

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2014-06 (SUB-1)

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING TITLE 18 OF THE DILLINGHAM MUNICIPAL CODE TO REPEAL AND REENACT CHAPTER 18.16 LAND USE PERMITS TO PROVIDE A SYSTEM OF PERMITS AND REVIEWS TO RESPOND TO A VARIETY OF LAND USE ACTIVITIES; TO PROVIDE ADDITIONAL DEFINITIONS RELATED TO LAND USES IN SECTION 18.12.020; TO PROVIDE ADDITIONAL GUIDANCE FOR NONCONFORMING USES IN CHAPTER 18.44; TO PROVIDE ADDITIONAL GROUNDS FOR THE CITY TO ENFORCE ITS REGULATIONS IN CHAPTER 18.60; AND TO CREATE CHAPTER 18.42, MATERIAL SITES AND REGULATION

WHEREAS, the community of Dillingham supports development; and

WHEREAS, construction of a development project may require the extraction of gravel and aggregate; and

WHEREAS, the City of Dillingham also wishes to protect its environment and citizens from unnecessary negative impacts of such projects; and

WHEREAS, the development of material sites can impact viewsheds and raise issues of noise, dust, potential harm to local wells and anadromous streams; and

WHEREAS, state and federal regulations require certain permits in connection with development and operation of material sites, but these permits do not cover all the issues that the community may wish to see addressed; and

WHEREAS, the City is considered the entity responsible for addressing issues that are not currently covered by existing regulations; and

WHEREAS, the City wishes to provide responsible oversight of its natural and built environments, by creating a system of permits and reviews to respond to the scope and variety of land use activities; and

WHEREAS, the City recommends adoption of necessary changes to the Dillingham Municipal Code to address the development of material sites in Dillingham;

NOW, THEREFORE, BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Amendment of Title 18. Title 18 of the Dillingham Municipal Code is hereby amended by repealing (repealed language shown as ~~strikethrough~~) and reenacting Chapter 18.16 to read as follows:

Chapter 18.16 LAND USE PERMITS

Sections:

- ~~18.16.010~~ Land use permit required.
- ~~18.16.020~~ Land use permit application.
- ~~18.16.030~~ Land use permit administration.

~~18.16.010~~ Land use permit required.

~~No party shall construct, construct an addition to, substantially improve, change the principal use of, or relocate a structure, or construct a driveway or fence within the city without first securing from the city planning department a land use permit for each parcel. (Ord. 92-21 § 4 (part), 1992.)~~

~~18.16.020~~ Land use permit application.

~~Application for a land use permit shall be filed with the planning department on forms supplied by the department. Each application shall be accompanied by the required fee. (Ord. 92-21 § 4 (part), 1992.)~~

~~18.16.030~~ Land use permit administration.

~~A. Administrator. The planning director is appointed to administer and implement this title by granting or denying land use permit applications in accordance with its provisions.~~

~~B. Alternate to Director. In the event that the planning director is out of town, the position is vacant, or the director is otherwise unavailable for more than one week, the city manager has the option of designating an interim administrator of this title. The interim administrator may include the city manager, another city employee or the planning commission.~~

~~C. Review. Following filing of the application, the planning director shall review the submittal, request any additional information deemed necessary, and determine whether the application complies with the requirements of this code.~~

~~D. Approval. If it is determined that the application complies with the requirements of this code, the planning director shall issue a permit granting administrative approval to proceed, subject to provisions of this code.~~

~~E. Revision of Permit. An applicant may seek approval from the planning director to revise an approved permit, without having to submit a new application, if:~~

- ~~1. The revision meets the definition of "minor amendment" in this title; or~~
- ~~2. The revision is for the purpose of mitigating impact to historic resources according to Chapter 18.32 of this title.~~

~~F. Expiration of Approval. An applicant has two years from the approval date to make substantial progress on the structures and uses that have been approved. If substantial progress has not been made within two years, the approval expires. If the applicant desires the structures and uses to be reapproved, a new permit application must be submitted. (Ord. 92-21 § 4 (part), 1992.)~~

Sections:

- 18.16.010** General Provisions
- 18.16.020** By-Right Land Use Activity.
- 18.16.030** General Land Use Permit.
- 18.16.040** Administrative Review.
- 18.16.050** Conditional Use Permit.

18.16.010 General Provisions

A. Purpose. Unless a land use activity is a by-right land use activity, as described in Chapter 18.16.020, no party shall construct, construct an addition to, substantially improve, change the principal use of, or relocate a structure, or construct a driveway or fence within the city without first securing from the city planning department a land use permit for each parcel on which the structure, driveway or fence is or will be located.

B. Administrator. The Planning Director shall administer and implement this title.

C. Alternate to Director. In the event that the Planning Director is out of town, the position is vacant, or the Director is otherwise unavailable for more than one week, the City Manager has the option of designating an interim administrator of this title. The interim administrator may include the City Manager, another city employee or the Planning Commission.

D. Expiration of Approval. An applicant has two years from the approval date to make substantial progress on the structures and uses that have been approved. If substantial progress has not been made within two years, the approval expires. If the applicant desires the structures and uses to be reappraised, a new permit application must be submitted.

18.16.020 By-Right Land Use Activity.

A. Purpose. Those land uses with the least significant impact on the natural or built environments shall be considered by-right activities. By-right land uses are deemed appropriate due to their minimal size and low impact on surrounding neighborhoods and/or properties. Acknowledging certain uses as by-right serves to expedite the process of constructing or establishing such use.

B. Authority. By-right land uses require no application or formal review from City of Dillingham staff, or by an elected or appointed body. It is the responsibility of the property owner to ensure compliance with the requirements of the underlying land use district.

C. Authorized By-Right Land Uses. By-right uses are those structures or uses that are non-habitable and clearly ancillary or secondary to the parcel's principal use, such as a small smoke house or "steam". A by-right building shall not exceed one hundred and fifty (150) square feet in size.

D. Process. If a person wishes to construct or establish a by-right land use, they may do so without supplying any material to the City of Dillingham. No formal review procedure is necessary.

18.16.030 General Land Use Permit.

A. Purpose. General Land Use Permits are required for all land uses not considered by-right land uses. The purpose of the permit is to ensure that the standards of the underlying land use district are satisfied. These standards may include, but are not limited to: setbacks, maximum building height, building size, density, open space, on-site and septic well systems and the intended use.

B. Authority. The Planning Director shall review all General Land Use Permits.

C. Authorized Uses for General Land Use Permit. All land uses, other than those allowed as by-right land uses, or those required to follow the Administrative Review or Conditional Use process, shall require a General Land Use Permit.

D. Standards Applicable to General Land Use Permits. Only those standards stated in Chapter 18.20, Land Use Districts, shall be applicable to a General Land Use Permit; however, the Planning Director may impose conditions to a General Land Use Permit if regulations pertaining to the specific use, building or structure in this Code grant such authority.

E. Process. A General Land Use Permit shall be processed as follows:

1. A voluntary pre-application conference may be held with the Planning Director;
2. The Planning Department shall make available the General Land Use Permit form that outlines the necessary material and specific format for the permit application;
3. Upon receiving a complete General Land Use Permit form, the Planning Director shall conduct a review to determine whether the proposed land use complies with the applicable land use district standards; and
4. The Planning Director shall approve or deny the application no more than thirty (30) days after it has been submitted.

F. Revision of Permit. An applicant may seek approval from the Planning Director to revise an approved permit without having to submit a new application if:

1. The revision does not change the use, add an additional use or expand the combined area of the approved buildings or uses by more than twenty-five (25) percent; or
2. The revision is for the purpose of mitigating impact to historic resources according to Chapter 18.32 of this title.

18.16.040 Administrative Review.

A. Purpose. An Administrative Review is for those land uses which are generally compatible with the other permitted uses in a land use district, but which require individual review of their location, design, operation characteristics, intensity and density to ensure the appropriateness of the land use in the land use district.

B. Authority. The Planning Director, in accordance with the procedures, standards and limitations of this Title, shall approve, approve with conditions or deny a land use application requiring an Administrative Review.

C. Uses Requiring Administrative Review. Chapter 18.20, Land Use Districts, shall define those uses which require an Administrative Review. A land use subject to an Administrative Review shall be evaluated by the Planning Director for compliance with the standards and conditions set forth in this Chapter.

D. Standards Applicable to Administrative Review. When considering a development application for Administrative Review, the Planning Director shall consider whether all of the following standards are met, as applicable:

1. The use is consistent with the intent of the land use district in which it is proposed to be located and complies with all other applicable requirements of this Title;

2. The use is compatible with the mix of development in the immediate vicinity of the parcel in terms of scale of development, safety, and type of use, as well as with any applicable comprehensive, neighborhood, or master plan;

3. The location, size, design and operating characteristics of the proposed use minimizes adverse off-site effect by meeting the standards specified in this Code, including drainage or other water quality impacts, visual impacts, impacts on pedestrian and vehicular circulation, parking, trash, service delivery, noise, vibrations and odor on surrounding properties;

4. There are adequate public facilities and services to serve the use including but not limited to roads, water, sewage, solid waste, parks, police, fire protection, emergency medical services, hospital and medical services, drainage systems and schools; and

5. The Planning Director may impose such conditions on an administratively-reviewed use that are necessary to maintain the integrity of the City's land use districts and to ensure the use complies with this Chapter and this Title; is compatible with surrounding land uses; and is served by adequate public facilities. This includes, but is not limited to, imposing conditions on size, bulk, location, open space, landscaping, buffering, lighting, stormwater management, signage, off-street parking and other similar features, the construction of public facilities to serve the use and limitations on the operating characteristics, hours of operation and duration of the use.

E. Process. An application for Administrative Review shall be processed in accordance with the following:

1. A voluntary pre-application conference may be held with the Planning Director;

2. Upon receiving a complete Administrative Review application, the Planning Director shall conduct a review and prepare a determination; and

3. The Planning Director shall approve, approve with conditions, or deny the application no more than forty-five (45) days after receiving a complete application.

F. Application. At a minimum, all Administrative Review applications shall include the following information and materials:

1. A completed City of Dillingham General Land Use Permit form;

2. A disclosure of ownership of the parcel proposed for development, listing the names of all owners of the property and all mortgages, judgments, liens, easements, contracts and agreements affecting the parcel and demonstrating the owner's right to apply for the development application. If there is a question determined by the City regarding ownership of the property, which could be resolved by a title insurance company, the City may request the applicant provide a certificate of plat or current title insurance policy indicating the legal and equitable owners. The certificate shall be current within thirty days of the application. Also;

3. An 8½" x 11" vicinity map locating the subject parcel within the City of Dillingham;

4. A site plan depicting the proposed layout and the project's physical relationship to the land and its surroundings;
5. A site improvement survey certified by a registered land surveyor, licensed in the state, showing the current status of the parcel including any easements or rights-of-way. This requirement or any part thereof may be waived by the Planning Director if the project is determined not to warrant a survey document;
6. A written description of the proposal and a written explanation of how the proposed development complies with the review standards relevant to the development application;
7. A sketch plan of the site showing existing and proposed features relevant to the review of the application, including:
 - a. Location, dimension, and use of all structures;
 - b. Location and dimensions of all existing and proposed roads, driveways, parking areas, patios, decks, walkways, and other impervious area(s); and
 - c. Distances of existing and proposed structures from all property lines, rights-of-way, and easements;
8. A written description of the operational characteristics of the proposed use;
9. Any additional materials required for the specified land use type.

G. Amendment to Approved Administrative Review.

1. Minor amendment. A minor amendment to an approved administratively-reviewed use may be authorized by the Planning Director. Revisions for the purpose of mitigating impact to historic resources according to Chapter 18.32 of this title may be reviewed as a minor amendment. Other minor amendments shall be limited to changes which meet all of the following standards:
 - a. The change will not cause negative impacts on pedestrian and vehicular traffic circulation, parking or noise;
 - b. The change will not affect the character of the neighborhood in which the use is located;
 - c. The change will not substantially alter the external visual appearance of the building or its site.
2. Major amendments. Any amendment that changes an approved use to the extent that it no longer meets the criteria for Administrative Review shall be reviewed by the Planning Commission as a proposed Conditional Use.

18.16.050 Conditional Use.

A. Purpose. Conditional uses are those land uses whose impact to the general community requires careful review. These impacts may include location, design, operation characteristics, intensity and density that potentially exceeds the normal expectations of the underlying land use district. As such, conditional uses warrant a review before a public forum.

B. Authority. Conditional use applications are reviewed by the Planning Commission during a public hearing. The Planning Commission, in accordance with the procedures, standards and limitations of this Chapter, shall by resolution approve, approve with conditions, or deny a land use application for a conditional use, after receiving recommendation from the Planning Director.

C. Authorized Conditional Uses. Only those uses which are authorized as a conditional use for each land use district in Chapter 18.20, Land Use Districts, may be considered for conditional use review. The designation of a land use as a conditional use in a land use district does not constitute an authorization of such land use or act as an assurance that such land use will be approved as a conditional use; rather, each proposed conditional use shall be evaluated by the Planning Commission for compliance with the standards and conditions set forth in this Chapter.

D. Standards Applicable to Conditional Uses. When considering a development application for a conditional use, the Planning Commission shall consider standards (1) through (5) found in Section 18.16.040.D., Standards Applicable to Administrative Review, as applicable.

E. Process. An application for review of a conditional use shall be processed in the following manner:

1. A voluntary pre-application conference may be held with the Planning Director;
2. Upon receiving a complete conditional use application, the Planning Director shall conduct a review and prepare a recommendation for the Planning Commission;
3. A public hearing before the Planning Commission shall be conducted no later than sixty (60) days after receiving a complete application;
4. Following the public hearing, the Planning Commission shall by resolution (with appropriate findings of fact) approve, approve with conditions, or deny the application.
5. Notice requirements for conditional use applications shall include the following:
 - a. The applicant shall post a public notice sign on the subject property describing the owner, applicant, request, and date of the public hearing. The sign shall be at least twenty-four (24) inches in width by thirty-six (36) inches in height, with lettering at least one (1) inch in height. The sign shall be visible from the highest traveled public right-of-way adjacent to the property. Notice signs can be obtained from the City
 - b. At least thirty (30) days prior to the date of the scheduled public hearing, the City shall mail a public notice announcing the owner, applicant, request, location of the proposed use and date of the public hearing to all property owners within five hundred (500) feet of the subject property boundary; and
 - c. At least thirty (30) days prior to the date of the scheduled public hearing. The City shall publish notice of the time and place of the hearing in the manner required by DMC 2.08.020;

F. Application. An application for conditional use shall include the same material required for Administrative Review, found in Section 18.16.040.

G. Amendment to Approved Conditional Use. This process is the same as specified under the Administrative Review process, found in Section 18.16.040.G.

18.16.060 Example and Summary of Administrative Requirements

The following table summarizes and provides examples of the requirements of this Chapter. In case of any conflict between the table and requirements set forth in Sections 18.16.010-050, Sections 18.16.-010-18.16.050 shall control.:

	BY-RIGHT LAND USE	GENERAL LAND USE PERMIT	ADMINISTRATIVE REVIEW	CONDITIONAL USE
Permit Required	No	Yes	Yes	Yes
Review Timeframe	Immediate	Up to 30 days	Up to 45 days	Up to 45 days
Review Authority	None required	Planning Director	Planning Director	Planning Commission
Appeal Authority	Not applicable	Board of Adjustment	Board of Adjustment	Board of Adjustment
Review Authority May Apply Conditions?	No	No	Yes	Yes
Examples of uses	<ul style="list-style-type: none"> • Smoke houses • Satellite dish • Steam • Deck • Minor home remodel 	<ul style="list-style-type: none"> • Single-family home • Add-on • Garage • Office building • Driveway • On-site well or septic 	<ul style="list-style-type: none"> • Material sites • Option for other uses in the future 	<ul style="list-style-type: none"> • Larger scale material sites • Option for other uses in the future

Section 2. Addition to 18.12.020 The Dillingham Municipal Code is hereby amended by the addition of the following definitions to Section 18.12.020, Definitions:

“Accessory structure” means a detached structure or building which is subordinate and incidental to that of the main building, structure, or use on the same lot.

“Berm” means a small hill or raised section of earth, at least six (6) feet in height, with the purpose of providing visual or noise screening and/or protection to adjacent property. rights-of-way or access easements.

“Buffer zone” means a variably-sized area maintained around the perimeter of an excavation site or property boundary. A buffer zone provides a neutral area that lessens the impacts of potential mining impacts including noise, water runoff and dust.

“Dewatering” means the process of removing or draining groundwater or surface water from a riverbed, water body or extraction site by pumping or evaporation.

“Exploration” means any excavation to determine the location of below ground natural resources, subsurface or slope integrity, and/or the depth of the water table.

“Extraction site” means those areas on a material site where resources are being extracted, or have been extracted, from subterranean soils.

“High water table” means the surface level of the water-saturated part of the ground, and frequently the uppermost portion of an aquifer at a given vertical reference, during the seasonal high water period.

“Material site” means the area, delineated by a parcel boundary, where a material extraction operation is occurring involving the extraction of the following materials: sand, gravel, rock, peat moss, clay, soil, sphagnum, pumice, cinders, clay or other minerals which are extracted by screening, washing, crushing, grinding, milling or other similar processes. Material sites also include those areas where material extraction has stopped or completed but remains in an un-reclaimed state.

“Operator” means the individual or company responsible for extraction operations on a material site.

“Revegetation” means the reseeding of soils to encourage plant growth and soil integrity that is equivalent to levels prior to site disturbance and/or vegetation removal.

“Water body” means any significant accumulation of water, including lakes, ponds, wetlands, creeks, rivers, streams, and canals.

Section 3. Addition of Section 18.44.025 The Dillingham Municipal Code is hereby amended by adoption of Section 18.44.025, Nonconforming Uses – Material Sites, to read as follows:

18.44.025 Nonconforming Uses - Material Sites.

A. All operating material sites with operation and reclamation permits approved by the State of Alaska and with approved General Land Use Permits issued by the City of Dillingham at the time of adoption of Ordinance No. 2014-06 on May 1, 2014 shall be deemed legal nonconforming uses. This nonconforming status enables operators to continue the extraction of material without the requirement of acquiring a material site permit as specified in this section. Compliance with provisions found in Sections 18.44.020 and 14.44.030, and the following standards are required:

1. All active material sites, or those that have filed for a state permit by the date of adoption of Ordinance No. 2014-06, shall register their operation with the City of Dillingham. This registration shall provide a record for the operation’s scope, including the type of mining operation to occur, and a copy of any approved State permits;
2. All operations must comply with Section 18.42.080, Reclamation Plan;

3. Operations that expand the magnitude and/or the potential impacts of the operation, as specified below, are required to submit and receive approval for continued operation under the administrative or conditional use permit specified in this section. The permit process shall occur and conclude prior to the operation completing the expansion:

a. Any nonconforming material site whose growth or expansion causes the operation to cross one permit level to another, as defined in Section 18.42.030, Types of Material Site Permits and Review Authority;

b. All operations extracting material within the high water table, shall comply with Section 18.42.090, Water Table Monitoring Plan;

c. Expansion by more than five (5) acres of the cumulative area affected by the operation, or expansion by more than ten (10) percent in the annual volume of material extracted, as compared to the area of operation and volume of material extracted during the summer season in the year prior to the adoption of this code.

4. After ten (10) years of operation from the date of approval of this ordinance, the operation shall be required to conform to all requirements of this code.

B. It is the operator's responsibility to report any changes at a material site that would require compliance with the standards in Section 18.44.025.A. Failure to report such changes may result in fines and/or the revocation of the nonconforming status.

Section 4. Addition to Section 18.60.010 The Dillingham Municipal Code is hereby amended by additional language to Section of Chapter 18.60.010, Violations-Enforcement. The amended section shall read as follows:

A. The planning director or designee may order the discontinuance of unlawful uses of land, buildings or structures; the removal or abatement of unlawful buildings or structures or any unlawful additions or alterations thereto; the discontinuation of construction or preparatory activity leading to an unlawful structure or use of land; or any other action necessary to ensure compliance with this title;

B. The planning director or designee may order the discontinuance of uses of land, buildings or structures that create a significant risk to sensitive environmental qualities of the site, including slopes, water bodies, and other identified important environmental areas;

C. The planning director or designee may order the discontinuance of uses of land, buildings or structures that create a significant risk to the general public's safety, health, and welfare; and

D. City police officers are also authorized to issue citations to any person who violates any provision of this title based on information supplied by the planning director or department of public works

Section 5. Addition of Chapter 18.42 The Dillingham Municipal Code is hereby amended by adoption of Chapter 18.42, Material Sites and Regulations, to read as follows:

CHAPTER 18.42 MATERIAL SITES AND REGULATIONS

Sections:

18.42.010	Purpose and Intent
18.42.020	Applicability – Scope
18.42.030	Types of Material Site Permits and Review Authority
18.42.040	Appeals
18.42.050	Application Review Fees
18.42.060	Submittal Process
18.42.070	Mining Plan
18.42.080	Reclamation Plan
18.42.090	Water Table Monitoring Plan
18.42.100	Performance Standards
18.42.110	Compliance with Federal & State Policies
18.42.120	Inspections
18.42.130	Penalties and Fines
18.42.140	Renewals

18.42.010 Purpose and Intent.

This Title provides material site land use regulations to allow extraction of material resources in a manner that is compatible with the maintenance of community health, safety and welfare and natural resource integrity. These purposes are accomplished by:

1. Promoting the goals and objectives of the City of Dillingham Comprehensive Plan;
2. Promoting the orderly and beneficial development of such areas by the owner/permittee in a manner that will not devalue the extraction site or neighboring properties for future beneficial uses upon completion of resource extraction;
3. Promoting diversified land use and economic opportunity;
4. Encouraging the most appropriate uses of land; and
5. Protecting and enhancing quality of life, health, and safety within the City of Dillingham.

18.42.020 Applicability – Scope.

A. This Chapter applies to all private and public lands in the City of Dillingham.

B. This Chapter shall not apply when material extraction is not intended for sale or barter, or where the area where gravel is to be extracted is less than one acre, or where the annual extraction of materials is five hundred (500) cubic yards or less.

C. Extraction that exceeds the standards stated in Section 18.42.030.B requires an Administrative Review Permit or Conditional Use Permit. See Section 18.42.030, Types of Material Site Permits and Review Authority, for requirements determining which permit is required.

D. Material extraction falling below the thresholds in Section 18.42.030.B shall comply with requirements found in Section 18.16.030, General Land Use Permit, and the additional standards below:

1. Hours of operation – operation is not permitted between the hours of 11 p.m. to 7 a.m.

2. Buffers required – policies established in Section 18.42.100.B.2, Buffers, shall apply to all material sites regardless of their location and volumetric extraction amount, with the exception that on parcels of three acres or less, the acceptable buffer width may be reduced to twenty-five (25) feet.

E. Exploration work conducted prior to material extraction must comply with setbacks and other dimensional standards of the underlying land use district, and shall result in minimal disturbances to vegetation, water ways and neighboring uses.

18.42.030 Types of Material Site Permits and Review Authority.

A. The types of permits available for material sites are:

1. Administrative Review Permit (ARP) – a permit approved, approved with conditions, or denied by the Planning Director in accordance with procedures outlined in Section 18.16.040, Administrative Review.

a. To qualify for an ARP, the following criteria must be met:

i. The cumulative continuous area of activity is less than five (5) acres in size;

ii. Extraction activities allowed by this permit shall not exceed five (5) years. A one-time extension may be granted, for a period no longer than twelve (12) months, after which a renewal permit must be obtained;

iii. The material site property lines are within five hundred (500) feet of parcel boundaries of four (4) or fewer residential parcels,

2. Conditional Use Permit (CUP) – a permit approved, approved with conditions, or denied by the Planning Commission. The CUP process shall proceed in accordance with procedures outlined in Section 18.16.050, Conditional Use Permit.

a. The following criteria qualify an application for a material site CUP:

i. A cumulative continuous area of activity is equal to or greater than five (5) acres in size;

ii. Any material site operation with extraction occurring below the average annual high water table;

iii. Extraction activities allowed by this permit shall not exceed five (5) years. A one-time extension may be granted, , for a period no longer than twelve (12) months, after which a renewal permit must be obtained;

iv. A material site with five (5) or more residential parcels located within five hundred (500) feet of its parcel boundaries; or

v. A material site that includes or immediately adjoins anadromous streams.

B. Conditions. During an ARP or CUP process, the review authority may set conditions of approval, upon the area in which the material site is located, including, but not limited to the following:

1. Setbacks may be increased as appropriate for increased compatibility with surrounding property;
2. Visual screening, buffering, noise mitigation, lighting restriction and ingress/egress restrictions as appropriate for increased compatibility with surrounding property, and in accordance with the goals in Section 18.42.100, Performance Standards;
3. Road maintenance, including dust mitigation, may be required of the material site operator; and
4. The location of batch plants.

18.42.040 Appeals.

Any appeal of a material site permit determination shall be subject to the policies and procedures outlined in Chapter 18.52, Appeals, of this Code.

18.42.050 Application Review Fees.

The applicant of a material site permit shall be responsible for all associated review fees, based upon the following schedule:

- A. Administrative Permit: \$100
- B. Conditional Use Permit: \$200

18.42.060 Submittal Process.

A. Prior to submitting an application for a material site permit, applicants may request a pre-application conference with the Dillingham Planning Department. For both the ARP and CUP required under this Chapter, the following shall be submitted to the department:

1. A completed General Land Use Permit application form provided by the department;
2. A mining plan in accordance with Section 18.42.070;
3. A reclamation plan acknowledging future compliance with standards as outlined in Section 18.42.080, Reclamation Plan; and
4. A fee in the amount designated in Section 18.42.050.

B. The Planning Director may reject any application which is incomplete or fails to meet the requirements of this Chapter. The rejection shall be in writing and shall state the deficient items. Once the deficiencies have been corrected, the complete application will be processed within the times specified below.

C. If the minimum criteria for an ARP can be met, the Planning Director shall render a decision within sixty (60) days of acceptance of the application.

D. If the proposed development exceeds the minimum criteria for an ARP, surrounding property owners will be notified and a public hearing before the Planning Commission for a CUP shall be conducted within sixty (60) calendar days of the acceptance of a complete application. The applicant may waive the sixty (60) day limit.

E. The Planning Commission shall hear any interested parties and shall render a decision on the application for a CUP within sixty (60) calendar days from the date of public hearing, unless

the applicant agrees to a time extension. In the granting of a CUP, the Planning Commission shall state in writing the conditions any approval of the permit.

18.42.070 Mining Plan.

A. All applicants seeking a material site permit must submit a mining plan. The mining plan shall describe the existing conditions of the site, and the operator's plan for material extraction and site management. At a minimum, the mining plan shall include the following:

1. The information required as part of a General Land Use Permit;
2. Photos of the existing property displaying existing vegetation;
3. An Existing Conditions Map showing:
 - a. Parcel boundaries with dimensions;
 - b. Location, dimensions, and purpose of rights-of-way and easements within the property;
 - c. General location and dimensions, and use of all existing structures;
 - d. Location and dimensions of all existing roads, driveways, parking areas, patios, decks, walkways, and other impervious area(s);
 - e. Location of all utilities, including but not limited to septic tanks and drainfields, water, power, and telecommunications;
 - f. Location of any streams, lakes or other surface water bodies, as defined; identify which, if any, of the streams are anadromous water bodies;
 - g. Other significant distinguishing land features such as slopes greater than twenty (20) percent within or adjacent to the parcel;
 - h. Vicinity map showing the land uses on adjacent parcels.
4. An Operations and Extraction Plan showing:
 - a. Location and boundaries of extraction site(s);
 - b. Location of proposed utilities;
 - c. Location, dimension, and use of all proposed structures;
 - d. Storm water management;
 - e. Distance of proposed structures from all property lines, from rights-of-way, easements, and other structures;
 - f. Mining activity phasing plan, showing the sequence of extraction and the relationship to required reclamation; and

g. Site ingress/egress, including haul roads within the site, and planned path of trucks delivering materials to off site locations.

5. A Performance Standards Compliance Map depicting compliance with those standards in Section 18.42.100, Performance Standards;

6. A Reclamation Plan addressing issues outlined in section 18.42.080;

7. All maps required above shall be submitted with a north arrow, maintain a consistent orientation, and use a similar scale with one (1) inch equaling an even number of feet not more than two hundred (200) feet. If a one (1) inch = two hundred (200) feet scale cannot represent the entire property, multiple maps must be provided;

8. When practical and beneficial to the simplicity and efficiency of the application, the requirements outlined in Section 18.42.070.A above may be combined onto a single plan and/or map.

18.42.080 Reclamation Plan.

A. For all extraction operations permitted under this Title, or for those material sites with a legal nonconforming status, reclamation of each phase of operation shall start as soon as that phase of extraction is over. The reclamation process will be completed in accordance with this section within four (4) years of an extraction phase becoming complete.

B. Reclamation is not required for those portions of mining phases that overlie subsequent phases.

C. The following actions must be conducted to satisfy the requirements of the reclamation plan:

1. Junk vehicles, junk vehicle parts, and trash shall be removed;

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

a. Site soils more susceptible to erosion or liquefaction require a slope adequate to ensure stabilization;

b. Slopes shall be graded to blend with the surrounding undisturbed topography.

D. Surface water quality shall be protected by implementing applicable best management practices described in the current publication of the State of Alaska Department of Environment Conservation's User Manual Best Management Practices for Gravel Pits.

E. All disturbed areas shall be covered with a minimum compaction depth of four (4) inches of organic material or soil stripped and stockpiled during initial development activities.

F. Surface areas shall be revegetated to protect against erosion.

1. A vegetative cover shall be established and maintained over all disturbed areas on the material extraction site in conformance with the current Alaska State Department of

Natural Resources, Division of Agriculture, Revegetation Manual for Alaska. A copy of this manual may be reviewed at the Planning Department;

2. Reseeding of reclaimed areas shall utilize certified seed suitable for Alaska conditions that is free of noxious weeds or undesirable plant species identified in 11 AAC.34.020, Prohibited and Restricted Noxious Weeds;

3. Seventy-five (75) percent live plant cover of the entire restored area shall be achieved within four (4) years of the phase being completed.

G. Areas covered by buildings, paved driveways, paved roads, and paved parking lots and areas where future utility easements and septic systems will exist are exempt from the reclamation standards outlined in subsections (E) through (F) of this section.

H. Standards for reclamation below the high water table upon completion of materials extraction are as follows:

1. The first twenty (20) feet of slope below the water table shall not exceed ten (10) percent to create a benthic zone; and

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

I. The owner/operator of the material extraction site shall record a restoration agreement with the State Recorder that runs with the land, to assure the City that the sale of the property to any other owner/operator for any reason will cause the new owner/operator to comply with the terms of the restoration agreement within the time constraints on the agreement.

18.42.090 Water Table Monitoring Plan.

A. Extraction of material below the high water table requires a permit under this Title except:

1. Material extraction in navigable water performed under the authority of the state or federal governments.

B. Compliance with these standards shall be paid for by the applicant, and required monitoring and testing procedures shall be coordinated with the City of Dillingham staff, to ensure these actions comply with required standards.

C. Prior to application for a material site permit with extraction occurring in the high water table, the following requirements shall be met:

1. Installation of a minimum of three water monitoring tubes or well casing as recommended by a qualified professional to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high water table elevation, and monitor groundwater quality upgradient and downgradient of the proposed activity on the property;

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

- a. Baseline representative groundwater samples, shall be collected biannually (either mid-summer and fall or fall and late winter) from monitoring wells, and be analyzed for any chemicals that present a risk to groundwater quality by appropriate methods approved by the state;
 - b. Representative groundwater samples shall be collected under supervision of a qualified professional using sampling methods and analytical methods as defined by a state-certified laboratory. Sampling methods shall include documentation to assure acquisition of representative samples.
3. Determination of seasonal high water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site shall be measured under supervision of a qualified professional;
4. A written report shall be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water quality for surrounding water users and adjacent properties. The report shall be submitted with the CUP application and shall:
- a. Identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the city or state, that are located within one thousand (1,000) feet of the boundary of the property on which the activity will take place;
 - b. Identify actual or presumed private drinking water wells located within one thousand (1,000) feet of the boundary of the property on which the activity will take place and include a copy of the available well logs. The qualified professional shall inspect ADNR well log records if available for wells;
 - c. Contain maps at appropriate scales presenting the results of the well search, and setbacks and/or buffers required by Section 18.42.090.E.7 of this section;
 - d. Include the water table elevation monitoring data, groundwater sampling analytical results, monitoring well logs and records of any test pits, and a discussion of the high water table determination;
 - e. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions shall include identifying confining layers; and
 - f. The report and all data relied upon in creation of the report shall be provided to the city and shall be available to the public for inspection and review by members of the public.

D. In addition to the application requirements for a material site CUP, the requirements for water table extraction shall include:

1. A description of the proposed extent and depth of material extraction beneath the high water table;
2. A monitoring plan, and a spill prevention, control, and countermeasures plan;

3. A certificate of general liability insurance with limits not less than \$1,000,000 per occurrence/\$1,000,000 aggregate for operations involving less than forty (40) acres and \$2,000,000 per occurrence/\$2,000,000 aggregate for operations involving forty (40) acres or larger. Insurance shall insure liability for bodily injury and property damage and be written on the Insurance Services Office form number CG0001 12 07 or CG001 04 13 a form as broad as CG0001 12 07 or CG001 04 13. The certificate of insurance shall include thirty (30) days' notice of cancellation to the City. The City shall be named on the applicant's general liability policy as an additional insured and the applicant shall waive their rights of subrogation against the City. Such insurance shall remain in full force and effect in the specified amounts for the duration of the permit period. ~~Insurance coverage must include liability for providing comparable alternate sources of drinking water to all impacted parties served by any private or public water system adversely affected as a result of the activity;~~

4. A certificate of pollution liability insurance with limits of \$1,000,000 per occurrence/\$1,000,000 aggregate including third party bodily injury and property damage and cleanup costs. The policy must also provide coverage for Natural Resource Damage including damage to groundwater and drinking water. If the responsible party's pollution liability (environmental) insurance is written on a claims-made form, the responsible party shall provide insurance for a period of three years after expiration or termination of the permit. The policy(ies) shall evidence a retroactive date, no later than the effective date of the CUP.

E. If approved, the operating standards for extraction within the high water table are as follows:

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

2. Implement the spill prevention, control and countermeasures plan in accordance with the United States of America Environmental Protection Agency's requirements and those provided by the State of Alaska Department of Environmental Conservation for above ground storage tank operations regardless of the quantity of petroleum products on site;

a. In the event of a reportable release of regulated contaminants, notification shall include the Planning Director and shall occur concurrently with notice to state and federal agencies, if applicable.

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

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

limited to, pH, conductivity, nitrates, sulfates, sodium, calcium, magnesium, bicarbonate, and potassium;

b. Analytical sampling results and water elevation monitoring data shall be retained for two (2) years following completion of reclamation activities and shall be provided to the Planning Director upon request;

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

4. A qualified professional shall annually submit a report to the department that includes a table of monitoring results:

a. Water quality sample analytical results in a table that includes the appropriate maximum contaminant levels established under 18 AAC 80; and

b. Water table elevation monitoring data.

5. Operations shall not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer currently used as a drinking water source;

a. If evidence suggests a confined aquifer or confining layer has been breached, or if groundwater or surface water elevation changes rapidly or beyond natural variation, the Planning Director shall be notified within twenty-four (24) hours.

6. Proof of insurance as required by subsection (C)(4) of this section to mitigate impacts arising from the extraction activity shall be maintained until completion and acceptance of reclamation activities;

7. Operations shall maintain the permitted buffers and setbacks except where operations encompass contiguous parcels and extraction within the high water table is proposed across adjoining lot lines.

18.42.100 Performance Standards.

A. Applicants for material site permits must include a plan for compliance with performance standards. The purpose of these standards is to:

1. Minimize the impacts of off-site dust movement;
2. Minimize disturbances to other properties created by noise;
3. Minimize the visual impact;
4. Protect the integrity of water bodies and drainage ways; and
5. Ensure that post-material extraction land uses are able to utilize the property.

B. Compliance with the following performance standards shall be described within the material site mining plan:

1. Setbacks.

a. At a minimum, setbacks for a material site shall comply with the standards in the applicable land use district as outlined in Chapter 18.20, Land Use Districts; and. :

b. Any area within one hundred (100) horizontal feet of a water body, in existence prior to permit issuance, shall remain undisturbed by material site activities.

2. Buffers.

a. Where a material site parcel boundary abuts a neighboring property or public right-of-way, a buffer shall be provided to minimize the visibility of the operation from public view, and to do so in a manner which is consistent with the pre-existing visual character of the landscape. The review authority shall determine which of the following form(s) of buffer is acceptable:

i. A minimum of fifty (50) feet of undisturbed natural vegetation, measured perpendicularly from the parcel boundary;

ii. A planted, earthen berm at least six (6) feet high with a slope of 2:1 or greater;

iii. An opaque fence at least six (6) feet high.

b. For sites in largely undeveloped areas, and where natural vegetation meets the standard specified above, retention and/or recreation of natural vegetation is the preferred approach to meeting the above standard;

c. At its discretion, the review authority may waive buffer requirements where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary. Buffer requirements shall be made in consideration of and in accordance with existing uses of adjacent property at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.

3. Site boundaries. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging, or blazed trees;

4. Hours of Operation. Extraction operations shall not be permitted between the hours of 11:00 p.m. and 7:00 a.m., however, the review authority may place alternative operational hours if appropriate for the operation's context.

5. Dust Mitigation. Water or magnesium chloride shall be applied to haul roads within the material site. The review authority may also require additional dust mitigation measures including, but not limited to wheel washers and/or track outs at site entrance points, or active revegetation programs. Vehicles transporting sand and gravel will be maintained and operated to not spill gravel, sand or dust onto public roads.

Dust mitigation shall be designed to be effective year round, including periods when the operation is not active;

6. Lighting Standards. Exterior light sources shall be shielded and directed towards the ground so as to not create glare on adjoining properties and to help maintain dark nighttime skies;

7. Surface Water Quality and Drainage – Storm water or pit dewatering shall be managed to avoid accelerated erosion or runoff burden on neighboring properties and/or water bodies. Options for water diversion include but are not limited to diversion ditches, trench drains, and culverts. Treatment options for water include but are not limited to settling ponds, retention basins, and constructed wetlands.

8. Hazardous fuels

a. No petroleum products or other waste shall be dumped on the site, access roads, or elsewhere;

b. Fuel storage containers larger than fifty (50) gallons shall be contained in impermeable berms and basins capable of retaining one hundred and ten (110) percent of the storage capacity;

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

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

9. Site ingress and egress. Internal haul roads and access points to the exterior roadway system shall be the minimum necessary for material site operations. The operator shall locate access points and haul roads away from adjacent residential property to the greatest extent possible;

10. Pit Floor. Pit floor is to remain clean of all non-gravel products;

11. Rock crushing equipment. Rock crushing equipment shall be located, to the greatest extent possible, away from property boundaries;

12. Garbage Disposal. All garbage is to be disposed of at a city-approved location. No garbage is to be buried;

13. Cuts and Fills. All mined slopes are to maintain 2:1 back slope and be benched at overburden/gravel joint area;

14. Site security and safety. Any areas of a material site that pose a hazard to the general public shall be enclosed by perimeter fencing at least six (6) feet in height. Access to the material extraction area shall be strictly controlled by the owner with locking gates or cables at the entrance of access roads.

The project manager shall make reasonable efforts to prevent trespass, nuisance, or unauthorized use such as public dumping, target practice, or unauthorized use of gravel by individuals;

15. Cultural Archeological Resources. In the event that historically or culturally significant artifacts are unearthed during material extraction, all extraction must stop until an analysis of findings can be conducted by a qualified professional.

18.42.110 Compliance with Federal & State Policies.

It is the operator's responsibility to have all necessary permits for conducting material site activities. Applicants may apply for a City of Dillingham Material Site Permit prior to receiving all necessary state and/or federal permits, but the City will only issue a permit once an applicant can provide proof that all other permits have been obtained.

18.42.120 Inspections.

The City may inspect permitted material sites no less than once per calendar year. No advance notice of an inspection is required. Allowing such inspection shall be included as a permit condition of all material extraction site permits. An operator shall allow the City to access the site in an unrestricted manner.

18.42.130 Penalties and Fines.

Any activity on an approved material site that is not compliant with the standards of this Title shall be subject to the fines and procedures outlined in Section 18.60.020, Violations and Penalties.

18.42.140 Renewals.

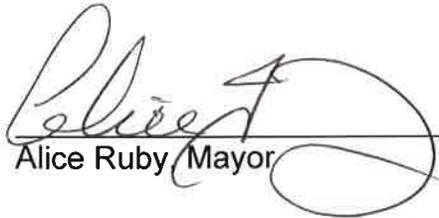
After the period of approval has lapsed, including any granted extensions, the owner or operator of a material extraction site must reapply for a material site permit renewal. The process for this renewal shall be subject to all applicable sections of this Title.

Section 6. Classification. This is a code ordinance.

Section 7. Effective Date. This ordinance shall be made effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on

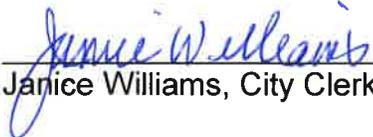
May 1, 2014.



Alice Ruby, Mayor

ATTEST:

[SEAL]



Janice Williams, City Clerk

Subject: An ordinance of the Dillingham City Council amending Title 18 of the DMC to amend Chapter 18.16 Land Use Permits to provide a system of permits and reviews to respond to a variety of land use activities and creating new Title 19, Material Site Regulation

Agenda of: May 1, 2014

Council Action: This ordinance was introduced April 3, 2014 and is up for a public hearing and adoption May 1. A substitute ordinance (SUB-1) will also be presented.

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	City Clerk / Janice Williams	<i>JW</i>	

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s):

- Public Hearing on Ordinance No. 2014-06 was advertised in the April 25, 2014 edition of Bristol Bay Times as required to be advertised in a local newspaper five days in advance of the public hearing

Summary Statement.

This ordinance has been vetted through the Code Review Committee and the Planning Commission with review by the City's Attorney. The one outstanding issue that was not addressed when this ordinance was introduced April 3 was the insurance coverage as noted on page 17 and 18. The following amendments have been offered by the City's Attorney:

Page 17.D.3. Added 2013 ISO form. The 2007 ISO form was changed in 2013. Gradually the ISO 2007 form will no longer be the standard by which to measure coverage.

Page 17.D.3. Remove the last sentence. It will not be possible to obtain coverage as specific as indicated by this sentence. The general rule is that "loss of use" of "property" can be one element of recoverable property damage. In general, the value of "loss of use" of a drinking water supply would be measured in part by the cost of procuring an alternate source of supply. Therefore, we would expect that IF coverage applies (which itself will depend on a number of other factors specific to each incident leading to the water supply being comprised) this category of damage would be covered by the policy as a "loss of use" claim. But this will never be specifically stated in an insurance policy.

Page 17.D.4. Add language. Pollution Liability insurance with limits of \$1M per occurrence/\$1M aggregate may or may not be part of a standard pollution liability policy. Therefore, it's recommended requiring specific NRD (natural resources damage) coverage. If such coverage is not in the standard pollution policy, it will be available through purchase of a coverage endorsement to the pollution liability policy.



NOTICE OF A PUBLIC HEARING

Public Hearing on Ordinance Nos. 2014-06, -07, and -08

The City Of Dillingham will hold a **Public Hearing** on **Thursday, May 1, 2014, at 7:00 P.M. in the City Council Chambers** for the purpose of taking comment from the public on the following ordinances:

Ordinance No. 2014-06, An Ordinance of the Dillingham City Council Amending Chapter 18.16 of the Dillingham Municipal Code to Provide a System of Permits and Reviews to Respond to a Variety of Land Use Activities and Creating New Title 19, Material Site Regulation

Ordinance No. 2014-07, An Ordinance of the Dillingham City Council Authorizing the Sale of Tax Foreclosed Property to the Former Record

Ordinance No. 2014-08, An Ordinance of the Dillingham City Council Amending Title 17 of the Dillingham Municipal Code to Allow for Private Access to Certain Subdivisions and Establish Minimum Standards for Private Access to Subdivisions and to Amend Definitions and Make Other Amendments to Platting Requirements

If you have any questions, please contact the City Clerk's office at 842-5212 or email cityclerk@dillinghamak.us.

