 30
20 calendar days from the date of public hearing, unless
21 the applicant agrees to a time extension. In the
22 granting of a conditional use permit, the planning
23 commission shall state in writing the conditions of

1 approval of the permit and define the limits of the
2 permitted activity.

3 Section 19. Adoption of section. MSB 28.30.150 is hereby
4 adopted to read:

5 28.30.150 ADDITIONAL APPLICATION PROCEDURES TO EXTRACT
6 EARTH MATERIAL WITHIN FOUR FEET OF OR INTO THE
7 SEASONAL HIGH WATER TABLE

8 (A) In addition to the application requirements
9 for a conditional use permit for earth materials
10 extraction, the application shall include:

11 (1) a description of the proposed extent
12 and depth of material extraction beneath the seasonal
13 high water table.

14 (2) a written report that meets the
15 requirements of MSB 28.30.150(B)(4), a monitoring
16 plan, and a spill prevention, control, and
17 countermeasures plan as required by this section.

18 (3) a fee in the amount designated in
19 accordance with MSB 28.10.040.

20 (4) a certificate of general liability
21 insurance with limits not less than one million
22 dollars per occurrence/one million dollar aggregate
23 for operations involving less than forty acres and two

1 million dollars per occurrence/two million dollar
2 aggregate for operations involving more than forty
3 acres. Insurance shall insure liability for bodily
4 injury and property damage and be written on the
5 Insurance Services Office form number CG0001 12 07 or
6 a form as broad as CG0001 12 07. The certificate of
7 insurance shall include 30 days notice of cancellation
8 to the borough. The borough shall be named on the
9 applicant's general liability policy as an additional
10 insured and the applicant shall waive their rights of
11 subrogation against the borough. Such insurance shall
12 remain in full force and effect in the specified
13 amounts for the duration of the permit period.
14 Insurance coverage must include liability for
15 providing comparable alternate sources of drinking
16 water to all impacted parties served by any private or
17 public water system compromised as a result of the
18 activity.

19 (5) a certificate of Pollution Liability
20 insurance with limits of one million dollars per
21 occurrence/one million dollar aggregate including
22 third party Bodily Injury and Property Damage and
23 cleanup costs. If the Responsible party's Pollution

1 Liability (Environmental) Insurance is written on a
2 claims-made form, the Responsible party shall provide
3 insurance for a period of three years after expiration
4 or termination of the permit. The policy(s) shall
5 evidence a retroactive date, no later than the
6 effective date of the conditional use permit.

7 (B) The following requirements shall be met
8 prior to application:

9 (1) Installation of a sufficient number of
10 monitoring wells and test pits, as recommended by a
11 qualified professional, to adequately determine
12 groundwater flow direction, hydraulic gradient, water
13 table and seasonal high water table elevation, and
14 monitor groundwater quality upgradient and
15 downgradient of the proposed activity on the property
16 on which the activity will take place. Monitoring
17 well and test pit locations must provide the qualified
18 professional with adequate information to characterize
19 the entire property that will be permitted for
20 material extraction;

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

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

4 (c) Monitoring well logs and a report
5 must be submitted to the Alaska Department of Natural
6 Resources (ADNR) prior to time of application. The
7 submittal to ADNR must comply with Title 11 Alaska
8 Administrative Code Chapter 93.140 (11AAC93.140) by
9 showing well construction parameters and information.

10 (2) Collection of a sufficient number of
11 representative groundwater samples, as recommended by
12 a qualified professional, to determine baseline water
13 quality.

14 (a) Baseline representative groundwater
15 samples shall be collected biannually (either mid-
16 summer and fall or fall and late winter) from
17 monitoring wells, and at a minimum, be analyzed for
18 arsenic, barium, cadmium, chromium, lead, mercury,
19 selenium, silver, total nitrite/nitrates, phosphates,
20 total dissolved solids, fecal coliform bacteria,
21 benzene, toluene, ethylbenzene, and xylenes by
22 appropriate methods approved by the state. Additional
23 analytes shall be included if recommended by a

1 qualified professional and based on review of
2 regulated potential sources of contamination within
3 one half-mile of the boundary of the property on which
4 the activity will take place;

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

11 (3) Determination of seasonal high water
12 table elevation, groundwater flow direction, hydraulic
13 gradient, and water table elevation for the subject
14 parcel shall be measured under supervision of a
15 qualified professional.

16 (4) A written report shall be completed by
17 a qualified professional that makes a determination
18 about the potential adverse impacts to groundwater and
19 surface water body elevation, groundwater and surface
20 water quality, surrounding water users and adjacent
21 properties. The determination shall be based on
22 available data, interpretations of the data and
23 knowledge of groundwater processes.

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

3 (a) Identify existing public water
4 system sources (i.e., wells, springs, surface water
5 intakes), as identified by the state, that are located
6 within one half mile of the boundary of the property
7 on which the activity will take place;

8 (b) Identify actual or presumed
9 private drinking water wells located within one half-
10 mile of the boundary of the property on which the
11 activity will take place and include a copy of the
12 available well logs. The qualified professional shall
13 inspect ADNR well log records available for properties
14 within one half mile of the boundary of the property
15 on which the activity will take place.

16 (c) Identify public drinking water
17 source capture areas less than or equal to the
18 distance of the two-year-time-of-travel isochron as
19 identified or approved by the state, located within
20 one-half mile of the boundary of the property on which
21 the activity will take place;

22 (d) Identify existing regulated
23 potential sources of contamination within at least one

1 half-mile of the boundary of the property on which the
2 activity will take place;

3 (e) Contain maps at appropriate scales
4 presenting the results of the well search, the
5 setbacks required by 28.30.160, and illustrating
6 wetlands and water bodies; At least one map shall show
7 identified potential sources of contamination; and

8 (f) Include the water table elevation
9 monitoring data, groundwater sampling analytical
10 results, monitoring well logs and records of any test
11 pits, and a discussion of the seasonal high water
12 table determination.

13 (g) Evaluate subsurface hydrologic
14 conditions and identify potential adverse impacts that
15 may occur as a result of material extraction.
16 Evaluating hydrologic conditions includes identifying
17 confining layers.

18 (h) The report and all data relied
19 upon in creation of the report shall be provided to
20 the borough and shall be available to the public for
21 inspection and review by members of the public.

22 (6) A monitoring plan shall be completed by
23 a qualified professional with appropriate action

1 levels requiring additional investigation and
2 monitoring to assess potential adverse impacts to
3 groundwater or surface water.

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

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

8 (C) The application shall be accepted or
9 rejected for failure to meet the requirements of this
10 section. The rejection shall be in writing and shall
11 state the deficient items. Once the deficiencies are
12 corrected, the application shall be accepted as
13 complete.

14 (D) A public hearing shall be scheduled before
15 the planning commission within 60 calendar days of the
16 acceptance of a complete conditional use permit
17 application, unless the 60 calendar day limit is
18 waived by the applicant.

19 (E) If extraction of earth materials within four
20 feet of the seasonal high water table is under
21 consideration, the planning commission shall hear any
22 interested parties and shall render a decision on the
23 application within 60 calendar days from the date of

1 public hearing, unless the applicant agrees to a time
2 extension. In the granting of a conditional use
3 permit, the planning commission shall state in writing
4 the conditions of approval of the permit.

5 Section 20. Adoption of section. MSB 28.30.160 is hereby
6 adopted to read:

7 28.30.160 OPERATION STANDARDS AND SETBACKS FOR
8 EXTRACTING MATERIAL WITHIN THE SEASONAL HIGH WATER
9 TABLE

10 (A) The following requirements shall be met
11 during material extraction into the four foot vertical
12 separation buffer or beneath the seasonal high water
13 table:

14 (1) Implement a monitoring plan that meets
15 the requirements of 28.30.150. If existing wells will
16 provide sufficient data, no additional wells are
17 required.

18 (2) Implement the spill prevention, control
19 and countermeasures plan in accordance with
20 Environmental Protection Agency's requirements for
21 above ground storage tank operations for typical and
22 standard housekeeping practices, regardless of the
23 quantity of petroleum products on-site.

1 (a) Fuel storage containers larger
2 than 50 gallons shall be contained in impermeable
3 berms and basins capable of retaining 110 percent of
4 the storage capacity to minimize potential for
5 uncontained spills or leaks. Fuel storage containers
6 50 gallons or smaller shall not be placed directly on
7 the ground, but shall be stored on a stable
8 impermeable surface;

9 (b) Locate storage tanks (above ground
10 storage tanks) farthest from the path of groundwater
11 flow to private and public water systems, as defined
12 by a qualified professional and farthest from state-
13 approved drinking water source capture areas
14 referenced above, and outside the setbacks described
15 in 28.30.160 for all drinking water sources;

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

22 (d) In the event of a reportable
23 release of regulated contaminants, notification shall

1 include the director and shall occur at the same time
2 the state and federal agencies, if applicable are
3 notified.

4 (3) Groundwater flow direction, hydraulic
5 gradient, and groundwater table elevation for the
6 subject parcel shall be measured at least monthly
7 during the active time of material extraction.
8 Monitoring wells must be maintained in place or
9 replaced with functional equivalent monitoring wells.

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

17 (a) Representative groundwater samples
18 shall be analyzed at a minimum, for benzene, toluene,
19 ethylbenzene, xylenes, and total dissolved solids, by
20 appropriate methods approved by a certified laboratory
21 as well as analytes listed in MSB 28.30.150(B)(2)(a)
22 that are likely to exceed the water quality standards
23 established by state regulation. Groundwater sample

1 analysis shall include testing for analytes that may
2 indicate water quality changes including, but not
3 limited to, pH, conductivity, nitrates, sulfates,
4 sodium, calcium, magnesium, bicarbonate, and
5 potassium;

6 (b) Analytical sampling results and
7 water elevation monitoring data shall retained for the
8 duration of the reclamation financial security and
9 shall be provided to the director upon request.

10 (i) If the monitoring data
11 indicates that a maximum contaminant level set under
12 18 AAC 80 has been exceeded, or if the water level
13 measurements indicate a shift, beyond natural
14 variability, in the elevation of the water table, the
15 owner or responsible party shall report that result to
16 the department within 48 hours of receipt of the
17 result.

18 (c) A qualified professional shall
19 annually submit a letter report to the borough
20 including a table of monitoring results and certifying
21 that:

1 (i) water quality sample
2 analytical results remain below the maximum
3 contaminant levels established under 18 AAC 80; and

4 (ii) water table elevation
5 monitoring data has not shifted beyond natural
6 variability.

7 (5) Material extraction operations shall
8 not breach or extract material from a confined aquifer
9 or breach a confining layer beneath a perched aquifer
10 currently used as a drinking water source or that
11 could reasonably be used as a future drinking water
12 source. If evidence suggests a confined aquifer or
13 confining layer has been breached, the director shall
14 be notified within 24-hours.

15 (a) A hydrologic assessment, conducted
16 by a qualified professional, to determine the area
17 impacted and the nature and degree of impacts and a
18 description of potential repair or mitigation options
19 shall be submitted to the Director within 14 calendar
20 days of notification;

21 (b) Repair or mitigation sufficient to
22 address identified impacts shall be initiated as soon

1 as practical, not to exceed 45 calendar days from the
2 date the assessment is received by the director.

3 (6) Proof of insurance as required by
4 28.30.150(A)(4) to mitigate impacts arising from the
5 extraction activity shall be maintained until
6 completion and acceptance of reclamation activities.

7 (B) Operations shall be conducted in accordance
8 with the current publication of the State of Alaska's
9 User Manual Best Management Practices for Gravel Pits.

10 (C) In addition to adherence with setback
11 requirements established in MSB 28.30.110, maintain
12 the following setbacks from earth materials extraction
13 activities within four-feet of or into the seasonal
14 high water table;

15 (a) 65 feet from the property line.
16 Where earth material extraction operations encompass
17 one or more contiguous parcels and extraction of
18 material within four-feet of or within the seasonal
19 high water table is proposed across adjoining lot
20 lines this setback shall not apply;

21 (b) 500 feet from the nearest
22 downgradient drinking water source;

1 (c) 350 feet from the nearest cross-
2 gradient drinking water source; and

3 (d) 200 feet from the nearest
4 upgradient drinking water source.

5 (e) Minimum separation distances shall
6 not apply to drinking water sources constructed after
7 a permit to extract material from beneath the seasonal
8 high water table has been issued.

9 Section 21. Adoption of section. MSB 28.30.170 is hereby
10 adopted to read:

11 28.30.170 STANDARDS FOR ADMINISTRATIVE OR CONDITIONAL
12 USE PERMIT.

13 (A) In granting an administrative or conditional
14 use permit for any earth materials extraction
15 regulated by this chapter, the director or commission
16 must make the following findings:

17 (1) that the use is not inconsistent with
18 the applicable comprehensive plan(s);

19 (2) that the applicant has met all other
20 requirements of this chapter pertaining to the use in
21 question;

22 (3) that granting the use will not be
23 harmful to the public health, safety and general

1 welfare;

2 (4) that sufficient setbacks, lot area,
3 buffers or other safeguards are being provided;

4 (5) that operational impacts including but
5 not limited to noise and dust shall be minimized;

6 (6) that the proposed use will be located
7 such that it will be compatible with existing and
8 planned uses in the surrounding area;

9 (7) that the proposed use will not render
10 the area used for extraction and earth material
11 processing unusable for future land use; and

12 (8) that the proposed use will not
13 adversely impact groundwater and surface water
14 quantity and quality.

15 Section 22. Amendment of section. MSB 28.30.180 is
16 hereby amended to read:

17 28.30.180 PERFORMANCE SECURITY STANDARDS

18 (A) Acceptable forms of performance security
19 are:

20 (1) Bond. The applicant may provide a
21 surety bond from a company authorized to do business
22 in Alaska, and acceptable to the borough.

1 (2) Deposit in escrow. The applicant may
2 deposit a cash sum equal to the total amount required
3 by this chapter. The deposit may be made either to
4 the borough or an account may be set up in escrow with
5 a responsible financial institution authorized to do
6 such business in the State of Alaska. In the case of
7 an escrow account, the applicant shall file with the
8 borough an escrow agreement which includes the
9 following terms:

10 (a) Funds of the escrow account shall
11 be held in trust until released by the borough and may
12 not be used or pledged by the applicant as security in
13 any matter during the period other than payment for
14 the improvements

15 (3) Letter of credit. The applicant may
16 elect to provide from a bank or other responsible
17 financial institution authorized to do such business
18 in the State of Alaska an irrevocable letter of credit
19 that will be required until reclamation has been
20 accepted by the borough. The letter shall be filed
21 with the borough and shall certify the following:

1 (a) that the creditor irrevocably
2 guarantees funds in an amount equal to the estimated
3 cost required of this section;

4 (b) that in the case of failure on the
5 part of the applicant to complete the requirements of
6 this chapter, the creditor shall pay to the borough
7 immediately and without further action the funds as
8 the borough determines are necessary to finance the
9 completion of those requirements.

10 (B) When the permit holder meets the obligations
11 under this chapter, the department shall return all
12 unused performance securities.

13 Section 23. Adoption of section. MSB 28.30.190 is
14 hereby amended to read:

15 28.30.190 FEES

16 (A) The borough shall adopt permit fees, in
17 accordance with MSB 28.10.040, to offset the cost of
18 permitting and monitoring of permits granted under
19 this chapter. Annual permit and inspection fees shall
20 be established.

21 (B) Failure to pay the inspection fee required
22 by this chapter when due shall constitute a violation
23 of this chapter.

1 (C) The Matanuska-Susitna Borough is exempt from
2 all fees required under this chapter.

3 Section 24. Adoption of section. MSB 28.30.200 is hereby
4 amended to read as follows:

5 28.30.200 AMENDMENT OF AN ADMINISTRATIVE OR
6 CONDITIONAL USE PERMIT

7 (A) The director may approve changes in
8 operational equipment, structures, or the sequence or
9 phasing of mining operations or changes to the site
10 development or reclamation plan that meet the
11 standards and requirements of this chapter and the
12 conditions and requirements of the permit without
13 requiring an amendment under this section.

14 (B) Any change not covered subsection (A) of this
15 section in the scope of operations or change to the
16 site development plan or reclamation plan submitted in
17 the application shall require an amendment under this
18 section.

19 (C) The procedure for amendment of an
20 administrative permit approved by the director, or a
21 request to change the conditions attached to an
22 administrative permit, shall be the same for a new
23 application.

1 (D) The procedure for amendment of a conditional
2 use permit approved by the commission, or a request to
3 change the conditions attached to a conditional use
4 permit, shall be the same for a new application.

5 Section 25. Adoption of section. MSB 28.30.300 is hereby
6 adopted to read:

7 28.30.300 TRANSFER OF AN ADMINISTRATIVE OR CONDITIONAL
8 USE PERMIT.

9 (A) An administrative or conditional use permit
10 may be transferred under the following conditions:

11 (1) Prior to transfer of ownership of the
12 property, the permit holder must provide written
13 notification on a form provided by the Borough that
14 includes the following information:

15 (a) name and contact information of
16 the new owner; and

17 (b) a detailed description of any
18 proposed changes the operation will undergo.

19 (2) Before a permit is transferred to a new
20 owner, the new owner must provide proof of current
21 insurance policies and must post bonds or other
22 sureties that are equivalent to or that exceed those
23 specified in this chapter. In addition, the new owner

1 must execute a signed acknowledgement that the new
2 owner will assume responsibility for compliance with
3 the requirements of the permit.

4 (3) If the above conditions are not met
5 before ownership of the property changes, then
6 activities under the permit must cease until the above
7 required conditions are met, the required amendments
8 are approved, and/or proof of insurance and
9 performance securities are provided by the new owner.

10 Section 26. Adoption of section. MSB 28.30.310 is hereby
11 adopted to read:

12 28.30.310 TERMINATION OF A PERMIT

13 (A) Except as otherwise specified by code, an
14 administrative or conditional use permit issued under
15 this chapter will become null and void under the
16 following conditions:

17 (1) Borough notification of termination of
18 the permit for failure to comply with an order to
19 correct violations of an administrative or conditional
20 use permit and the time for an appeal has expired;

21 (2) Responsible party's failure to initiate
22 the use for which the administrative or conditional
23 use permit was issued within two years of the date of

1 the permit issuance;

2 (B) The planning commission may grant a one-time
3 one-year extension of a conditional use permit. The
4 planning commission must find that the request is
5 reasonable and the proposed use is still appropriate
6 under the standards for consideration under the
7 subject use. An application for extension shall be
8 subject to the same application fee as a conditional
9 use permit and shall require public notice and public
10 hearing in accordance with the requirements of MSB
11 28.10.025.

12 Section 27. Adoption of section. MSB 28.30.320 is hereby
13 adopted to read:

14 28.30.320 APPEAL PROCEDURES.

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

21 Section 28. Adoption of section. MSB 28.30.330 is hereby
22 adopted to read:

23 28.30.330 VARIANCES

1 (A) Applications and procedures for obtaining
2 variances from standards of this chapter shall be as
3 prescribed in MSB 17.65.

4 Section 29. Adoption of section. MSB 28.30.340 is hereby
5 adopted to read:

6 28.30.340 FLOOD DAMAGE PREVENTION; APPLICATION AND
7 PROCEDURES.

8 (A) Applications and procedures for obtaining a
9 development permit within any designated special flood
10 hazard area under this chapter shall be as prescribed
11 in MSB 17.29.

12 Section 30. Adoption of section. MSB 28.30.350 is hereby
13 adopted to read:

14 28.30.350 VIOLATIONS, ENFORCEMENT, AND PENALTIES

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

17 (B) If the Director determines that the
18 responsible party has violated, or allowed a violation
19 of the approved reclamation plan and fails to comply
20 with a lawful order of the director correcting the
21 violation, the performance security shall be
22 forfeited. The responsible party shall be liable to

1 the borough in a civil action for the full amount of
2 costs incurred by the borough related to the action.

3 (1) The borough may, with the staff,
4 equipment, and material under its control, or by
5 contract with others, reclaim the disturbed areas when
6 it finds that reclamation has not occurred in
7 accordance with the reclamation plan.

8 (2) The Borough may also pursue injunctive
9 relief or any other remedy available under MSB 1.45.

10 (C) Enforcement of the provisions of this
11 chapter and associated penalties and remedies shall be
12 consistent with the terms and conditions of MSB 1.45.

13 (D) Authorized representatives of the borough
14 will be allowed to inspect the permitted site and
15 related records at reasonable times for the purpose of
16 monitoring compliance with all permit conditions. Upon
17 reasonable notice from the borough, the responsible
18 party shall provide necessary assistance and security
19 to facilitate authorized inspections by borough
20 representatives.

21 (E) In addition to other applicable penalties,
22 failure to correct the violation of code, after
23 reasonable notice, may result in revocation of the

1 permit.

2 Section 31. Amendment of section. MSB 28.100 is hereby
3 amended by adding the following definitions:

4 • "Administrative permit" means a written
5 document issued administratively which may specify
6 controls, restrictions and safeguards on the
7 administratively permitted activity to ensure
8 compatibility with permitted uses.

9 • "Adverse impact" means a condition that
10 creates, imposes, aggravates, or leads to inadequate,
11 impractical, unsafe, or unhealthy conditions on a site
12 proposed for development or on other properties and
13 facilities.

14 ▪ "Agricultural" means currently in use, or
15 classified by borough or state agencies, for farm or
16 ranch purposes, including pasture.

17 ▪ "Angle of repose" means the steepest angle
18 material can be piled without slumping.

19 ▪ "Applicant" means that person, corporation
20 or other legal entity or authorized representative
21 possessing the legal right to develop the natural
22 resource or undertake the proposed use for the site in
23 question, and submitting an application for

1 development or to undertake a permitted activity or
2 use.

3 ▪ "Aquifer" means a formation, a group of
4 formations, or part of a formation that contains
5 sufficient saturated permeable material to yield
6 economical quantities of water to wells and springs.

7 ▪ "Artesian water table" means a water table under
8 hydrostatic head, generally beneath an impermeable
9 layer. When this layer is penetrated, the water level
10 rises in an uncased borehole above the top of the
11 aquifer.

12 • "Batch plant" means a plant or equipment
13 used for production of asphalt or concrete.

14 • "Berm" means an earthen mound designed to
15 provide visual interest, screen undesirable views,
16 decrease noise, or control or manage surface drainage.

17 • "Buffer" means a method of protection
18 against negative impacts, which provides a physical
19 separation or barrier.

20 • "Building" means any structure, including
21 mobile homes, intended for the shelter, housing, or
22 enclosure of any person, animal, process, equipment,
23 goods, use, materials, or services of any kind or

1 nature.

2 • "Capture area" means the area on the surface
3 of the ground where infiltrating water will travel to
4 a drinking water well.

5 • "Commencement" means the extraction and
6 sale of 2000 or more cubic yards of material from a
7 single phase of mining operation.

8 • "Commercial" means any activity where
9 natural resources, goods, or services are offered or
10 provided for sale, barter or trade.

11 • "Company", see definition for "person".

12 • "Compatible" means able to exist or act
13 together harmoniously, considering noise levels and
14 vibration, odors, potential fire hazard, visual
15 impacts, effects to surface water and groundwater
16 quality/quantity, adequacy of the road system, air
17 quality, fish and wildlife, character of residential
18 areas and surrounding land uses.

19 • "Conditional use" means a use of a structure
20 or land, which may be allowed by the planning
21 commission after a public hearing and review and
22 subject to certain prescribed or imposed conditions.

1 • "Conditional use permit (CUP)" means a
2 written document which may specify controls,
3 restrictions and safeguards on the conditional
4 permitted activity to ensure compatibility with
5 permitted uses.

6 • "Conditions of approval" means requirements
7 established by the borough before preliminary or final
8 approval of an application becomes effective.

9 • "Confined aquifer" means an aquifer which is
10 bounded above and below by formations of impermeable
11 or relatively impermeable material. An aquifer in
12 which ground water is under significantly greater
13 pressure than atmospheric pressure and its upper limit
14 is the bottom of a bed of distinctly lower hydraulic
15 conductivity than that of the aquifer itself. Confined
16 aquifer is synonymous with artesian aquifer.

17 • "Confining layer" means a geologic bed or
18 layer that retards but does not necessarily prevent
19 the flow of water. A confining layer does not readily
20 yield water to wells or springs. Confining layer is
21 synonymous with aquitard.

22 • "Corridor" means the route within which a
23 pipeline right-of-way is located.

1 • "Department" means the Borough Planning and
2 Land Use Department.

3 • "Developable" means land that does not have
4 slopes exceeding 30 percent, and is not located within
5 a geologic hazard area, federally defined floodway,
6 drainage channel or wetland area greater than one
7 acre.

8 • "Earth materials" includes but is not
9 limited to those natural resources such as sand,
10 gravel, soil, peat moss, sphagnum, stone, pumice,
11 cinders and clay; also called "materials."

12 • "Earth material processing" means any
13 crushing, loading, screening, sorting, storing,
14 washing, or production of asphalt.

15 • "Easement" means authorization by a property
16 owner for the use of a designated portion of his
17 property by another, for a specified purpose.

18 • "Extraction" means to excavate earth
19 materials from the surface and/or subsurface.

20 • "Fencing, security" means an eight-foot
21 chain-link fence topped by three strands of barbed
22 wire, or the equivalent, with a gate that can be

1 secured.

2 • "Groundwater" means that part of the
3 subsurface where water occurs in the saturated zone.

4 • "Ground cover" means grasses or other low-
5 growing plants and landscaping.

6 • "Growing Season" means June 1 through August
7 30.

8 • "Impermeable" means a surface or material
9 that provides a functional barrier to significant
10 liquid flow or infiltration.

11 • "Industrial use" means any activity which
12 includes manufacturing, earth material processing,
13 warehousing, storage, distribution, shipping or other
14 related uses.

15 • "Interested party" means:

16 ▪ the applicant before the platting board
17 or planning commission;

18 ▪ any person with an interest relating to
19 the property or transaction which is the subject
20 matter of the appeal so situated that the disposition
21 of the action may as a practical matter impair or
22 impede the protection of that interest; or, a public

1 interest participant, when the issues involve strong
2 public policies and when numerous people will receive
3 benefits should the individual's position prevail; and
4 who:

5 o appeared before the platting board
6 or planning commission and made an oral or written
7 presentation; or

8 o has an interest in a determination
9 or order by a borough official pursuant to MSB
10 15.39.030(A)(1), that was not rendered at a public
11 hearing of the platting board or planning commission;

12 ▪ any governmental agency; or
13 ▪ the person to whom an enforcement order
14 is issued.

15 • "Isochron" means a line drawn on a map
16 through all points having the same numerical value of
17 time.

18 • "Lessee" means the person leasing mineral
19 rights for development purposes from the owner. The
20 person may also be the responsible party, for the
21 purposes of this chapter.

22 • "Materials", see definition for "earth
23 materials".

1 • "Master plan" means a plan that describes
2 the complete build-out (consisting of all phases) and
3 the associated cumulative impacts of the exploration
4 and/or development and production stages of a natural
5 resource.

6 • "Monitoring well" means any cased excavation
7 or opening into the ground made by digging, boring,
8 drilling, driving, jetting or other methods for the
9 purpose of determining the physical, chemical,
10 biological, or radiological properties of groundwater.

11 • "Natural grade" means the elevation of the
12 ground level in its natural state, before
13 construction, filling, or excavation.

14 • "Operating plan" means a general description
15 of all associated facilities and operations areas
16 identifying purpose, use, typical staffing pattern,
17 seasonal or periodic considerations, routine hours of
18 operating, source of services/infrastructure, and any
19 other information related to regular functioning of
20 that facility.

21 • "Parcel" means any contiguous lot or tract
22 of land owned and recorded as the property of the same
23 persons or controlled by a single entity.

1 • "Permit" means written governmental
2 permission issued by an authorized official or
3 authorized board or commission, empowering a person to
4 do some act not forbidden by law but not allowed
5 without such authorization.

6 • "Person" means an individual(s),
7 institution(s), land owner(s), or legal entity(ies)
8 that is permitted by legal ownership, lease, permit,
9 contract, or other written device to utilize a natural
10 resource, and also a natural person(s), a
11 corporation(s), association(s), guardian(s), partnership(
12 s), receiver(s), trustee(s), administrator(s),
13 executor(s), fiduciary(ies) or representative(s), of
14 any kind.

15 • "Phase" means a portion of an operation
16 undertaken in a logical time and geographical
17 sequence.

18 • "Platted subdivision lot" means any parcel
19 of land created pursuant to state law, which has been
20 recorded with the state.

21 • "Pollution" means the contamination or other
22 degradation of the physical, chemical or biological
23 properties of water or air, including change in

1 temperature, taste, color, turbidity or odor, or such
2 discharge of any liquid, gaseous, solid, radioactive
3 or other substance into water or air as will or is
4 likely to create a nuisance or render such water or
5 air harmful, detrimental or injurious to public
6 health, safety or welfare, or to domestic, commercial,
7 industrial, agricultural, recreational or other
8 beneficial uses, or to livestock, wild animals, birds,
9 fish or other aquatic life.

10 • "Processing", see "Earth material
11 processing".

12 • "Public nuisance" means any land use
13 activity which depreciates land values, is unsightly,
14 creates excessive noise, fumes, odors, or unsanitary
15 conditions, creates danger from fire and/or explosion,
16 creates traffic hazards, or activities which pose a
17 danger to public health, safety or welfare or the
18 economic well-being of the community.

19 • "Qualified professional" means an
20 independent registered civil engineer or licensed
21 geologist recognized by the State of Alaska or ground
22 water professional certified by the National Ground
23 Water Association.

1 • "Quiet zone" means the area within one-half
2 mile of a school, hospital, institution of learning,
3 court, rest home or other designated area where
4 exceptional quiet is necessary, while such places are
5 in use.

6 • "Residential use" means the use of land,
7 buildings or structures for human habitation.

8 • "Responsible Party" means the landowner or
9 the land owner's designated agent.

10 • "Runoff" means the portion of rainfall,
11 melted snow, irrigation water, and any other liquids
12 that flows across the ground surface.

13 • "Screening" means a method of visually
14 shielding or buffering one abutting or nearby building
15 or use from another by fencing, walls, berms, or
16 densely planted vegetation.

17 • "Seasonal high water table" means the
18 highest level to which the groundwater rises in most
19 years. Estimates are based on observations of the
20 water table at selected sites and on the evidence of a
21 saturated zone, the upper limit often consisting of a
22 mixture of grayish and reddish mottles in the soil.

1 • "Setback" means the distance between a
2 structure or activity and any lot line, right of way,
3 or easement and also the minimum distance required to
4 be maintained between two structures or between a
5 structure and property line, right-of-way, water well,
6 or water body. The distance shall be calculated in a
7 straight line, without regard to intervening
8 structures or objects to the closest exterior point of
9 the structure, property line, or shore line, or center
10 of the well.

11 • "Silt soil" means a soil that consists of at
12 least 50 percent silt sized particles.

13 • "Site" means any plot or parcel of land or
14 combination of contiguous lots or parcels of land.

15 • "Slope" means The rate of vertical change of
16 ground surface expressed as a percentage figure and
17 determined by dividing the vertical distance by the
18 horizontal distance.

19 • "Standards" means mandatory regulations,
20 which are indicated by use of the terms "will,"
21 "shall" and "must."

22 • "Street" means any vehicular way that is (1)

1 an existing state, municipal, or borough roadway; (2)
2 shown upon a plat approved pursuant to law; (3)
3 approved by other official action; (4) shown on a plat
4 duly filed and recorded in the office of the recording
5 clerk; (5) shown on the official map or adopted master
6 plan. It includes the land between the street lines,
7 whether improved or unimproved.

8 • "Structure" means anything that is
9 constructed or erected and located on, attached to, or
10 under the ground, or attached to something fixed to
11 the ground.

12 • "Unconfined aquifer" means an aquifer whose
13 upper surface is a water table free to fluctuate.

14 • "Use" means the purpose for which land, a
15 building, or structure is arranged, designated, or
16 intended, or is occupied or maintained.

17 • "Water body or water course" means a natural
18 or man-made landscape feature that contains water
19 (water body) or conveys surface water (water course)
20 and that is inundated at a frequency and duration such
21 that water, not air, is the principal medium in which
22 prevalent organisms live. Water bodies include lakes,
23 ponds, reservoirs, emergent wetlands and all saltwater

1 bodies; water courses include rivers, streams, creeks,
2 sloughs, canals and drainage ways.

3 • "Water table" means the upper surface of a
4 zone of saturated soil, including natural seasonal
5 fluctuations, but excluding fluctuations caused by
6 heavy rains or rapid snowmelt; the water table is
7 indicated by the level at which water stands in a well
8 that is open along its length and penetrates the
9 surficial deposits just deeply enough to encounter
10 standing water in the bottom.

11 Section 32. Effective date. This ordinance shall take
12 effect upon adoption by the Matanuska-Susitna Borough Assembly.

13 ADOPTED by the Matanuska-Susitna Borough Assembly this -
14 day of -, 2009.

15
16 Talis J. Colberg, Borough Mayor

17 ATTEST:

18
19
20
21 LONNIE R. McKECHNIE, CMC Borough Clerk

22
23 (SEAL)