



## ORDINANCE SERIAL NO. 07-05

### AN ORDINANCE AMENDING TITLE 40, CHAPTERS 40.05, 40.10 and 40.15 AND ENACTING CHAPTERS 40.01, 40.06, 40.20 TO PROVIDE FOR GENERAL PROVISIONS, CREATION OF A PLANNING DEPARTMENT AND RESOURCE DEVELOPMENT

**WHEREAS**, the Aleutians East Borough as a second class borough is mandated pursuant to Title 29 to provide for planning, platting, and land use management regulations on an area basis, and

**WHEREAS**, specifically the Aleutians East Borough is mandated to establish a Planning Commission to perform duties prescribed by local ordinance and to assist with proposing the systematic and organized development of the Aleutians East Borough through a Comprehensive Plan; and

**WHEREAS**, once established the Aleutians East Borough Planning Commission is mandated to review, recommend and administer measures necessary to implement the Borough's Comprehensive Plan to address planning, platting, zoning and resource development; and

**WHEREAS**, under the laws of the State of Alaska the Borough's Comprehensive Plan is comprised of a compilation of borough policy statements, goals, standards, and maps aimed at guiding the physical, social and economic development of both the private and public sector of the Borough.

#### **NOW, THEREFORE, BE IT ENACTED:**

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

**Section 2. Severability.** If any provisions of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

**Section 3. Effectiveness.** This ordinance shall become effective upon adoption.

**Section 4. Adoption of Section.** Chapters 40.05, 40.10, and 40.15 are amended and Chapters 40.01, 40.06, 40.20 are adopted as annexed hereto as part of this ordinance and Title 40 of the Code of Ordinances of the Aleutians East Borough.

INTRODUCED: 3/5/07

ADOPTED: 5/3/07

  
Stanley Mack, Mayor

Date: 5/3/07

ATTEST:

  
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CLERK

Date: 5/3/07

TITLE 40  
ALEUTIANS EAST BOROUGH  
PLANNING, PLATTING AND LAND USE

CHAPTER

- 40.01 GENERAL PROVISIONS
- 40.05 PLANNING COMMISSION
- 40.06 PLANNING DEPARTMENT
- 40.10 COMPREHENSIVE PLAN
- 40.15 ZONING DISTRICTS
- 40.20 RESOURCE DEVELOPMENT

TITLE 40  
PLANNING, PLATTING AND LAND USE

Chapter 40.01  
General Provisions

**Sections:**

40.01.010	Purpose
40.01.020	Geographic Scope
40.01.030	Borough Administration
40.01.040	Compliance
40.01.050	Fees and Penalties
40.01.060	Definitions

**40.01.010 Purpose**

This title creates land management principles and procedures for administering development within the Borough. The purpose of this title is to:

- (a) Achieve the goals and objectives and implement the policies of the Borough's Comprehensive Plan;
- (b) Establish the Borough's Land Use Regulations;
- (c) Establish a Planning Commission and a Planning Department;
- (d) Administer the Comprehensive Plan and Coastal Zone Management Plan;
- (e) Establish Zoning Districts;
- (f) Promote and protect the public health, safety, morals, and general welfare, as well as the historical, economic, social, and cultural interest of the Borough's residents;
- (g) Protect fish resources and ensure continuation of a productive commercial fishery;
- (h) Protect subsistence resources;
- (i) Ensure the future growth and development is in accord with the values of its residents;
- (j) Secure the beneficial effects of development for present and future residents;
- (k) Identify, avoid, and mitigate the negative effects of development;
- (l) Ensure future development is of the proper type, design, and location and is served by a proper range of public services and facilities;
- (m) Protect human health and the environment by prohibiting adverse impacts of industrial pollution;

- (n) Ensure public involvement in permitting, planning, and zoning decisions;
- (o) Encourage local business development;
- (p) Maintain all Borough maps and resource data within a Geographic Information System;
- (q) Implement the requirements of the Borough Charter and AS 29.40 as they pertain to Planning, Platting, and Land Use Regulations; and
- (r) Public and private development will be encouraged to:
  1. Provide the maximum long term local benefits that reach the maximum number of Borough residents;
  2. Develop the undeveloped resources of the Borough or otherwise diversify the economic base of the Borough;
  3. Be a stable economic force that maximizes local employment;
  4. Minimize the adverse impact of the development on the environment, natural resources, neighboring properties and communities, and on public infrastructure;
  5. Bear its share of burden on local governments of providing public facilities and services and should contribute to improving the quality of life in the Borough; and
  6. Be sensitive and responsive to the subsistence and other life styles that exist in the communities that the development will affect.

**40.01.020      Geographic Scope**

This title applies to all private, state, federal, Borough, and municipally owned lands, tidelands, submerged lands and waters within the Borough's boundaries. This title does not apply to federally restricted town site lots or allotments unless allowed by federal law. This title does not apply to any lands within the municipal boundaries of Akutan, Cold Bay, King Cove, and Sand Point; planning, platting and land use is administered by these municipalities under Chapter 45.05.030, which governs Planning, Platting and Land Use Regulations within the Borough.

**40.01.030      Borough Administration**

- (a) All planning, platting and land use approvals require Assembly approval. Only minor amendments, to previously approved Resource Development projects, may be approved by the Planning Director under 40.20.010 (d).
- (b) The Planning Commission reviews all applications and major amendments to previous approved projects. Planning Commission prepares a recommendation for Assembly action.

- (c) The Administrator and Planning Director serve as staff to the Mayor, Assembly, and Planning Commissions to carry out the requirements of this title.

**40.01.040            Compliance**

The Administrator may revoke, suspend, or modify any approval that is in conflict with this title or any applicable state or federal requirement. The Administrator may approve continued operation under a Compliance Plan until the compliance violation is remedied or require the use to cease. Penalties for non-compliance may be assessed by the Administrator pursuant to Chapter 1.24, which pertains to penalties.

**40.01.050            Fees and Penalties**

The Planning Commission will establish a schedule of fees and penalties for compliance with this title. The Assembly will establish procedures for the Administrator to follow when pursuing civil and criminal penalties.

**40.01.060            Definitions**

The definitions listed below are in addition to those listed in Chapter 1.12.010, which provides general definitions for the Code:

- A. "Applicant" means the person who makes an application for use under the provisions of this title, and successors in title or interest;
- B. "Commercial" means use involving the storing, wholesaling, retailing, or rental of any article, service, or substance for cash, trade, or any form of compensation, and supporting activities, but excludes such uses when they are conducted in a dwelling unit or accessory building and are clearly subordinate to the use of the dwelling for residential purposes provided that the primary use and appearance of the lot and accessory building remains residential and generally conforming to the appearance of the surrounding area. For the purposes of this title, Resource Development activities are administered as a separate and distinct commercial activity and are not included in this definition;
- C. "Compliance Plan" means a written plan developed by the Administrator to bring development into compliance with this title;
- D. "Comprehensive Plan" means a document officially adopted by the Assembly including text, charts, graphics, or maps, or any combination, designed to portray general long-range proposals for the arrangement of land uses and development of an economic base and human resources and which is intended to guide government policy towards achieving orderly and coordinated development of the entire community;

- E. "Industrial" means an intensive land use and economic activity involved with manufacturing and production. For the purposes of this title, Resource Development activities area administered as a separate and distinct industrial activity and are not included in this definition;
- F. "Residential" means a use involving the occupation of a building or structure for living, cooking, sleeping, and accessory uses;
- G. "Resource Development" means exploration and development of petroleum, natural gas, coal, metal ore, sand, gravel, other natural resources, and minerals, and all associated processing, refining, and transportation and distribution infrastructure required to commercially develop these resources and bring them to market; and
- H. "Scientific Advisory Council" means a council that is appointed by the Mayor to evaluate the Study and Project Monitoring Plans to determine if they are acceptable; this council will work closely with the Borough's Natural Resource Department described in Chapter 2.6 of this Code.

## TITLE 40

### PLANNING, PLATTING AND LAND USE

#### Chapter 40.05 Planning Commission

##### **Sections:**

40.05.010	Planning Commission
40.05.020	Appointment
40.05.030	Term of Membership
40.05.040	Vacancy
40.05.050	Filling Vacancy
40.05.060	Organization
40.05.070	Rules of Procedure
40.05.080	Meetings
40.05.090	Reimbursement and Compensation
40.05.100	Powers and Duties

##### **40.05.010 Planning Commission**

A Borough Planning Commission is adopted pursuant to authority set forth in Alaska Statute 29.40.020 and consists of seven Borough residents appointed by the Mayor and confirmed by the Assembly.

##### **40.05.020 Appointment**

The Mayor shall appoint the Planning Commission members as follows: two from the City of Sand Point, a first class city; two from the City of King Cove, a first class city; and three from the Aleutians East Borough, outside the corporate limits of the cities of Sand Point and King Cove. Members appointed from the cities of Sand Point and King Cove must be appointed from a list of recommendations submitted by the Council of the respective City that the Planning Commission member is to represent. The list must contain at least two names for each vacancy. People recommended must be residents of the respective City the Commission member will represent. Each member of the Planning Commission has one vote.

##### **40.05.030 Term of Membership**

The term of a member shall begin on January 1, and shall continue for the duration of three years and until a successor is appointed and takes office.



(Ord. 88-4, Sec. 40.05.030)

**40.05.040            Vacancy**

The office of a member of the Planning Commission becomes vacant upon:

- (a) The death or resignation of a member;
- (b) The failure of a member to attend three consecutive regular meetings without first being excused by the Planning Commission;
- (c) Failure of the member to attend two-thirds of the regular and special meetings of the Planning Commission during any twelve month period without first being excused by the Planning Commission;
- (d) Upon a two-thirds vote of the Assembly to remove the member from office; or
- (e) The occurrence of any other event that by ordinance or other law causes the office to become vacant.

**40.05.050            Filling Vacancy**

If a vacancy occurs on the Planning Commission, the vacant position shall be filled by appointment for the unexpired term of the Commission member being replaced.

**40.05.060            Organization**

At the first meeting of each calendar year, following the day the Assembly confirms the annual appointments to the Planning Commission, the Planning Commission shall elect one member to chair meetings of the Planning Commission. The chair shall appoint a recording secretary. Annually, the Planning Commission shall establish and publish in a newspaper of general circulation in the Borough regular meeting dates for the Planning Commission. Schedule revisions must be published 30 days in advance of the meetings.

**40.05.070            Rules of Procedure**

- (a) Robert's Rules of Order, Newly Revised, shall govern the procedures of the Planning Commission to the extent it does not conflict with other provisions of this Code. The Planning Commission may, by resolution, modify Robert's Rules of Order.
- (b) A quorum of the Planning Commission for the conduct of any meeting or public hearing shall be a majority of the commission. No actions shall be taken by the

commission except by concurrence of at least four members.

- (c) Any and all final decisions of the Planning Commission may be overruled or reversed by the Assembly, but only upon a vote of five Assembly members in favor of such overruling or reversal.

#### **40.05.080 Meetings**

- (a) Regular meetings of the Planning Commission shall be held as set out in the schedule of regular meetings.
- (b) Special meetings of the Planning Commission may be called by the chairman or by three members. Reasonable notice of the meeting shall be given to all members and the public. The notice must state the subject or subjects of the meeting. No action may be taken on any matter that was not within the scope or subject of the meeting as set out in the notice.

#### **40.05.090 Reimbursement and Compensation**

Planning Commission members shall be reimbursed, or paid a per diem, for such reasonable and necessary expenses the member incurs in the discharge of the member's duties. The Assembly may, by resolution, establish per diem rates, rules relating to reimbursement and other payments, and may authorize additional reimbursable item payments in lieu of, as well as payment of, compensation for an honorarium.

#### **40.05.100 Powers and Duties**

The Planning Commission shall:

- (a) Prepare and submit to the Assembly a proposed Comprehensive Plan in accordance with AS 29.40.030 for systematic and organized development of the Borough;
- (b) Recommend amendments to the Comprehensive Plan to the Assembly for approval;
- (c) Review, recommend, and administer measures necessary to implement the Comprehensive Plan, including measures provided under AS 29.40.040 and Chapter 40.15 (Land Use Regulations) of this Title;
- (d) Act as the Aleutians East Borough Platting Board;
- (e) Have the authority to prepare and submit to the Assembly for its approval a Master Plan for the physical development of the Borough, including the general location,

character and extent of streets, bridges, parks, waterways, and other public ways, grounds and spaces, together with the general location of the public buildings and other public property, public utilities, and the extent and location of any public housing projects. The Planning Commission shall recommend modifications to the Master Plan from time to time, as it deems in the Borough's interest;

- (f) Prepare and recommend to the Assembly a comprehensive zoning ordinance and map, or propose amendments or revisions thereof, with such provisions as the commission shall deem necessary or desirable for the promotion of health, safety, morals, and general welfare of the inhabitants of the Borough;
- (g) Act as the platting board and exercise other functions with respect to land subdivisions, planning, and zoning as may be prescribed elsewhere in this code or any other ordinance of the Borough, not inconsistent with the provisions of the Borough charter;
- (h) Review all applications, and major amendments to previous approved projects, and prepare recommendations for Assembly action;
- (i) Cause minutes of each meeting to be recorded and forwarded to the Borough Assembly through the Borough Assembly; and
- (j) Perform other duties as may be prescribed by ordinance or requested by the Assembly.

(Ordinance 04-02, Chapter 40.05)

TITLE 40

PLANNING, PLATTING and LAND USE

Chapter 40.06  
Planning Department

**Sections:**

40.06.010	Planning Department
40.06.020	Planning Director
40.06.030	Functions

**40.06.010 Planning Department**

The Planning Department Director is appointed by the Mayor, confirmed by the Assembly, and reports to the Administrator. The Planning Department carries out the Borough functions described in:

- (a) Chapter 40.06 Planning Department
- (b) Chapter 40.10 Comprehensive Plan
- (c) Chapter 40.15 Zoning Districts
- (d) Chapter 40.20 Resource Development

**40.06.020 Planning Director**

The Planning Director is responsible for providing balanced and orderly Resource Development within the Borough. Local, state, and federal law and regulations will govern the actions of the Planning Director.

**40.06.030 Planning Department Functions**

The Planning Department functions include:

- (a) Maximizing Resource Development benefits for Borough residents, while ensuring protection of human health and safety, the environment, commercial fishery resources, subsistence resources, cultural and historic sites, and other economic opportunities within AEB;
- (b) Ensuring all Resource Development within the Borough complies with the Borough's Comprehensive Plan and all other local, state, and federal laws;
- (c) Preparing written recommendations to the Planning Commission for each Resource Development application; to either approve the project, deny it, or approve it with conditions;

- (d) Review and comment on state and federal permits and approvals required for Resource Development projects within the Borough to ensure compliance with local requirements and address local concerns;
- (e) Inspecting and auditing Resource Development projects for compliance with local, state, and federal requirements;
- (f) Conducting enforcement actions; and
- (g) Maintaining complete and accurate maps and documentation on each Resource Development project within a Geographic Information System.

## TITLE 40

### PLANNING, PLATTING and LAND USE

#### Chapter 40.10 Comprehensive Plan

##### **Sections:**

- 40.10.010 Description and Purpose
- 40.10.020 Planning Commission Review and Recommendations
- 40.10.030 Assembly Action
- 40.10.040 Adoption and Contents

##### **40.10.010 Description and Purpose**

The Comprehensive Plan is a guide for the systematic and organized physical, social and economic development, both public and private, of the Borough and serves as a long-range policy guide for the development of the Borough as a whole. It may include separate elements that deal with discrete topics such as transportation, education, subsistence, economic development, tourism, public infrastructure, comprehensive development plans for specific communities or areas, delivery of public services, Borough lands management, and other subjects that may affect the orderly and beneficial development of the Borough.

It is the purpose of the Comprehensive Plan to:

- (a) Encourage maximum, sound and reasonable development and use of renewable and nonrenewable resources within the Borough;
- (b) Minimize the adverse impact of such development and use on the residents and environment of the Borough;
- (c) Promote a healthy and stable ecosystem;
- (d) Minimize the occurrence of incompatible land uses; and
- (e) Promote the health, welfare, and safety of the residents of the Borough.

The Comprehensive Plan shall be implemented through the adoption and application of land use regulations, conditional use and other permitting, zoning, platting, site development and other land use and related regulations.

##### **40.10.020 Planning Commission Review and Recommendations**

The Planning Commission shall regularly review the Comprehensive Plan and recommend additions, deletions, and revisions to the Assembly.

**40.10.030 Assembly Action**

The Assembly may expand, contract, or amend the Comprehensive Plan by ordinance.

**40.10.040 Adoption and Contents**

The Borough Comprehensive Plan is adopted and consists of the following plans, statements, programs, reports, policies, recommendations, goals, standards, maps and documents:

- A. Aleutians East Borough Coastal Management Program, titled, "Coastal Area Boundary Policies Implementation Resource Inventory and Analysis," prepared by Jon Isaacs and Associates *Resource Analysis Fineline Graphics*. Effective Date, November, 1992; reprinted April, 1993.
- B. Aleutians East Borough Transportation Improvement Program, prepared by HDR Alaska, Inc., dated September 2001.
- C. Overall Economic Development Plan 1999, City of False Pass, prepared by The Stadum Group for the City of False Pass, dated July, 1999.
- D. Strategic Economic and Community Development Plan 2001, Nelson Lagoon, prepared for Nelson Lagoon by The Stadum Group, dated November 2001.
- E. Overall Economic Development Plan 1999, City of Cold Bay, prepared for the City of Cold Bay by The Stadum Group, dated July 1999.
- F. Aleutians East Borough Resolution Number 04-10 entitled A Resolution of the Aleutians East Borough Adopting General Borough Policies to Guide Public and Private Development and Other Significant Activities within the Borough.
- G. Coastal Resources Inventory and Environmental Sensitivity Maps, prepared by Research Planning, Inc Columbia, South Carolina, dated September 2001.
- H. Aleutians East Borough, Alaska, Overall Economic Development Plan, dated March 1, 1994.
- I. Borough Land Use Standards Document, dated February 2007.

(Ordinance 04-02, Chapter 40.10)

TITLE 40  
PLANNING, PLATTING and LAND USE

Chapter 40.15  
Zoning Districts

**Sections:**

- 40.15.010 Enacting Clause
- 40.15.020 Scope
- 40.15.030 Compliance Required
- 40.15.040 Official Zoning Districts, Boundaries, and Map
- 40.15.050 Amendments

**40.15.010 Enacting Clause**

The zoning standards contained herein, together with all amendments, shall officially constitute the zoning regulations of the Aleutians East Borough.

**40.15.020 Scope**

(a) Minimum Requirements

In interpreting and applying the provisions of this Ordinance such provisions shall be the minimum requirements for the promotion of the public health, safety, and general welfare.

Whenever the requirements of this title are at variance with the requirements of any other lawfully adopted ordinance of the Borough, those imposing the higher standards shall apply.

(b) Replacement of Other Ordinances

The provisions of this Ordinance shall not be deemed or construed to repeal, amend, modify, alter, or change any other Ordinance or any part thereof not specifically repealed, amended, modified, altered, or changed herein, except in such particulars or matters where this Ordinance is more restrictive than such other Ordinances or parts thereof; and if this

Ordinance is found to be more restrictive, and each other Ordinance is found to be less restrictive, each such other Ordinance shall remain in full force and effect and shall prevail.



(c) Compliance With Other Ordinances and Laws

Nothing in this Ordinance shall be construed to authorize the use of lands, buildings, and/or structures in violation of this Ordinance or any other applicable statutes, ordinances, or laws.

(d) Reference to Any Portion of this Ordinance

Whenever reference is made to any portion of this Ordinance, or any other law or ordinances, the reference shall apply to all amendments and additions now or hereafter made.

(e) Severability

If any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part of provisions thereof other than the part so decided to be invalid or unconstitutional.

**40.15.030 Compliance Required.**

All land, and buildings, structures, or appurtenances located thereon within the Borough, and subject to this Ordinance, which are hereafter occupied, used, erected, altered, or converted shall be used, placed, and erected in conformance with the Land Use Standards prescribed for the Zoning District in which such land, or buildings, structures, and appurtenances are located, except as hereinafter provided.

To insure that public uses and structures conform to the general community pattern and to regulations governing private uses and development, agencies of the federal government, the state, and the Borough shall submit plans and receive approvals in conformance with the requirements outlined in this title.

Whenever private use is made of any public land or public structures, such use shall fully conform to the regulations set forth in this title.

**40.15.040 Establishment of Official Zoning Districts, Boundaries, and Map.**

(a) Zoning District Established

The unincorporated areas within the corporate limits of the Borough are hereby divided into zoning districts. The districts established herein shall be known as:

<u>Abbreviated Designation</u>	<u>Zoning District Name</u>
R	Residential
C	Commercial
I	Industrial
RD	Resource Development

1. **Residential:** The Borough contains one Residential Zoning District, which encompasses the Village of Nelson Lagoon and extends 10 miles from the Village boundary in each compass direction, with the exception of the Village of Nelson Lagoon airport and associated fuel and equipment storage facilities.
2. **Commercial:** The Borough contains one Commercial Zoning District, which encompasses the Village of Nelson Lagoon airport and associated fuel and equipment storage facilities.
3. **Industrial:** The Borough does not include any Industrial Zoning Districts at this time.
4. **Resource Development:** A Resource Development Zoning District has been established, which includes all Borough Land between the 160<sup>00</sup>'00" and 162<sup>00</sup>'00" degrees longitude, excluding the City of Sand Point and its boundaries, and the City of King Cove and its boundaries, and the Nelson Lagoon Residential and Commercial districts.

(b) Zoning District Map

The boundaries of the zoning districts set out herein are delineated and shown on the Zoning District Map of the Borough; said map being a part of this ordinance as fully as if the same were set forth herein in detail.

Two original, official, and identical copies of the Zoning Districts Map are hereby adopted, bearing the signature of the Mayor and the attestation of the Borough Clerk, and shall be filed and maintained as follows:

1. One copy shall be filed with the Borough Clerk and retained as the original record and shall not be changed in any manner;
2. One copy shall be filed with the Planning Commission and shall be maintained up to date by posting thereon all changes and subsequent amendments; and

3. Reproductions of the official Zoning Districts Map, as amended, may be made from time-to-time for informational purposes.

(c) Zoning District Boundaries

The district boundary lines shown on the Zoning Districts Map are usually along streets, alleys, property lines or extensions thereof. Where uncertainty exists as to the boundaries of districts as shown on the official Zoning Districts Maps, the following rules shall apply:

1. Boundaries indicated as approximately following the centerline of streets, highways, or alleys shall be construed to follow such center line.
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
3. Boundaries indicated as approximately following city limits shall be construed as following city limits.
4. Boundaries indicated as following the centerline of creeks, drainage courses, or rivers shall be construed as following such centerline.
5. Boundaries indicated as parallel to, or extensions of, features indicated above shall so be construed. Distances not specifically indicated on the original Zoning Districts Map shall be determined by the scale of the map.

(d) Zoning District Amendments

Zoning Districts Amendments require Assembly approval.  
(Ordinance 05-05, Chapter 40.15)

## TITLE 40

### PLANNING, PLATTING AND LAND USE

#### Chapter 40.20 Resource Development

##### **Sections:**

40.20.010	Approval Required
40.20.020	Purpose
40.20.030	Duration
40.20.040	Application Contents
40.20.050	Approval Criteria
40.20.060	Compliance and Enforcement
40.20.070	Resource Development Fund

##### **40.20.010 Approval Required**

All Resource Development within the Resource Development District requires Assembly approval prior to construction or operation.

- a. **Pre-application Meeting:** The Owner/Operator must meet with the Borough for a pre-application meeting at least 180 days prior to submitting the application for approval. At the pre-application meeting the Applicant must present the project scope and timeline to the Borough and explain how this project will comply with the requirements of this title and state and federal laws and regulations. At the pre-application meeting, the Applicant will be required to submit an initial payment of \$50,000 to be placed in a Resource Development Review Fund for this project. The Borough will use these funds to pay for the cost of reviewing and approving the proposed Resource Development project and will administer these funds in accordance with Chapter 40.20.070. Payment of the application fee does not guarantee approval of the project.
- b. **Application Meeting:** The Owner/Operator must meet with the Borough at least 180 days prior to construction or operation to submit an application for Borough approval.
- c. **Approval Process:** The Planning Director will have 90 days to review the application, including a 30 day public notice period. The Planning Director may extend review time periods for complex projects. The public notice period will not commence until the Planning Director has determined that the application is complete and ready for Borough consideration.

By the end of the 90 day review period, the Planning Director will submit a written recommendation to the Planning Commission. The Planning

Commission will have 60 days to develop a written recommendation to the Assembly. The Assembly will grant the approval with or without conditions, or deny the application with explanation within 30 days.

- d. **Amendments:** Resource Development Approval Amendments will require Borough approval. The Planning Director will determine the significance of the proposed amendment. Minor amendments may be approved by the Planning Director. Significant amendments may warrant public and Planning Commission review, and Assembly approval, as determined by the Planning Director.

#### **40.20.020 Purpose**

Borough approval is required for all Resource Development projects to ensure compliance with this title. The Planning Commission must recommend approval to the Assembly, and the Assembly must approve the Resource Development. The Assembly may place conditions on the approval.

#### **40.20.030 Duration**

Approvals are valid while Owner/Operator is in compliance with this title, conditions of Borough approval, and all state and federal requirements. Approvals expire automatically within 12 months, if no construction or activity has commenced or if construction has been suspended for 12 consecutive months.

#### **40.20.040 Application Contents**

To obtain Approval the Owner and Operator must submit the following to the Planning Director:

1. Project Scope and Schedule;
2. Conflict Avoidance Plan (Fisheries & Subsistence Use);
3. Study & Project Monitoring Plan;
4. Local Economic Development Plan;
5. Field Office Plan;
6. Infrastructure Support Plan;
7. Transportation Plan;
8. Historical and Cultural Resources Protection Plan;
9. Good Neighbor Plan;
10. Pollution Prevention Plan;
11. Hazard Assessment Plan;
12. Surety;
13. Reclamation Plan;
14. Emergency Plan; and
15. Fees & Payments.

#### **40.20.050 Approval Criteria**

The Planning Commission will establish procedures for the Planning Director to follow when reviewing applications for approval. At a minimum, the Planning Director must verify the application is complete and meets the requirements of this title prior to recommending it for Planning Commission consideration. The Planning Commission will make a recommendation for Assembly approval. Due deference will be given to residents affected by the proposed development when setting the terms and conditions of approval.

Based on Planning Director and Planning Commission recommendation for Approval, the following criteria must be met for the Assembly to approve Resource Developments:

1. **Project Scope and Schedule**  
The project scope and schedule must be submitted in written form by the Owner/Operator and must be compatible with existing and proposed adjacent uses, commercial fisheries, subsistence activities, and projected community needs. The project must adhere to the goals and objectives of the Aleutians East Borough Comprehensive Plan. Facilities must be consolidated as practical; site selection must include sufficient acreage to allow for reasonable expansion of facilities and should minimize site clearing, dredging, and disturbance of productive habitats, and should be located in an area of least biological productivity, diversity, and vulnerability, and where effluents and spills can be contained. Maps of proposed project must be submitted electronically for incorporation into the Borough's Geographic Information System.
2. **Conflict Avoidance Plan (Fisheries & Subsistence Use)**  
The Conflict Avoidance Plan must demonstrate that Commercial Fishing, Subsistence Use, and Sport Harvest Conflicts will be avoided. Alternative site locations, transportation routes, and other mitigation measures may be proposed to avoid conflict. Commercial fishing, subsistence use, and sport harvest have priority.
3. **Study & Project Monitoring Plan**  
A Study and Project Monitoring Plan must be comprehensive and must ensure protection of human health and the environment. The plan must be reviewed and approved by the Borough Scientific Advisory Council.
4. **Local Economic Development Plan**  
A Local Economic Development Plan must include a local hire manpower plan, local business contracting plan, training program, and mentoring program for both construction and operation phases of the resource extraction project.
5. **Field Office Plan**

Resource Development activities are required to maintain a field office at the construction and operating site. The field office must be manned 24 hours per day to ensure proper oversight of project activities. The field office staff must include, at a minimum, a Native and Community Liaison, a Fisheries Protection Biologist, and an Environmental Compliance Officer to provide project oversight, monitoring, address local concerns, and ensure compliance.

6. **Infrastructure Support Plan**

Resource Development Applicants must meet with Village, Municipal Government, and Tribal Leaders of all communities within 25 miles of their operations to determine whether it will be beneficial to expand community infrastructure to include resource extraction needs, or whether it would be more appropriate to institute enclave development requirements. A joint tribal, local community and industry agreement on this issue must be reached, approved by all parties, and submitted to the AEB. In the event there is agreement to expand existing community infrastructure to meet the needs of industrial development (e.g. medical clinic, school, community center, tank farm, recreation facilities, etc.), industry is responsible for construction, maintenance, and operation costs of expanding these facilities to support their activities.

7. **Transportation Plan**

Transportation infrastructure (e.g. roads, bridges, runways, marine facilities, etc.) built by industry on Borough, state, or federal lands must be available for all AEB resident use and access. Wherever possible, existing transportation infrastructure should be expanded to meet industry needs to minimize duplication and environmental impact. Industry is responsible for construction, maintenance, and operating costs for the transportation infrastructure required to support their activities. Whenever possible, onshore exploration activities should be supported by air service, an existing road system or port facility, or by vehicles which do not cause significant damage to the ground surface or vegetation. At cessation of operations, the transportation infrastructure must be donated to AEB for public use, or the transportation infrastructure must be completely removed and the area must be remediated to AEB's satisfaction.

8. **Historical and Cultural Resources Protection Plan**

A Historical and Cultural Resources Protection Plan must be submitted to demonstrate that traditional, historical and cultural sites may not be disturbed or adversely impacted during the construction or operation of the Resource Development project.

9. **Good Neighbor Plan**

The Good Neighbor Plan must include a plan to ensure surrounding residential properties are not adversely impacted by excessive noise, fumes, odors, glare, smoke, light, vibration, dust, litter or interference with media reception. The plan should include charitable contributions to support local education, art, and charities, provide employment training programs to maximize local hire. This

program should provide a fund for impact assistance if adverse impacts are realized by the community or individual residents.

**10. Pollution Prevention Plan**

The Pollution Prevention Plan must include best management practices for protecting drinking water, air, and local food sources from pollution, and a recycling program.

**11. Hazard Assessment Plan**

A Hazard Assessment Plan must include evaluation of all potential hazards to the Resource Development Project including, but not limited to, geophysical hazards, fire, flood, landslides, erosion, earthquake, coastal storms, and ice.

**12. Surety**

Surety must be appropriate for the magnitude, type, cost, nature, and duration of the development. Surety must be provided in an amount sufficient to fund:

- a. Environmental clean-up and restoration requirements;
- b. Compensate residents for any adverse human health impacts;
- c. Compensate commercial fisherman and subsistence users for adverse impacts;
- d. Dismantle, remove, and restore the Resource Development site to its original condition prior to development; and
- e. The liability under the surety provisions shall continue until such time as released, or in its entirety, by the Planning Director.

**13. Reclamation Plan**

The Reclamation Plan must be provided in sufficient detail to determine surety requirements and describe the reclamation actions to be completed at cessation of operations. The Reclamation Plan must be developed using best management practices.

**14. Emergency Plan**

The Emergency Plan must provide for adequate medical, rescue, fire, and other emergency services. The plan should preferably include proposals to fund expansion of existing Borough emergency services to support increased demands created by the new Resource Development project.

**15. Fees & Payments**

Resource Development Fund payments (Chapter 40.20.070) and all fees required by Chapters 40.01.060 must be paid.

**40.20.060 Compliance and Enforcement**

Compliance with Borough approval is required. The Operator must submit quarterly reports demonstrating compliance with the approved plans listed in Chapter 40.20.050 by January 15<sup>th</sup>, April 15<sup>th</sup>, July 15<sup>th</sup> and October 15<sup>th</sup> and of each calendar year. Compliance violations will be subject to enforcement under Chapter 40.01.040 and may be subject to penalties under Chapter 40.01.050



**40.20.070 Resource Development Fund**

Each Resource Development project will be required to fund the cost for Borough review and approval of their application, and the cost of inspection and oversight of the project once it is in operation. The Resource Development Fund requirements are triggered at the pre-application meeting, or at the discretion of the Planning Director, if Borough is incurring costs to participate in project meeting, discussions, and review prior to the pre-application meeting. At the pre-application meeting, the Applicant will be required to submit an initial payment of \$50,000 to be placed in a Resource Development Fund for this specific project. Each month, the Planning Director will provide the Applicant with an account describing how the funds were used by the Borough to review, approve, or monitor project compliance. The Applicant must maintain a minimum balance of \$25,000 in this fund at all times. Failure to maintain and provide adequate funding within the Resource Development Fund for the project will trigger compliance actions under 40.01.040. Unused funds will be returned to the applicant at the completion of the project, or if an application is withdrawn from consideration.

# Aleutians East Borough Resource Development District Map

