

CODE ORDINANCE

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Amended: 10/13/04

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Motion to Reconsider Failed: 10/13/04

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 04-175(AM)**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY CREATING MSB 17.62. ESTABLISHING AN AREAWIDE CONDITIONAL USE PERMIT FOR COAL BED METHANE EXPLORATION AND DEVELOPMENT.

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BE IT ENACTED:

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

Section 2. Adoption of chapter. MSB 17.62 is hereby adopted to read as follows:

SECTION

17.62.010 Intent

17.62.015 Jurisdiction of Chapter Provisions

17.62.020 General Procedures

17.62.030 Exploration Permit Application Requirements

17.62.040 Development and Production Application

Requirements

17.62.050 Review and Referrals

17.62.060 Duration, Modification and Preexisting Uses

17.62.070 Construction or Installation of Unapproved

Coal Bed Methane Facilities

17.62.080 Penalty

- 17.62.090 Civil Action
- 17.62.120 Right to Enter
- 17.62.130 Emergency Response Plan Required
- 17.62.140 Archaeological and Historic Preservation Plan  
Required
- 17.62.150 Fish and Wildlife Mitigation Plan Required
- 17.62.160 Groundwater and Surface Water Monitoring Plan  
Required
- 17.62.170 Master Plan Required
- 17.62.180 Surface Use Agreement Requirement
- 17.62.190 Review of Applications; Action by Planning  
commission
- 17.62.200 Application; Submittal Procedure
- 17.62.210 Determination of Completeness
- 17.62.220 Public Notice
- 17.62.230 Notice Upon Request
- 17.62.240 Permit Standards
- 17.62.250 Appeals of Planning commission Decisions
- 17.62.260 Appeals of Enforcement Actions
- 17.62.270 Compliance
- 17.62.280 Land Use Standards
- 17.62.290 Environmental Quality Standards
- 17.62.300 Surface Disturbance Standards
- 17.62.310 Definitions
- 17.62.010 INTENT**

(A) It is the borough's intent to allow the development of coal bed methane resources within the borough while mitigating potential land use and private property conflicts between such development and existing, as well as planned, land uses. In addition, it is the intent of this ordinance to protect private and public property, and the health, safety, and welfare of borough residents.

**17.62.015 JURISDICTION OF CHAPTER PROVISIONS**

(A) This chapter shall apply to all lands within the borough with the exception of those lands within the cities of Houston, Palmer, and Wasilla.

(B) Where this chapter is in conflict with the conditions of a special land use district, the most restrictive conditions apply.

**17.62.020 GENERAL PROCEDURES**

(A) Exploration, development, and production of coal bed methane facilities within the borough shall be subject to the provisions of this Chapter and any other applicable regulations of the borough, as well as any state or federal entities or agencies having jurisdiction over such development.

(B) Construction, installation and operation of coal bed methane facilities shall not commence until approval has been granted by the planning commission. The

Matanuska-Susitna Borough Planning and Land Use Director,

hereinafter referred to as "director", shall serve as the authorized representative of the planning commission.

(C) A conditional use permit for coal bed methane development shall consist of two separate permits: one permit for exploration activities and one permit for development and production activities. Each of the permits requires a separate application, public notice, public hearing, and planning commission approval.

**17.62.030 EXPLORATION PERMIT APPLICATION REQUIREMENTS.**

(A) An application for a conditional use permit for coal bed methane exploration activities and related facilities shall be filed by the company seeking to explore for coal bed methane.

(B) Application for a conditional use permit shall be made in writing on a form or forms provided by the Matanuska-Susitna Borough planning and land use department, and shall include:

(1) A narrative description of the company and its subcontractors seeking to undertake coal bed methane exploration activities. The narrative should include the history of the firm, its experience in coal bed methane exploration, e.g., number of projects, location, key contacts, size of project, number of wells, etc., its technical and financial ability to undertake the proposed exploration activities, its ability to complete reclamation requirements, and a listing of any judgments,

finances, or penalties received that are associated with coal bed methane exploration, or other oil and gas activities.

(2) A legal description of the properties involved.

(3) Documentation of property ownership.

(4) A detailed site plan drawn to scale depicting proposed coal bed methane facilities, including, but not limited to:

(a) Existing site conditions of proposed exploration sites, including topography, watercourses, flood plains, other natural hazards and features, vegetation, land use, and access;

(b) The location and floor area size of all existing and proposed building structures and other improvements, if any; including a description of the type of land use proposed to occupy the land and structures;

(c) The existing and proposed pedestrian and vehicular circulation system to be used at proposed exploration site(s) and relationship of that circulation system to the surrounding area. This will include parking areas, service areas, loading areas and all points of access to the site(s);

(d) Proposed utility systems;

(e) Exploration wells;

(f) Waste pits;

(g) Injection wells,  
(h) Collection and distribution systems,  
if any; and

(i) Other ancillary structures, if any.

(5) A statement identifying the land uses on adjacent properties;

(6) A development schedule indicating the approximate date when exploration shall begin and be completed;

(7) A statement of how the proposed project conforms with applicable comprehensive plans and other adopted local, borough, state and federal plans;

(8) A non-refundable application fee as prescribed in MSB 17.99 is due at the time of application.

(C) The name of the operator of the proposed exploration activities.

(D) A description of how all waste materials will be handled and disposed;

(E) A proposed site plan drawn to scale depicting existing conditions at each proposed exploration site;

(F) A description of planned exploration activities, including the following: schedule and duration of exploration activities; site buffering and screening plan; operational vehicular access and circulation plan; fencing and security measures;

(G) A copy of the required emergency response plan as provided in 17.62.130;

(H) A copy of the archaeological and historic preservation plan as described in 17.62.140;

(I) A copy of the fish and wildlife mitigation plan as described in 17.62.150;

(J) A copy of the groundwater and surface water monitoring plan as described in 17.62.160;

(K) A methane seepage testing plan that establishes the level of methane present in the vicinity prior to, during, and following the exploration activities; and

(L) A detailed reclamation plan describing all reclamation activities, including schedule for completion, photos of area of the site where activity is proposed before operation begins, plans for well capping, and the conditions of each exploration site upon completion of the reclamation activities, including finished contours, a revegetation plan, finished drainage plan and finished access points.

**17.62.040 DEVELOPMENT AND PRODUCTION APPLICATION REQUIREMENTS**

(A) An application for a conditional use permit for coal bed methane development and production shall be filed by the company seeking to explore for coal bed methane.

(B) Application for a conditional use permit shall be in writing on a form or forms provided by the Matanuska-Susitna borough planning and Land Use Department. All applications shall include:

(1) A narrative description of the company and its subcontractors seeking to undertake coal bed methane development and production activities. The narrative should include the history of the firm, its experience in coal bed methane development and production, e.g., number of projects, location, key contacts, size of project, number of wells, etc., its technical and financial ability to undertake the proposed development and production activities, its ability to complete reclamation requirements, and a listing of any judgments, fines, or penalties received that are associated with coal bed methane development and production, or other oil and gas activities.

(2) A legal description of the properties involved.

(3) Documentation of property ownership.

(4) A detailed site plan drawn to scale depicting coal bed methane development facilities, including, but not limited to:

(a) Existing site conditions of proposed development and production sites, including topography,

watercourses, flood plains, other natural hazards and features, vegetation, land use, and access;

(b) The location and floor area size of all existing and proposed building structures and other improvements, if any; including a description of the type of land use proposed to occupy the land and structures;

(c) The existing and proposed pedestrian and vehicular circulation system to be used at proposed development and production sites and impacts to the circulation systems in the surrounding area. This will include parking areas, service areas, loading areas and all points of access to the site(s);

(d) Proposed utility systems;

(e) Waste pits;

(f) Extraction and injection wells;

(g) Compressor stations;

(h) Collection and distribution systems;

and

(i) Other ancillary structures.

(5) A statement identifying the land uses on adjacent properties;

(6) A development schedule indicating the approximate date when development or natural resource extraction shall begin and be completed;

(7) A statement of how the proposed project conforms with applicable comprehensive plans and other adopted local, borough, state and federal plans;

(8) A non-refundable application fee as prescribed in MSB 17.99 is due at the time of application.

(C) The name of the operator of the proposed development and production activities.

(D) A description of how all waste materials will be handled and disposed.

(E) A proposed site plan drawn to scale depicting existing conditions at each proposed development and production site.

(F) A description of planned development and production activities, including the following: schedule and duration of development and production activities, site buffering and screening plan; operational vehicular access and circulation plan; fencing and/or security measures.

(G) A copy of the master plan as described in 17.62.170.

(H) A copy of the required emergency response plan as provided in 17.62.130.

(I) A copy of the archaeological and historic preservation plan as described in 17.62.140.

(J) A copy of the fish and wildlife mitigation plan as described in 17.62.150.

(K) A copy of the groundwater and surface water monitoring plan as described in 17.62.160.

(L) A methane seepage testing plan that establishes the level of methane present in the vicinity prior to, during, and following the development and production activities.

(M) A detailed reclamation plan describing all reclamation activities, including schedule for completion, photos of area of the site where activity is proposed before operation begins, plans for well capping, and the conditions of each development and production site upon completion of the reclamation activities, including the following: finished contours; revegetation plan; finished drainage plan; and finished access points.

(N) A developer shall post a bond in an amount projected to reclaim the site to its original condition or in a condition acceptable to the property owner.

#### **17.62.050 REVIEW AND REFERRALS**

(A) The director shall refer the exploration and development and production applications to the State of Alaska Oil and Gas Conservation commission, Alaska Department of Environmental Conservation, Alaska Department of Natural Resources, Alaska Department of Fish and Game, the United States Environmental Protection

Agency, United States Geological Survey, United States Fish and Wildlife Service, and other government agencies or entities for review and comment. Any comments received from other agencies shall be forwarded to the planning commission as part of the application(s) packet materials.

(B) Coal bed methane facilities shall also be reviewed for general consistency with the standards and policies set forth in the following documents:

- (1) borough land use regulations;
- (2) the borough comprehensive plan;
- (3) plans and regulations of municipalities in the borough, if applicable;
- (4) other applicable local, borough, state and federal plans, policies and regulations.

**17.62.060 DURATION, MODIFICATIONS AND PREEXISTING USES**

(A) Approval granted for coal bed methane exploration and development and production activities shall expire or be considered revoked if such activities are not initiated within three years of the date of approval.

(B) Where an exploration or development and production permit has been approved and the applicant desires to modify the subject permit by changes to the approved emergency response plan, an amendment to the original application shall be required if the director

determines that the level of impact will be increased as a result of the modification.

(1) The activity described in the desired modification request shall be granted by the director if it complies with the standards and conditions of this chapter.

(2) Modifications which the applicant determines in good faith are required in order for the exploration or development and production activities to continue operating in a safe manner and which must be done immediately in order to maintain the existing level of production may be done on an emergency basis, without prior notice or approval by the director.

(3) The applicant shall notify the director in writing within one week of any proposed emergency modifications.

(C) Where an exploration or development and production permit has been approved and the applicant desires to modify the subject permit by changes to site layout, well spacing, or equipment pertinent to coal bed methane exploration and development (compressors, generators, pipelines, and drill rigs), an amendment to the original application shall be required, as approved by the director.

(D) This Chapter shall become effective on the date specified in the ordinance adopted by the borough

Assembly. The provisions of this Chapter shall apply to all facilities for which construction has not commenced or a permit has not been issued as of the effective date. This chapter shall apply to all facilities for which A.O.G.C.C. approval has not been obtained as of the effective date. All uses completed prior to the date of Assembly adoption shall be considered nonconforming uses.

**17.62.070 CONSTRUCTION OR INSTALLATION OF UNAPPROVED COAL BED METHANE FACILITIES**

(A) It is unlawful to construct, install, or cause to be constructed or installed, any coal bed methane facility within the borough, unless prior approval has been granted by planning commission.

**17.62.080 PENALTY**

(A) Any person, firm, corporation or legal entity which owns, leases or operates a coal bed methane facility, and which constructs, installs or uses, or which causes to be constructed, installed or used without first receiving approval from planning commission shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500.00 per day for each day, per facility operated in non-compliance with this chapter.

(B) All violations of conditions of the approved conditional use permit shall be considered infractions.

**17.62.090 CIVIL ACTION**

(A) In case any coal bed methane facility is or is proposed to be erected, constructed, reconstructed, altered or used, or any land is proposed to be used, in violation of any provision of this Chapter, the borough attorney, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

**17.62.120 RIGHT TO ENTER**

(A) For the purpose of implementing and enforcing this Chapter, borough personnel may enter onto subject property upon telephonic, facsimile, or other electronic notification of the permittee, lessee or other party holding a legal interest in the property; if such entry is denied, the borough shall have the right to obtain an order from a court of competent jurisdiction to obtain entry.

**17.62.130 EMERGENCY RESPONSE PLAN REQUIRED**

(A) Each operator with coal bed methane facilities in the borough is required to provide the borough with a written and digital copy of the emergency response plan as part of the permit application. No applications for

exploration or development and production permits shall be considered complete until the operator has provided such plan to the borough.

(B) Upon approval by the borough Director of Emergency Services, the plan shall be filed with the borough and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). Failure to provide an annual update to the emergency response plan is cause for revocation of approved conditional use permit(s).

(C) The emergency response plan shall consist of the following information, at a minimum:

(1) Name, address and phone number, including an emergency number of at least two persons responsible for emergency field operations who are available 24 hours a day, seven days a week.

(2) An as-built facilities map showing the name, location and description of all facilities, including the size and type of all pipelines.

(3) Provide a written emergency response plan for the potential emergencies that may be associated with the operation of the facilities. The emergency response plan shall identify a list of all toxic and hazardous materials to be used under permit and procedures for addressing all of the following: explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide or

other toxic gas emissions, or hazardous material accidents or spills. The emergency response plan shall also include provisions for notifying the borough and State of Alaska Fire Marshall of all emergencies.

**17.62.140 ARCHAEOLOGICAL AND HISTORIC PRESERVATION PLAN REQUIRED**

(A) Each applicant for an exploration and/or development and production conditional permit application under this chapter is required to provide an archaeological and historic preservation plan. No conditional use permit application(s) for coal bed methane exploration or development and production conditional use permit(s) shall be considered complete until the operator has provided such plan to the borough.

(B) The plan shall identify sites of archeological and historic importance and identify proposed actions to eliminate, reduce, or mitigate disturbance to such sites.

A copy of the archeological and historic preservation plan shall be filed with State Historic Preservation Officer for review and comment and all comments received shall be made a part of the conditional use permit application file under this chapter.

**17.62.150 FISH AND WILDLIFE MITIGATION PLAN REQUIRED**

(A) Each applicant for an exploration or development and production conditional permit application

under this chapter is required to provide a fish and wildlife mitigation plan. No conditional use permit application(s) for coal bed methane exploration or development and production conditional use permit(s) shall be considered complete until the operator has provided such plan to the borough.

(B) The plan shall identify areas of fish and wildlife habitat and wildlife migration routes and identify proposed actions to eliminate, reduce, or mitigate disturbance to such areas. A copy of the fish and wildlife mitigation plan shall be filed with State of Alaska Department of Fish and Game and the United States Fish and Wildlife Service for review and comment. All comments received from these agencies shall be made a part of the conditional use permit application file under this chapter.

**17.62.160 GROUNDWATER AND SURFACE WATER MONITORING PLAN  
REQUIRED**

(A) Each operator with exploration or resource development activities or facilities in the borough is required to provide a groundwater and surface water monitoring plan. No conditional use permit application(s) for coal bed methane exploration or development and production conditional use permit(s) shall be considered complete until the operator has provided such plan to the borough.

(B) The plan shall be filed with the borough and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, monitoring modifications, etc.). Failure to provide an annual update shall be cause for revocation of the conditional use permit.

(C) The plan shall consist of the following information, at a minimum:

(1) Name, address and phone number, including an emergency number of at least two persons responsible for water monitoring field operations who are available 24 hours a day, seven days a week.

(2) An as-built facilities map showing the name, location and description of all facilities, including the size and type of all pipelines.

(3) Provide a written groundwater and surface water monitoring plan for monitoring of the groundwater and surface water supplies that may be affected by the operation of coal bed methane exploration, development, or distribution facilities. This shall include the effects, if any, of the following: explosions, fracturing, fracturing fluids, waste handling and storage, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide, or other toxic emissions, or hazardous material vehicle accidents or spills

(4) Undertake testing of groundwater supplies

through the use of groundwater monitoring wells and provide copies of all water monitoring test results to the borough. Such tests shall occur no less than once a month at each site and shall monitor for all materials introduced by the coal bed methane exploration, development, production, and distribution activities, including but not limited to fracturing fluids and drilling muds.

(5) All groundwater testing and monitoring done must be done by an independent groundwater testing professional.

(6) Copies of all monitoring and test results shall be provided quarterly to the borough.

(7) A written groundwater and surface water monitoring plan for the monitoring of the groundwater and surface water supplies within 1 mile of every proposed well. This shall include the effects, if any, of the following: explosions, fracturing, fracturing fluids, waste handling and storage, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills.

**17.62.170 MASTER PLAN REQUIRED**

(A) Each operator with coal bed methane facilities in the borough is required to provide a master plan for development and production activities. A master plan is

not required for exploration activities. No applications for a conditional use permit for development and production shall be considered complete until the operator has provided such plans to the borough.

(B) The master plan is to provide the borough with an understanding of the total amount of development that is likely to occur during development and production of coal bed methane resources. The master plan is also to provide an understanding of the cumulative effects and impacts of the proposed development and production activities.

(C) The master plan shall be filed with the borough and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). Failure to provide an updated master plan on an annual basis is cause for revocation of any exploration, development, or production permit.

(D) The master plan shall consist of the following information, at a minimum:

(1) Name, address, and phone number, including a 24-hour emergency number, for the individual responsible for the overall management of all permitted and proposed activities;

(2) Name, address, and phone number, including a 24-hour emergency number, for the individual responsible for the overall emergency response;

(3) An as-built facilities map showing the location and description of all proposed facilities;

(4) A map depicting all earthquake faults within the area where proposed exploration or development and production facilities are to be located and a narrative statement describing those actions and activities, if any, that will be undertaken to reduce the negative impacts and hazards associated with developing coal bed methane exploration and development and production facilities in earthquake zones.

(5) The plan shall describe the proposed plans for additional exploration and ongoing development and production activities including the proposed number of wells and their location, well spacing distances for all wells, identification of wells by type(e.g., core drilling, water injection, etc.), location of all access roads and points of access, methods and sites for waste disposal handling and storage, proposed method and location of the distribution system, groundwater protection efforts, water injection systems and sites, location and building size of all compressor stations, location of all collection systems and pipelines, and location and construction standards of all roads, driveways, estimated traffic volumes, and points of access and egress.

(6) The type, ingredients, and amounts of all fracturing fluids and drilling muds used in exploration and development activities.

(7) The plan shall describe those actions that will be taken to protect sites of archaeological and historic preservation importance.

(8) The plan shall describe those actions that will be taken to protect fish and wildlife, fish and wildlife habitat, and fish and wildlife migration routes.

(9) The plan shall describe those actions that will be taken to protect groundwater and surface water supplies with particular attention paid to anadromous streams, drinking water supplies and recreational use of surface waters. A watershed approach should be used to describe how groundwater and surface water supplies will be addressed as part of the proposed coal bed methane activities.

**17.62.180 SURFACE USE AGREEMENT REQUIREMENT**

(A) Each operator with coal bed methane facilities in the borough is required to enter into a written surface use agreement with all property owners where coal bed methane exploration and development is located. Property owners may not be compelled to enter such agreements. A property owner must be notified in writing by any operator that they may refuse to enter into a surface use agreement (a copy of such notification must

be submitted to the borough). Failure to notify a property owner of their right to refuse surface access shall automatically revoke a permit for exploration or development on that property. The terms of a surface use agreement may be determined by the parties as long as they are not inconsistent with restrictions otherwise placed on operators by borough code. The surface use agreement may, at a minimum, consist of the following:

(1) An access agreement between the lessee and landowner that establishes access rights, compensation rates, maintenance responsibility, and liabilities.

(2) A water well mitigation agreement that establishes water quality and quantity measures, monitoring, and mitigation procedures that protect the surface property owners existing water wells.

(3) A contract between the lessee and the landowner that provides for compensation to the landowner for damages as a result of exploration or development activities. Damages include but are not limited to:

(a) Loss of privacy,

(b) Noise from compressor stations, screw compressors, generators, wells or other coal bed methane facilities,

(c) Lower property values resulting from land encumbrances or easements resulting from exploration or operations,

(d) Damages from water discharged to the surface,

(e) Water damage to adjoining property,

(f) Soil erosion,

(g) Noxious weeds,

(h) Damage from construction of gas gathering pipelines, and electrical stations,

(i) Damage from construction of well heads, pumps and compressor stations resulting in increased noise and exhaust emissions,

(j) Damage resulting from storage of construction materials,

(k) Loss of established well capacity or depth for the surface property owner resulting from exploration or operational drilling,

(l) Loss of domestic or farm animals resulting from damage to fences,

(m) Litter,

(n) Fire damage from construction or operation of the facility,

(o) Damage as a result of contamination from discharge of hazardous materials or hazardous substances,

(p) Damage to the surface property owners property due to trespass or vandalism associated with improperly or negligently operated, monitored, or managed coal bed methane facilities.

**17.62.190 REVIEW OF APPLICATIONS; ACTION BY PLANNING COMMISSION**

(A) The director shall review such applications and forward a recommendation for approval, conditional approval, or denial with appropriate findings to the planning commission for final action. Final actions of the planning commission shall contain appropriate findings based upon evidence in the record before the planning commission.

**17.62.200 APPLICATION; SUBMITTAL PROCEDURE**

(A) The application shall consist of all items identified in section 17.62.040. Prior to formal submittal of the application, the director shall meet with the applicant to discuss and identify any additional information required to adequately review the proposed facility.

**17.62.210. DETERMINATION OF COMPLETENESS.**

(A) The director will review the application for completeness. If the director determines the application is complete, the planning commission will commence project review as described in sections 17.62.040, 17.62.050 and 17.62.240. If the application is incomplete, the applicant will be notified of the deficiency and the application shall be withdrawn from the review process until the required information is submitted.

(B) The planning commission shall conduct a noticed public hearing for review of the proposed facility.

**17.62.220 PUBLIC NOTICE**

(A) A legal notice of the public hearing before the planning commission shall be published in a newspaper of general circulation within the borough not less than 45 days prior to the public meeting and written notice shall be given individually to the following:

(1) The owners, as recorded in the records of the borough, of any land adjacent to or located within 5,280 feet of any portion of the subject well site or facility: such notice to be sent by director at the applicant's expense.

(2) All community councils with jurisdiction.

(3) All postmasters in the affected area.

(B) The public notice of planning commission review shall take a form prescribed by director and shall include the following:

(1) A description of the location (including a legal and practical location description) and proposed activity under review.

(2) Time and place of the commission's public hearing, and the name, phone number and email address of the responsible borough staff.

(3) The name and address of the applicant operator or designated agent and a statement that additional information may be obtained from the director.

#### **17.62.230 NOTICE UPON REQUEST**

(A) Notice shall be sent to any other person, agency or organization that has filed a request with director to receive notice of facilities undergoing public review; such notice to be sent by director.

#### **17.62.240 PERMIT STANDARDS**

(A) The planning commission decision to approve or deny an application for a coal bed methane permit shall be made and determined based on compliance with the following standards:

(1) The degree of compatibility of the proposed site plan and land uses with adopted

comprehensive plans and other adopted local, borough, state and federal plans.

(2) The compatibility of the project and the site design with surrounding buildings, land uses, ownership and physical characteristics;

(3) The adequacy of access to and from the project and the effect on pedestrian and vehicular circulation and safety;

(4) The impact that the proposed project may have on the need and availability of public services within the area;

(5) The compatibility of the project to the site conditions and environmental setting;

(6) The impact of noise, fumes and dust associated with the project;

(7) The adequacy of the existing utility infrastructure and the effect of the project on reasonable and economic extension of public utilities and facilities;

(8) The effect of the proposed project on property values of adjacent lands.

(9) The effect of the proposed project on groundwater and surface water quantity and quality.

(10) The effect of the proposed project on public health, safety and welfare.

(11) The effect of the proposed project on fish and wildlife, fish and wildlife habitat, and fish and wildlife migration routes.

(12) The effect of the proposed project on recreational uses, and tourism related businesses.

(13) Compatibility with State and Federal agency recommendations.

(B) All standards contained in this chapter are minimum standards. More restrictive conditions may be imposed by the planning commission where necessary to ensure compliance with applicable comprehensive plans and other adopted local, borough, state and federal plans to protect the public health, safety, or welfare.

(C) The planning commission shall apply the following criteria to the evidence in the record of proceedings as a basis for decision:

(1) The demonstrated need for the facility, in the location proposed, to serve the applicant's existing and projected coal bed methane exploration, and/or development and production requirements.

(2) Suitability of the location of the proposed facility given its size, design and operational characteristics. Factors to be considered include noise levels, impacts upon air and water quality, vibration and odor levels, fire protection and access requirements, visual impacts, wildlife impacts and public safety. These

factors will be evaluated in accordance with applicable state, borough and federal standards and criteria.

(3) Existing and proposed road alignment, intersections, condition, structure and site distances; traffic volumes and types of equipment; dust control; and existing road uses.

(4) Topography, natural hazards (landslides, earthquakes, flooding, and wildfire), current resource values, open space corridors, prime farmland (as designated by the U.S. Soil Conservation Service) and fish and wildlife habitat.

(5) Compatibility with existing and projected future uses based upon present subdivision and land use approvals for properties located within the surrounding affected area. A facility's compatibility with land uses in the surrounding area shall include the effect of the proposed coal bed methane facilities on community development, established residential areas, recreational uses, environmental quality, groundwater and surface water supplies and quality, fish and wildlife, fish and wildlife habitat and migrations routes.

(6) The planning commission shall consider the applicant's estimated or projected ability to mitigate the impacts which it generates, as set forth in the facility's operational plan, and in accordance with

applicable borough, state and federal rules, regulations and standards.

(D) The planning commission decision shall be based upon evidence in the record. Following the conclusion of the public hearing, a written resolution shall be adopted as its decision on the application. The resolution shall set forth findings based upon evidence in the record of proceedings before the planning commission and any applicable federal, state or borough statutes, rules, regulations or policies. For the purposes of judicial review, the planning commission decision on an application shall be deemed to have been made as of the date upon which the planning commission executes the written resolution.

(E) The borough shall adopt permit fees to offset the cost of permitting and enforcement of permits granted under this chapter. An annual permit fee shall be established.

**17.62.250 APPEALS OF PLANNING COMMISSION DECISIONS**

(A) Appeals from a decision of the planning commission shall be made to the Board of Adjustments and Appeals in accordance with MSB 15.39.

**17.62.260 APPEALS OF ENFORCEMENT ACTIONS**

(A) Appeals from an enforcement action(s) of a borough administrative unit shall be heard by an

administrative hearing officer, in accordance with MSB 02.39.

**17.62.270 COMPLIANCE.**

(A) All coal bed methane facilities must comply with the standards contained in this title. Failure to comply with this title shall be grounds for denial.

**17.62.280 LAND USE STANDARDS**

(A) Coal bed methane well sites are restricted to a maximum spacing of 2 wells per 640 acre section.

(1) A setback of at least 1,320 feet shall be required between the site perimeter of a coal bed methane facility (unless the facility is a compressor station) and the closest existing residential structure, unless notarized written consent is obtained from the affected surface property owner(s) to a waiver of this standard. A setback of at least 1 mile shall be required between the site perimeter of a compressor station and the closest existing residential structure.

(2) A setback of at least 1,320 feet shall be required between the site perimeter of a coal bed methane facility (unless the facility is a compressor station) and the closest property line, unless verified written consent is obtained from the affected property owner(s). A setback of at least 1 mile shall be required between

the site of a compressor station and the closest property line.

(3) A setback of at least 1,320 feet between the site perimeter and all water bodies containing anadromous fish.

(4) A setback of at least 1,320 feet between the site perimeter and any educational facility.

(5) A setback of at least 1,320 feet between the site perimeter and any water body.

(6) A setback of at least 1,320 feet between the site perimeter and any conservation easement that restricts the subject property from development.

(7) A setback of at least 1,320 feet between the site perimeter and any state licensed hospital, residential treatment center or psychiatric facility.

(8) A setback of 1,320 feet between the site perimeter and any religious facility including churches, synagogues, or other places of worship.

(C) Variances, exceptions, or waivers to dimensional standards are allowed provided:

(1) the granting of the variance, exception, or waiver of a setback standard will not be detrimental to the public safety, health, or welfare or injurious to other property; and

(2) the granting of the variance, exception, or waiver to the setback standard allows a creative and

positive development solution and the variance will not adversely affect the intent and purpose of this ordinance; and

(3) the granting of the variance, exception, or waiver to the setback standard is found to be consistent with the overall purposes of this ordinance.

(4) any variance, exception, or waiver of a residential property setback requires notarized consent of all affected property owners.

(D) Residential Area Prohibitions:

(1) Coal bed methane exploration and development facilities shall not be located within residential areas having one (1) or more dwelling units per acre.

(2) Coal bed methane exploration and development facilities shall not be located on any lot less than 5 acres in size.

(E) Sound mitigation measures shall include:

(1) The exhaust and other emissions from all engines, motors, coolers, compressors, and other mechanized equipment shall be vented in a direction away from the closest existing residences or platted subdivision lots.

(2) All coal bed methane facilities with engines or motors which are not electrically operated

shall be equipped with quiet design mufflers (also referred to as hospital grade or dual dissipative) or equivalent. Such equipment mufflers shall be properly installed and maintained in proper working order.

(3) All mechanized equipment associated with coal bed methane facilities shall be anchored so as to minimize transmission of vibration through the ground.

(4) Coal bed methane facilities shall be located outside of a designated quiet zone.

(5) The maximum sound level as measured at the property line of the coal bed methane facility shall be no higher than 55dba.

(F) Safety standards shall include at a minimum:

(1) Security fencing and a locked gate for coal bed methane facilities sufficient to reduce the likelihood of those facilities becoming attractive nuisances is required at all exploration and development sites.

(2) Safety practices generally accepted by the coal bed methane industry, and permitted by the state in the approved plan of operations, shall be used at all times during drilling and production to minimize the danger to the general public.

(3) Open-ended discharge valves on all storage tanks, pipelines and other containers shall be secured

where the facility site is unattended or accessible to the general public.

(4) All land within 25 feet of any tank, pit or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish.

(5) Where the applicant's visual mitigation plan specifies alternative security fencing, the alternative fencing shall apply.

(6) Waste pits shall be six-foot chain-linked fenced with privacy slats and secured at all times.

(7) Drilling and other associated wastes shall be disposed of offsite on a regular basis and in compliance with the waste disposal plan required in MSB 17.62.040.

(G) No exploration or development facility shall be located on property that is subject to a conservation easement that restricts the property from development.

**17.62.290 ENVIRONMENTAL QUALITY STANDARDS**

(A) In recognizing the right of the borough to determine land uses and the right of the mineral estate to extract minerals, the following criteria shall be used in siting coal bed methane facilities on private property:

(1) The siting of a facility shall adhere to the standards outlined in this chapter to the maximum extent practical.

(2) The standards in this chapter shall not cause the operator to site the facility in:

(a) geologic hazard areas,  
(b) an area with slopes exceeding 30 percent;

(c) an area of wetlands under the jurisdiction of the U.S. Army Corps of Engineers;

(d) an area within a floodway of a stream or river as shown on the Flood Insurance Rate Maps (FIRM) or as determined by a state licensed professional engineer.

(B) The planning commission shall determine the compliance of the proposal using the standards listed below. Where conflicts between standards occur the more restrictive standard will be used:

(1) Facilities shall be sited to minimize the impact on existing residences, commercial structures, public buildings, and borough approved platted building envelopes.

(2) Facilities shall be constructed using existing infrastructure. This includes, but is not limited to, the use of existing roads, pipeline routes, and well pads.

(3) Facilities shall be sited to minimize the impact to agricultural operations.

(4) Facilities shall be sited in areas that maximize the amount of natural screening available for the facility. Natural screening includes, but is not limited to, the use of existing vegetation as a background, the construction of the facility near mature stands of vegetation, the construction of the facility in canyons or behind ridges and natural rock formations.

(5) Facilities shall be sited at the base of slopes to provide a background of topography and/or natural cover.

(6) Facilities shall be sited to avoid crossing hills and ridges or silhouetting.

(7) Facilities shall be sited in order to minimize the amount of cut and fill needed to construct the facility.

(8) Facilities shall be sited away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings and other landmarks.

(9) Facilities shall be located to avoid or minimize impacts on archaeological sites and properties of historic significance.

(10) Facilities shall be located, developed, and operated to avoid or minimize negative impacts to groundwater and surface water supplies.

(11) Facilities shall be located, developed, and operated to avoid or minimize negative impacts to fish and wildlife, fish and wildlife habitat, and fish and wildlife migration routes.

(12) The provisions of any existing surface use agreement shall be taken into consideration regarding the siting of a facility.

(C) A visual mitigation plan shall be required for all facilities. The plan shall incorporate the appropriate design elements of this chapter. The requirement for a visual mitigation plan may be waived by the director if a plan is deemed unnecessary. The visual mitigation plan minimum requirements are as follows:

- (1) Scaled drawing.
- (2) Site boundary dimensions and descriptions.
- (3) Existing and proposed contours and pad elevations.
- (4) Existing conditions and site features that incorporate and surround such site to be developed.
- (5) Existing and proposed access.
- (6) Cross section of existing and proposed contours, if applicable.

(7) Orientation and dimensions of facilities (pump jacks, buildings, etc.).

(8) Description of existing and proposed vegetation.

(9) Location, height and extent of perimeter berms, if applicable.

(10) Type, location and amount of mulch materials, if applicable.

(11) Type, location and height of fencing, if applicable.

(12) Direction and type of lighting, if applicable.

(13) Written maintenance plan for at least one year after revegetation.

(14) Title block:

(a) Name of development;

(b) Name of applicant or developers;

(c) State permit number;

(e) Date of preparation; and

(f) Section, township and range.

(15) Vicinity map:

(a) Major roads, adjacent subdivisions and town boundaries;

(b) Section, township and range; and

(c) Rivers, streams, ponds and wetlands.

(16) For sites requiring a visual mitigation plan, performance security shall remain in place for at least one year after installation of the plant and landscape materials. The performance security shall be of an amount sufficient to cover the costs of the proposed improvements or the amount required by section 17.62.110, whichever is greater.

(D) To the maximum extent possible, the applicant shall use structures of minimal size to satisfy present and future functional requirements.

(E) When clearing trees and vegetation for construction of facilities, the applicant shall feather and thin edges of vegetation while keeping overall clearing to a minimum.

(F) The applicant shall replace earth adjacent to water crossings at slopes less than the natural angle of repose for the soil type of the site.

(G) To the maximum extent possible, the applicant shall align access roads to follow existing grades and minimize cuts and fills.

(H) Facilities shall be painted as follows:

(1) Uniform, non-contrasting, non-reflective color tones, similar to Munsell Soil Color coding system.

(2) Color matched to land, not sky, slightly darker than adjacent landscape.

(I) The applicant shall minimize damage to existing trees and vegetation.

(J) Pad dimensions shall be the minimum size necessary to provide a safe work area and minimize surface disturbance.

(K) Within six months after well completion, the pad area (except the main access road and the immediate areas within 25 feet of the aboveground facilities) shall be reseeded or replanted with native grasses or existing vegetation acceptable to the surface owner.

(L) One or more of the following landscape practices shall be applied, on a site specific basis:

(1) Establishment of berms, ground covers, shrubs and trees. Vegetation clusters shall be placed 10-15 feet apart along the edge of the permanent pad site.

(2) Shaping cuts and fills to appear as natural forms.

(3) Cutting rock areas to create irregular forms.

(4) Designing the facility to utilize natural screens.

(5) Construction of fences such as woven wood or rock for use with or instead of landscaping.

(M) Exterior lighting, when required, shall be directed away from residential areas and the evening sky, or effectively shielded from such areas.

(N) The applicant shall consult with the appropriate state and federal wildlife management agencies to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures. Facility and cumulative impact recommendations shall be submitted for review and approval by the director.

(1) The following mitigation measures shall be included as appropriate in the site specific wildlife mitigation procedures required under this chapter, as appropriate:

(a) Avoid conducting drilling and construction activities during critical use periods.

(b) Avoid conducting onsite operation and maintenance activities during critical use hours.

(c) Confine vehicular access to established roads except under emergency circumstances.

(d) Forbid use of firearms in project areas.

(e) Install gates which can be locked at the first property boundary crossed when accessing a facility from the closest public road.

(f) Conduct work in streams in a manner that eliminates or minimizes siltation and erosion and at a period of little or no flow.

(g) Place all pipe below the channel scour depths in streams and rivers to avoid partial diversion or channel discharges.

(h) Stabilize excess material at stream and river crossings in place or remove off the site.

(i) Complete the fueling and lubrication of construction equipment away from aquatic environments.

(2) In lieu of a site specific mitigation review for each facility, the applicant may submit to planning a multisite plan addressing cumulative impacts to fish and wildlife from the estimated total number of facilities. The multisite plan shall include, but not be limited to, all items under subsection 62.150 of this chapter.

(O) If fresh water is required for facility operation, the applicant shall identify the proposed source of such water.

(1) Onsite containment and disposal of water associated with the facility shall be in accordance with any applicable federal and state requirements.

(P) Facilities shall not be located in geologic hazard areas.

(Q) Facilities shall comply with the adopted borough floodplain ordinance when they are located in a 100-year floodplain area.

#### **17.62.300 SURFACE DISTURBANCE STANDARDS**

(A) The purpose of this section is to provide standards to ensure minimal disturbance to surface conditions.

(B) Facilities shall be located so as to use only as much of the surface as is reasonably necessary for the operation of the facility and to avoid the unreasonable loss of agricultural land. This standard may be waived if verified written consent is obtained from the surface owner.

(C) Installation of facilities which are accessible by non-maintained roads included in the borough road system, which the borough engineer determines are inadequate to safely accommodate the additional traffic associated with the operation of the facility, shall be permitted only if such roads are improved and maintained by the applicant to a level which the borough engineer determines is necessary to allow such traffic to use such roads in accordance with applicable state and borough standards.

(D) When a facility becomes operational, all construction-related debris and slash shall be removed from the site. The site shall be maintained free of debris and excess materials at all times during operation.

(E) All burning of trash shall be done within a container such as a wire cage or excavated pit covered with wire.

(F) The applicant shall be responsible for ongoing facility sites and access road weed and noxious weed control during construction and operation of the facility, until abandonment is filed with the A.O.G.C.C.

All weed control shall be preformed by mechanical means and shall not include the use of pesticides.

(G) Upon abandonment of the site, as defined by the A.O.G.C.C. reclamation shall be conducted in accordance with A.O.G.C.C regulations.

**17.62.310. DEFINITIONS.**

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- **"A.O.G.C.C"** means the Alaska Oil and Gas Conservation commission.

- **"Abandonment"** means that the presumption of permanent abandonment of a well based on the operator's filing with the A.O.G.C.C. Presumption of permanent abandonment of a major facility shall be based upon nonuse for one year without notification of the intent to resume operations.

- **"Adjacent"** means properties sharing a common property boundary.

- **"Agricultural"** means currently in use, or classified by borough or state agencies, for farm or ranch purposes, including pasture.

- **"Applicant"** means that person, corporation or other legal entity possessing the legal right to develop the mineral resource or any other use proposed in connection thereof for the site in question; generally, the applicant will be the owner or lessee of the mineral estate.

- **"Coal bed methane facilities"** means:

- o An individual well site built and operated to produce natural gas (methane), including auxiliary equipment required for such production, i.e., separators, dehydrators, pumping units, tank batteries, and other equipment.

- o Gas gathering lines and water collection lines serving coal bed methane facilities, including trunk and lateral lines, shall not be subject to the setback standards required for such facilities, but shall comply with other applicable standards in this Chapter.

- o Facilities associated with gas gathering lines and water collection lines, such as: drip stations, vent stations, pigging facilities, chemical injection

stations, transfer pump stations and valve box, which comply with all applicable standards and requirements in this Chapter.

- o An individual well head compression and multiple well compression facility which complies with all applicable standards and requirements in this Chapter.

- o Storage yards or construction staging areas occupying one acre or less, and which comply with all applicable standards.

- o Gas treating facilities which serve multiple wells or gathering systems.

- o Pipelines for which the power of eminent domain is available.

- **"Collection line"** means a pipeline to a well designed to collect produced or wastewater and transport it to a central disposal area (evaporation pit or injection well).

- **"Compatible"** means able to exist or act together harmoniously, considering noise levels, odors, potential fire hazard, visual impacts, effects to surface water and groundwater quality/quantity, adequacy of the road system, air quality fish and wildlife, character of residential areas and surrounding land uses.

- **"Compressor station"** means an installation consisting of one or more individual compressors, located on a gathering or transmission line, or both.

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

- **"Critical use hours"** means that time of day when disturbance is most likely to increase stress to and negatively impact fish and wildlife.

- **"Critical use period"** means that portion of the year (weeks or months) when disturbance is most likely to increase stress to and negatively impact fish and wildlife.

- **"Department"** means the borough planning and Land Use Department.

- **"Designated agent"** means an agent designated by the owner or lessee, as defined by the A.O.G.C.C

- **"Developable"** means land for residential purposes if it does not have slopes exceeding 30 percent, and is not located within a geologic hazard area, federally defined floodway, drainage channel or wetland area greater than one acre. (See Residential.)

- **"Development and Production"** means all activities associated with the extraction, collection, compression, distribution, and transportation of coal bed methane.

- **"Director"** means the Matanuska-Susitna Borough Planning and Land Use Director.

- **"Easement"** means authorization by a property owner for the use of a designated portion of his property by another, for a specified purpose.

- **"Exploration"** means all activities associated with the identification of coal bed methane sources, quantities, and preferred methods of production.

- **"Evaporation pit"** means an excavated pit used for storing and evaporating wastewater produced in degasification activities, during drilling or production, or both, sometimes lined.

- **"Gas well"** means a well having a pressure and volume of natural gas; specifically, producing methane, often in combination with a variety of other substances such as butane, propane and carbon dioxide.

- **"Gathering system"** means a system consisting of well (or gathering), lateral, and trunk pipelines transporting oil, gas or other products derived from coal bed methane production to a central facility or transmission line, and so classified under the DOT regulations. For the purposes of this chapter a gathering system is synonymous with collection and distribution systems.

- **"Lessee"** means the individual or firm leasing mineral rights for development purposes from the owner. The lessee may also be the permittee, for the purposes of this Chapter.

- **"Master Plan"** means a plan that describes the complete build-out (consisting of all phases) and the associated cumulative impacts of the exploration and/or development and production stages of coal bed methane development including all phases.

- **"Multiple completion well"** means a well equipped to produce oil and/or gas separately from more than one reservoir.

- **"Nuisance"** means a facility which is not being constructed, operated or installed in substantial compliance with the regulations of this Chapter and any applicable conditions of approval and as to which the applicant has failed or refused to abate, correct or discontinue the violation of this Chapter after being ordered to do so by the planning commission.

- **"Operating plan"** means a general description of all associated coal bed methane facilities identifying purpose, use, typical staffing pattern, seasonal or periodic considerations, routine hours of operating, source of services/infrastructure, and any other

information related to regular functioning of that facility.

- **"Operator"** means that individual or firm engaged in all or a portion of the extraction operations at a well or other facility; usually the lessee of the mineral estate, although day-to-day operations may be contracted to another firm.

- **"Platted subdivision lot"** means any lot created pursuant to state law, which has been recorded with the state.

- **"Pollution"** means the contamination or other degradation of the physical, chemical or biological properties of water or air, including change in temperature, taste, color, turbidity or odor, or such discharge of any liquid, gaseous, solid, radioactive or other substance into water or air as will or is likely to create a nuisance or render such water or air harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

- **"Producing (in production)"** means the development stage in which marketable coal bed methane are extracted from a well; may also signify the

extraction level at which the quantitative terms of the lease are fulfilled.

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

- **"Residential"** means having an existing residence, recreational cabin, temporary dwelling or vacation home.

- **"Security fencing"** means an eight-foot chain link fence topped by three strands of barbed wire, or the equivalent, with a gate that can be secured.

- **"Spacing"** means acreage dedicated to each well producing from the same formation.

- **"Transmission line"** means a pipeline transporting oil, natural gas or any other products derived from coal bed methane production, which is defined as a transmission line by the Department of Transportation regulations under the Natural Gas Pipeline Safety Act of 1968, as amended.

Section 3. Effective date. This ordinance shall take effect upon adoption by the Matanuska-Susitna borough Assembly.

ADOPTED by the Matanuska-Susitna Borough Assembly this 13 day  
of October, 2004.

**/S/**

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TIMOTHY L. ANDERSON, Borough Mayor

ATTEST:

**/S/**

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MICHELLE M. MCGEHEE, CMC, Borough Clerk

(SEAL)

YES: Woods, Kvalheim, Colver, and Vehrs

NO: Allen, Colberg, and Simpson