CITY OF HOUSTON, ALASKA
RESOLUTION 09-24

A RESOLUTION OF THE COUNCIL FOR THE CITY OF HOUSTON, ALASKA IN FAVOR OF THE CONDITIONAL USE PERMIT FOR NATURAL EXTRACTION WITH JAMES M. (MARTY) DENEVAN, D.B.A. MAT-SU GRAVEL PRODUCTS.

WHEREAS, the City of Houston agrees to the Conditional Use Permit (CUP) for Natural Resource Extraction and Associated Industrial Uses is hereby issued as referenced within the attached document; and

WHEREAS, The Permit CUP 174120090001, effective dates for the Conditional Use Permit begins 12:01 a.m. October 9, 2009 and expires 11:59 p.m. October 10, 2015; and

WHEREAS, the applicant’s name: James M. (Marty) Denevan. The name of the business: Mat-Su Gravel Products. Address: 2739 N. Backhaus, Wasilla, Alaska 99654; and

WHEREAS, the permitted site is MSB Tax Parcels are 17N03W12B002 and 17N03W01C002

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, that:

The City Council of the City of Houston hereby agrees with the general requirements and conditions and specific conditions of the permit expressed in the attached document.

PASSED AND APPROVED by a duly constituted quorum of the City Council for the City of Houston, Alaska on this ___ day of ________, 2009.

THE CITY OF HOUSTON, ALASKA

______________________________
Roger Purcell, Mayor

ATTEST:

______________________________
Steven M. Cunningham, City Clerk
Houston, Alaska
CONDITIONAL USE PERMIT
NATURAL RESOURCE EXTRACTION

PERMIT # 174120090001

ACTION: In accordance with Matanuska-Susitna Borough Code 17.41.505 (C) natural resource extraction in the city of Houston, R-1 district, is hereby recommended for approval as referenced within this document.

EFFECTIVE DATES: Beginning from the date of issuance of this permit through seventy-two (72) consecutive months.

PERMITTED SITE: MSB Tax Parcels 17N03W01C002 and 17N03W12B002; Mile 53 Parks Highway

PERMITTEE: James M. (Marty) Denevan
Mat-Su Gravel Products
2739 N. Backhaus
Wasilla, Alaska 99654

1. Executive summary

A condition use permit application has been submitted for natural resource extraction. The area on which the operation will occur is up to 15 surface acres to be disturbed out of a total of 69 acres.

During this conditional use permitting procedure, the Houston City Council, acting as the local zoning board, has heard from the applicant, the land owners and allowed four additional opportunities for public opinion through three work sessions, the required Public Hearing which occurred on July 9, 2009, and an additional public hearing on September 10, 2009 at 6:00 p.m. at Houston City Hall, 13965 W. Armstrong Road, Houston, Alaska.

2. Facts and circumstances

A. Land Use
Each of the parcels are zoned R-1 (Residential). The land owners have a residences on both parcels.
B. Description and Character of Surrounding Area:

The Parks Highway bisects the middle of Parcel B2 and across the southwest corner of the Parcel C2. Cheri Creek runs through both of these parcels. Meadowview and Meadowview Heights Subdivisions are adjacent to the east side of the subject parcels. Capitol corridors subdivision is located south of the parcels. Homesteaders Community Center is located west of the subject parcels.

The property is located within the R-1 District (Single-family and two-family residential district) within the city of Houston. The intent of this district is to provide for low density, rural residential development with single-family and two-family dwelling and to provide for such community services and facilities that would serve the area population while preserving the character of existing residential areas within the city of Houston.

Adjacent land uses are zoned mostly R-1. However, there is commercial land use to the Southeast and Public Lands and Institutions to the Southwest and Northeast.

FINDING: The proposed temporary land use is permissible according to MSB 17.41.505 and HMC 10.41 Article IV with the completion and approval of a conditional use permit.

3. Comprehensive Plan

A. Comprehensive Plan Primary Goal:

- To maintain the high quality residential living environment that currently exists in Houston and to continue to take advantage of the characteristics of the community’s rural setting. The community should work toward encouraging a moderate level of growth which will provide an economic base in Houston adequate to allow provision of employment opportunities in the area and to avoid becoming dependent upon external governmental or economic factors and activities.

The basis of this goal is an expression of a desire to plan for expected population growth with the intent of maintaining Houston’s physical and environmental setting while promoting a more independent economic base.

It is also clear that, in order to more fully appreciate and participate in that lifestyle, the resident and property owners in Houston need to have more opportunities for employment within the area so that commuting to employment centers such as Anchorage and other parts of the Matanuska-Susitna Borough is not always a necessity.

This project supports the continued growth of the City by providing building sites suitable for home construction, by making sand and gravel available for building homes, businesses, roads and other development that will be for the betterment of the community, and it will provide eight full-time jobs in the City of Houston for 6 years.
The properties on which the proposed gravel extraction activity will take place are currently zoned R-1, for single and two-family residential development with natural resource extraction allowed as a conditional use. However, to be able to use this land for its intended purpose significant site preparation is required. The land is a combination of wetlands and gravel bearing glacial moraine of uneven elevation. While the wetlands are to remain undisturbed, a large amount of gravel must be removed from the upland portion of the property to provide a level area suitable for building homes. This site preparation, and the gravel generated, is also necessary for public safety reasons, because it will allow for the construction of the extension of Birchwood Lane, which is needed to provide a second access/exit point in the Meadowview Subdivision.

The proposed natural resource extraction is a conditional use permitted in lands zoned R–1 (Residential - single and two family dwelling units). The time period proposed for the natural resource extraction is limited to six (6) years. The Houston City Council agrees with the borough planning staff that this is a transitional use and the properties will be returned back to its intended use: R-1, Residential.

**B. Economic Goal: Community Objective**

- Strengthen and broaden the economic base of Houston by encouraging the continued growth and development of the tourism industry, service industries, transportation-related industries, and natural resource development industries in the Houston area.

Houston residents are supportive of economic development and willing to promote industries, including natural resource development, which yields a potential for localized negative impacts. The potential adverse impacts of the latter in terms of quality of rural lifestyle are widely recognized. Residents are willing to accommodate this industry and others if appropriate safeguards are applied which will protect existing local lifestyles at the same time. Houston is richly endowed with large quantities of gravel used for construction purposes.

The large amount of the gravel this project will produce will be in excess of what is required for site preparation, so the surplus gravel will be sold and thereby contribute to the local economy by generating revenue to pay the wages of eight employees, provide the funds for the property owners to develop their land, and it will generate City of Houston sales tax revenue. Once the project is completed, and the land is developed for building construction, this property will be worth much more, not only to the land owners, but also to the City and Borough governments for tax purposes.

Any localized negative impacts this project may have will be temporary in nature and will be mitigated to the maximum extent by adequate vegetative buffers, limits to the operating hours, a restriction against mining into or near the water table, excavating gravel only on small portions of the property at one time and then beginning reclamation immediately once the excavation is completed.
FINDING: The proposed conditional use supports the Houston Comprehensive Plan.

4. MSB 17.41 – Houston Land Use Ordinance

MSB 17.41.505 – R-1 district; single-family and two-family residential district
The intent for this district is to provide for low density, rural residential development with single-family and two-family dwellings and to provide for such community services and facilities that would serve the area population while preserving the character of existing areas within the city of Houston. The proposed natural resource extraction is a conditionally permitted use within this zone.

FINDING: The proposed conditional use is permissible. While the scope of operations is moderate, the total percentage of land affected is less than 21.7%, minimizing the total human footprint, enabling future residential development.

MSB 17.41.705 – Conditional Use Permits. The application was submitted with deficiencies as noted in the MSB Planning Staff recommendations and subsequent reviews have indicated inadequate available information. The deficiencies noted have been corrected and are addressed as follows:

17.41.705(B)(1)(d)(i) Detailed site plan drawn to scale depicting the following: existing site conditions, including topography, watercourses, floodplains, other natural hazards and features, vegetation, land use, and access.

FINDING: Site plans for the development were submitted. The Planning Department reported that the site plans were deficient in the following:
- The existing site conditions were not shown.
- Topography was not shown.
- Wetlands, vegetation, and land use were not depicted.

Over the course of reviewing and requesting additional information, maps have been produced and site visitations have satisfied the omissions noted by borough planning staff. The existing drainage runs into Long Lake by way of Cheri Creek. Mr. Denevan has proposed the finished contours will be 3:1 slopes on the set backs from property lines on Cheri Creek side natural vegetation will remain in place to an elevation that is 10 to 12 feet above water table to leave a two foot berm on the edge of excavate area with a 1 – 2 % floor sloping to the 3:1 slopes to be absorbed.

One note of concern was the latest requirement of the applicant to file a Flood Hazard Development Permit when the previous planning report specifically indicated the property as not located on a federally designated flood hazard area. Following up with Robert Guerten, MSB Flood Plain Manager of Code compliance reported that he had been contacted by Mr. Denevan and discussed the current application and its applications with the Mat-Su Borough’s Flood Management program. Mr. Guerten reported that any excavation on Lot C2 would necessitate
applying for a Flood Hazard Development Permit. Mr. Denevan agreed to restrict all excavation to Lot B2 (Southern lot) eliminating the need for additional permitting for a Flood Hazard Development Permit to begin activity under this CUP. If the permittee desires to excavate material from Lot C2 at a later date, the permittee must first obtain a flood hazard permit and then apply for an amendment to this CUP.

17.41.705(B)(1)(d)(ii) General Landscaping plan, including the treatment and materials used for private and common open spaces, final grading of the property, existing and proposed drainage pattern, types of plants and/or screening to be used, especially at the perimeter of the site.

FINDING: Current information provided in the SWPPP (Stormwater Pollution Prevention Plan) is adequate.

The borough planning staff indicated inadequacies of a landscaping plan, reclamation plan and proposed drainage patterns not shown on the site plan or addressed in the application material. Subsequent documentation, as requested, has been added, detailing each of these concerns. The applicant has met with Matthew LaCroix of EPA and it was determined that a Multi-Sector General Permit was required and has filed a Multi-Sector General Permit with coverage to begin at the conclusion of the sixty-day waiting period, on 10/09/2009.

17.41.705(B)(1)(g) – Statement of how the proposed project conforms with the City of Houston Comprehensive Plan.

FINDING: The application and conformity of this proposed natural resource extraction does not ultimately deviate from the Houston Comprehensive Plan.

Public comments in opposition to the proposed CUP voiced concerns of dust, noise, vibrations, and possible loss of water quality and quantity. These characteristics are not usually present in a rural residential setting. However, it is observed that dust, noise, and vibrations are currently present as a result of the following:

- Sighting-in guns, 150 Db;
- ATV and snow machine use, 100 Db, dust, vibrations;
- Chain Saws, 105 Db, vibrations;
- Heavy equipment operations, 93 Db, dust, vibrations;
- Generators, 75 Db, vibrations;
- General construction, 50 Db, dust, vibrations

While these characteristics exist throughout the entirety of the city of Houston, most locations do not observe this as a nuisance. To mitigate the noise and vibration concerns, hours of operation were introduced. To mitigate the dust nuisance, Mr. Denevan will water the excavation site and access road as delineated in the SWPPP Plan.

Concerns expressed about the quality and quantity of potable water were addressed at length. Of special note was information from the Materials Extraction Best Practices specifically concerning the penetration of the confining layer or confining aquifer and its effects on the quality and quantity of water. It was further noted that the Matanuska-Susitna Borough Code
restricts resource extraction to four (4) feet above the seasonal high water table. Mr. Denevan’s proposed natural resource extraction would cease when approaching eight (8) feet of the seasonal high water table as measured from monitoring wells situated every five acres as recommended by Matthew LaCroix of the EPA. Should this safeguard prove inadequate, procedures have been established in the event of a breech in the confining layer or confining aquifer and are briefly outlined below:

- Cease all gravel extraction operations immediately and seal the breech based on the recommendations by qualified professionals and the authorities listed below.
- Notification of authorities within 24 hours, including, but not limited to:
  (1) City of Houston Public Works Director
  (2) MSB Director of Planning
  (3) City of Houston Code Compliance
  (4) MSB Code Compliance
  (5) EPA
  (6) Alaska DEC, Division of Water
- A hydrologic assessment, conducted by a qualified professional, to determine the area impacted and the nature and degree of impacts and a description of potential repair or mitigation options shall be submitted to the above authorities within 14 calendar days of notification.

The Houston City Council views the proposed natural resource extraction primarily as a transitional use with little or no additional disturbance from noise, dust, vibrations, and the effects on the quality and quantity of potable water due to the following:

- The seasonal nature of gravel extraction;
- Twenty-five (25) foot buffer of natural vegetation between the project and property lines;
- The mitigation of hours of operation;
- The length of time to complete this project being limited to six (6) years;
- Limiting the natural resource extraction to no less than four feet above the seasonal high water table;
- The establishment of emergency procedures in the event of a breech of the confining layer or confining aquifer.

17.41.705(B)(2)(b) – Proposed site plan drawn to scale depicting conditions upon completion of the extraction operation, including the following: finished contours; re-vegetation plan; finished drainage plan; and finished access points.

Reclamation activities must be in accordance with those listed in the SWPPP.

The natural resource extraction will ultimately have a finished grade near level with a slope of one (1) to two (2) percent away from Cheri Creek Drainage. The current natural drainage is toward Cheri Creek with a much steeper slope. The access point is to remain as permitted by ADOT/PF.

MSB 17.41.725(B) – Natural resource extraction standards. The city council shall require applicants for natural resource extraction conditional use permit to submit a bond for reclamation of the natural resource extraction site in an amount determined by the city council.
to be sufficient to ensure compliance with reclamation requirements prior to the commencement of extraction activities.

The city is requiring a reclamation bond of $79,880 as required by MSB 17.41.725(B). The amount of the bond incorporates estimates based on the following:

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Subtotal 77,880

Administrative/Oversight Flat fee 2,000

Total 79,880

5. General Requirements and Conditions of the Conditional Use Permit

All development and use of the permitted site will occur as described in the approved application submittal, including all additional plans and alterations as addendums and as further specified by the conditions herein. Any variance from the requirements or conditions of this permit or from borough and city of Houston code may be grounds for penalties as authorized by borough and city of Houston code including, but not limited to, revocation of the permit. Unless otherwise specified all items required to be submitted to, or approved by, the city of Houston or the Matanuska-Susitna Borough must be submitted or approved prior to start up under this permit.

6. Specific Conditions of the Permit

a. All activity will be conducted in compliance with state or federal regulations governing items listed in MSB 17.41 and HMC 10.41.

b. Implement the SWPPP, as submitted with the application material.

c. Excavation to remain a minimum of four feet above the season high water table.

d. The contractor will comply with the “Mining and Reclamation Plan” as submitted with this application and subsequently amended.

e. If the operation expands or alters, an amendment to the conditional use permit shall be required. This includes, but is not limited to:
• A Flood Hazard Development Permit and application for amendment to excavate material from Lot C2 at a later date.
• An Alaska Department of Transportation approved access points before any excavation of the parcels south of the Parks Highway, in the vicinity of LaRae Road and Hawk Lane.

f. The contractor will provide a copy of its Mining License to the City of Houston and the Matanuska-Susitna Borough.

g. Access is granted solely to the Parks Highway using the existing approved driveway access to avoid industrial traffic mixing with residential traffic. Any traffic on residential roads, other than for local deliveries will be grounds for permit revocation.

h. Upon completion of natural resource extraction operations, the existing driveway access to the site will be brought to borough standards and connected as an extension of Birchwood Lane, which is needed to provide a second access/exit point in the Meadowview Subdivision.

i. The hours of operation shall be limited to Monday through Saturday from 8:00 a.m. to 7:00 p.m. for full operations. Operations are permitted Sundays from 12:00 p.m. to 5:00 p.m. without the operation of any crushing or sifting machinery.

j. Should a confining layer be breached:
   • Cease all gravel extraction operations immediately and seal the breach based on the recommendations by qualified professionals and the authorities listed below.
   • Notification of authorities within 24 hours, including, but not limited to:
     (1) City of Houston Public Works Director
     (2) MSB Director of Planning
     (3) City of Houston Code Compliance
     (4) MSB Code Compliance
     (5) EPA
     (6) Alaska DEC, Division of Water
   • A hydrologic assessment, conducted by a qualified professional, to determine the area impacted and the nature and degree of impacts and a description of potential repair or mitigation options shall be submitted to the above authorities within 14 calendar days of notification.
   • All expenses incurred, including salaries, consultation and legal fees, shall be paid by the permittee.

k. No permanent disposal of solid waste is permitted on the site.

l. Trash, survey lath, roadway markers, and other debris associated with permitted activities will be regularly picked up and properly disposed.

m. If complaints are received concerning noise, dust or fumes, the applicant will take reasonable corrective action to satisfy complaints.

n. Authority to interpret and enforce. The Public Works Director and Community Service Officer are authorized to make a determination regarding compliance with this code and interpretations regarding implementation of the code or permit conditions. These determinations will be subject to review by the city zoning board upon appeal by the applicant. An appeal under this condition must be filed within five business days of the determination. In the event city staff determines a violation of the Conditional Use Permit is occurring, the Community Services Officer will notify the permittee. Notification will be considered effective if provided verbally to the senior person on staff
at the permitted site or to the permittee office at the address provided in the permit. The notification will include a time frame for bringing the deficiency into compliance and the notification will be followed up in writing. Failure to bring the violation into compliance as required is a violation of code and subject to prosecution in accordance with code. Enforcement may result in an issuance of a stop work order requiring all operations on the site to cease until such time the violation is brought into compliance. Failure to obey a stop work order is a separate violation. Each day constitutes a separate violation.

o. Right of Entry. The permittee will authorize city staff access onto the permitted site and into permitted facilities at any reasonable time for the purpose of observing compliance of the operation with permit conditions.

p. Routine reporting requirements.
   - The permittee will file an annual report by December 31 of each year describing the past season’s activities, reclamation activities, and other pertinent information necessary to insure compliance with permit conditions. The Annual report will also describe plans for the coming year’s operation.
   - Monthly test well monitoring reports submitted to Houston Code Compliance during the months of operation (normally April through November).

q. Insurance. Require the permittee to provide commitment to the city that the permittee will hold the city harmless in the event of casualty or loss due to accident or problems arising from the permitted use. The permittee will provide liability insurance of a minimum of one-million ($1,000,000) dollars naming the city of Houston as an additional beneficiary.

r. Accessory Uses and Structures. No accessory uses or structures on the property will be permitted unless they are shown on the approved site plan and their use is described in the operation plan.

s. Amendments to the Permit. The approved site plan and operational plan may be changed through amendment for uses and structures which are customarily accessory and incidental to the permitted uses as approved in accordance with the applicable standards.

t. Prohibited uses and structures. Any use or structure which causes or may reasonably be expected to cause excessive noise, vibration, odor, smoke, dust, or other particulate matter, toxic or noxious matter, humidity, heat, or glare, at or beyond lot lines of the lot on which it is located, or to surface estate owners on the same lot, is hereby prohibited. Excessive, for the purposes of this permit, is defined as a degree exceeding that which can be practically or cost efficiently prevented for such a use in a customary manner of operation, or an impact injurious to public health, safety, and welfare. Techniques for mitigation of negative impacts include, but are not limited to specific time of operation, design, siting, intensity levels, shielding, landscaping, vegetation, and construction methods.

u. Minimum Parking Requirements. All parking for the permitted use will be conducted off the public right-of-way. Off street parking will be provided at a minimum of one space for every two workers for the largest shift and at least one parking space for staff conducting maintenance and repairs.

v. Signs. Signs intended to be visible from off the premises will be in accordance with HMC 10.41 Article VI. Warning signs required by law are allowed.

w. Buffers: there shall be a twenty-five (25) foot buffer of natural vegetation between the project and property lines or the Parks Highway right-of-way; there shall be a no-
disturbance buffer of at least fifty (50) feet between extraction activity and wetlands, and a buffer of one hundred (100) feet from each side of Cheri Creek.

7. This permit is approved by City of Houston Resolution 09-24, passed this 10\textsuperscript{th} day of September, 2009. This decision may be appealed within 21 days of the date of approval by the City Council in accordance with MSB 15.39 Board of Adjustment and Appeals.