

TITLE 40

ALEUTIANS EAST BOROUGH  
PLANNING, PLATTING AND LAND USE

CHAPTER

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TITLE 40

PLANNING, PLATTING AND LAND USE

Chapter 40.01  
General Provisions

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**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 an electronic 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. Encourage public and private development 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, False Pass and Sand Point; planning, platting and land use is administered by these municipalities under Sec. 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 permit approvals require Assembly approval unless otherwise specifically delegated to the Planning Commission or Administrator in this Code
- B. The Planning Commission reviews all planning, platting and land use permit applications that require Assembly approval and prepares a recommendation for

Assembly action. The Planning Commission also decides planning, platting and land use permit applications that are elevated by the Administrator to the Planning Commission.

- C. The Administrator and Planning Director serve as staff to the Mayor, Assembly, and Planning Commissions to carry out the requirements of this title. The Administrator is authorized to approve certain planning, platting and land use permit approvals as delegated in this Code. The Administrator may delegate its authority to approve a permit to a designee in his absence.

**40.01.040 Permit Approval Required.**

- A. All Resource Development within the Resource Development District requires an approved land use permit approval prior to construction or operation, to ensure compliance with the Code.
- B. The Assembly, Planning Commission, or Administrator may place conditions upon issuance of any permit that is necessary or desirable to ensure that a rule, policy, standard or intent will be implemented in a manner consistent with this Code.

**40.01.050 Compliance.**

- A. Permittees must comply with all terms, conditions, and permit stipulations included in an approved permit.
- B. Permittee must comply with all local, state, and federal laws, regulations, rules and orders, and requirements and stipulations.
- C. Any use that does not comply with the applicable provisions of a permit, approval, or other authorization issued under this Code is a violation of this Code.
- D. Permits are revocable immediately upon violation of any of its terms, conditions, and stipulations or upon failure to comply with any applicable laws, statutes, or regulations.
- E. Any person may bring to the attention of the Administrator suspected violation of this Code. The complaint must be submitted to the Borough in writing using the Borough Land Use Complaint Form.
- F. The Administrator is authorized to investigate any credible complaints in order to ensure compliance with this Code. The Administrator, or his authorized representative, has the the right to enter and inspect or investigate land uses approved under a Borough permit or approval for compliance with that approval or violations of this Code.

- G. After a violation has been discovered, investigated, and verified, the Administrator will notify by written finding the person responsible for the violation (Notice of Violation) and the property owner by personal notice, certified mail and/or notice posted on the site of the violation. A copy of the Notice of Violation will concurrently be provided to the Assembly and Planning Commission members.
- H. The Notice of Violation will specify the violation(s) and may revoke, suspend, or modify any permit or approval that is in conflict with this Code or any applicable state or federal requirement and may specify the range of fines or penalties to be imposed and shall direct the person to cease the violation, or appeal the finding within 10 days after receipt, mailing or posting of the notice.
- I. The Administrator will provide an update on all Notices of Violation at each scheduled Planning Commission and Assembly meeting.
- J. The Administrator may elevate a compliance decision to the Planning Commission to decide. The Planning Commission may elevate a compliance decision to the Assembly to decide.
- K. The Administrator may approve continued operation under a Compliance Plan until the compliance violation is remedied or require the use to cease, or may elevate this decision to the Planning Commission or Assembly to decide.
- L. Application fees may be collected by the Administrator pursuant to Chapter 40.01.050.
- M. Penalties for non-compliance may be assessed by the Administrator pursuant to Chapter 1.24, which pertains to penalties.

**40.01.060 Fees and Penalties.**

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

**40.01.070 Elevation.**

- A. The Administrator may elevate a decision to the Planning Commission based on a written finding that the permit application may:
  - 1. Have potential, significant or negative impacts on or conflict with Borough interests, resources or activities in a manner or to a degree that warrants consideration by the Commission;

2. Conflict with adopted Borough policies in a manner or to a degree that warrants consideration by the Commission and cannot be easily decided by the Borough Planning Director; or,
  3. Raised a particular issue or set of issues that warrants consideration by the Commission.
- B. Decisions elevated to the Planning Commission will be placed on the next scheduled meeting of the Planning Commission. The permit applicant must participate in the Planning Commission meeting at a location designated by AEB, and present its application. The Planning Commission decision will be made at the meeting. The permit will either be approved or denied.

**40.01.080 Applicant's Opportunity to Appeal.**

- A. An applicant may appeal the decision of the Administrator made under this Chapter to the Planning Commission pursuant to procedures of Chapter 40.02.
- B. An applicant may appeal the decision of the Planning Commission made under Chapter to the Board of Adjustment pursuant to the procedures of Chapter 40.03.
- C. The Board of Adjustment's decision is final and may be appealed to the Alaska Superior Court in accordance with Alaska State Law.

**40.01.090 Definitions.**

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

- A. "Aggrieved Party" means a resident, landowner, municipality, tribes, or Native Corporation in the Aleutians East Borough, or the Applicant.
- B. "Applicant" means the person who makes an application for use under the provisions of this title, and successors in title or interest;
- C. "Casual Recreational Use" means a recreational use of Borough land that is nonexclusive and involves only minimal disturbance to the land by an individual or group of people that are not involved in the commercial provision of commercial recreation services. Nonexclusive examples of a casual recreational use may include: fishing, hunting, camping, hiking, skiing, climbing, canoeing, kayaking, rafting, paddle sports, water sports, scuba, adventure activities, sports, boating, all-terrain vehicle trips on existing trails or under conditions that will not cause damage

to the land or vegetation, snow machine trips, dog-mushing, sight-seeing, bird watching, wildlife viewing, and subsistence activities.

- D. “Coal Mining” means mining, extraction, harvesting removing or producing for sale, profit or commercial use any coal and all associated processing, refining, and transportation and distribution infrastructure required to commercially develop these resources.
- E. “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;
- F. “Commercial Recreation” means the commercial provision of services in support of any of the following: fishing, hunting, camping, hiking, skiing, climbing, canoeing, kayaking, rafting, paddle sports, water sports, scuba, adventure activities, sports, boating, all-terrain vehicle trips, snow machine trips, sight-seeing, bird watching, wildlife viewing, hotels and lodges, and tours. This definition includes professional guides and outfitters. This definition does not include: (a) Casual Recreational Use, (b) any commercial recreation activities conducted by Native Corporations or tribes that are Aleutian East Borough landowners, or (c) local residents that only provide transportation to a fishing, hunting, or recreational location but do not provide hunting, fishing, or ecotourism guide services.
- G. “Compliance Plan” means a written plan developed by the Administrator to bring development into compliance with this title;
- H. “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;
- I. “Direct Marketing Seafood Processor” means a for-profit or non-profit cooperative, partnership or individual fisherman who processes or exports only their own catch or has their own catch custom processed for sale.
- J. “Eco-Tourism” means the commercial provision of camping, hiking, skiing, climbing, canoeing, kayaking, rafting, paddle sports, water sports, scuba,

adventure activities, sports, boating, all-terrain vehicle trips, snow machine trips, sight-seeing, bird watching, wildlife viewing, and tours.

- K. "Fishing Guide" means the commercial provision of fishing guide services.
- L. "Hotel and Lodge Operator" means the commercial provision of hotel and lodge accommodations.
- M. "Hunting Guide" means the commercial provision of hunting guide services.
- N. "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;
- O. "Large Mining Operations" means Coal Mining or Mineral Mining operations of five (5) acres or more at any one time.
- P. "Mineral Mining" means mining, extraction, harvesting removing or producing for sale, profit or commercial use any copper, gold, silver, zinc, lead, molybdenum, or other metallic mineral product, compound or combination of mineral products and all associated processing, refining, and transportation and distribution infrastructure required to commercially develop these resources;
- Q. "Mineral and Coal Exploration" means exploration for minerals and coal, including two dimensional or three dimensional seismic surveys run in search of minerals and coal, but and does not include Mineral Mining or Coal Mining operations.
- R. "Offshore Seafood Processor" means a for-profit company that buys, processes, and/or exports a fishery resource using facilities located offshore. This definition includes floating processors that are anchored or docked at the shoreline. This definition excludes Onshore Seafood Processors and Direct Marketing Seafood Processors.
- S. "Oil and Gas" includes the exploration for (including seismic surveys and drilling) development of and production of petroleum or natural gas, including all associated processing, refining, and transportation and distribution infrastructure required to commercially develop these resources;
- T. "Onshore Seafood Processor" means a for-profit company that buys, processes, and/or exports a fishery resource using facilities located onshore. This definition excludes Offshore Seafood Processors and Direct Marketing Seafood Processors.
- U. "Professional Researcher" means a person, company or organization that conducts on its own behalf, or is funded to conduct research on another's behalf, including, but not limited to a: organization or company operating for profit; non-

governmental organization; local government; state government; federal government; or university. Research conducted by local elementary, junior-high or high-school students in support of school educational activities and cultural surveys conducted by Native Corporations and tribes is excluded from this definition.

- V. "Recreational Mining" means recreational gold panning; hard-rock mineral prospecting or mining using light portable field equipment, such as a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger; or suction dredging using a suction dredge with a nozzle intake of six inches or less, powered by an engine of 18 horsepower or less, and pumping no more than 30,000 gallons of water per day.
- W. "Research" means research conducted by Professional Researchers that require field work anywhere within AEB boundaries, and may include one or more of the following types of research:
1. wildlife, habitat or other biological research;
  2. air quality, meteorological, water quality, hydrological studies, or soil research;
  3. archeological or paleontological research for artifacts relating to human and prehistoric animal life;
  4. geological surveys that result in minimal disturbance of the ground surface, excluding: two dimensional or three dimensional seismic surveys run in search of oil, gas, or other minerals; drilling of holes; or excavation;
  5. socioeconomic research;
  6. land surveying or mapping;
  7. engineering assessments; and/or,
  8. any research or studies required to support Resource Development.

This definition does not include earthquake monitoring equipment located in the Borough.

- X. "Research Conducted in Support of Resource Development" means Research conducted by a Resource Development Operator, or a Professional Researcher hired by the Resource Development Operator, to conduct research to support a Resource Development Project.
- Y. "Research Conducted for Other Purposes" means Research conducted by a Professional Researcher for any other purpose than to support a Resource Development Project.
- Z. "Residential" means a use involving the occupation of a building or structure for living, cooking, sleeping, and accessory uses;

AA. "Resource Development" means:

1. Hydrocarbon Exploration and Development; ;
2. Coal Mining;
3. Mineral Mining;
4. Mineral or Coal Exploration
5. Sand, Gravel, and Rock Mining;
6. Research; and
7. Commercial Recreation.;

BB. "Sand, Gravel, and Rock Mining" means gravel mining, quarrying, or producing for sale, profit or commercial use and sand, gravel, or rock, including all associated processing and transportation and distribution infrastructure required to commercially develop these resources.

CC. "Scientific Advisory Council" means a council may be appointed by the Mayor to evaluate Research, Project Monitoring Plans, and Remediation Plans, as needed and requested by the Mayor, to determine if they are acceptable; this council will work closely with the Borough's Natural Resource Department described in Chapter 2.60 of this Code.

DD. "Small Mining Operations" means Coal Mining or Mineral Mining operations that are limited to less than five (5) acres at any one time. This definition does not include Recreational Mining.

EE. "Technically Feasible" means technical solutions using commercially available technology that are safe and appropriate to achieve the intended purpose.

## TITLE 40

### PLANNING, PLATTING AND LAND USE

#### Chapter 40.02

#### Appeals to the Planning Commission

Sections:

- |           |  |
|-----------|--|
| 40.02.010 | Persons Who May Appeal.                        |
| 40.02.020 | Commencement of Appeal – Stay.                 |
| 40.02.030 | Appeal Hearing – Notice, Preparation of Record |
| 40.02.040 | Appeal Hearing.                                |
| 40.02.050 | Decision.                                      |

**40.02.010            Persons Who May Appeal.**

An Applicant or any Aggrieved Party that submitted timely comments to the Administrator during the public comment period may appeal a decision of the Administrator made under Chapter 40.01 to the Planning Commission.

**40.02.020            Commencement of Appeal – Stay.**

- A. A decision of the Administrator is final unless appealed to the Planning Commission within 14 calendar days of receipt of the Administrator's decision received by certified mail.
- B. A written notice of appeal must be filed with the Borough Clerk, specifically stating the reason for the appeal, the relief sought, and payment of a \$500 appeal fee. In the event the Appellant prevails, the appeal fee will be returned.
- C. The decision of the Administrator is stayed upon receipt of an appeal.

**40.02.030            Appeal Hearing – Notice, Preparation of Record.**

- A. Upon timely submittal of an appeal, the Borough Clerk shall schedule the appeal hearing, mail notice of the appeal, prepare the appeal record and notify the Planning Commission of the appeal.
- B. Within 15 calendar days of receipt of an appeal, notice of the appeal shall be given by certified mail, at a minimum, to the Permit Applicant, Appellant, adjoining property owners, Planning Commission Members, and all persons that submitted written comments on the decision under appeal. The appeal notice shall include the Appellant's notice of appeal, describe the decision appealed from, state the date of the appeal hearing and time within which written argument supporting or opposing the appeal may be submitted, and contain the substance of subsection F of this section regarding the availability of the appeal record.
- C. The Permit Applicant, Appellant, adjoining property owners, and all persons that submitted written comments on the decision under appeal may submit to Borough Clerk written argument supporting or opposing the appeal within 15 calendar days of receipt of the notice of appeal. Written argument submitted shall become part of the appeal record.
- D. The appeal record shall be completed within 30 calendar days from the date that the notice of appeal was mailed by certified mail. The appeal record shall include the Administrator's written decision, the appeal, any written comments received supporting or opposing the appeal, and supporting documentation.

- E. Following completion of the record, the Borough Clerk shall, by certified mail, serve a copy of the appeal record on the Permit Applicant and the Appellant. The Borough Clerk shall deliver a copy of the appeal record to the Borough staff assigned responsibility for the appeal and the Planning Commission.
- F. A copy of the appeal record shall be available for public inspection at the Administrator's office and the Borough Clerk's office. Any person may obtain a copy of the record upon payment of the copying and postage charges.

**40.02.040            Appeal Hearing.**

- A. The Planning Commission shall hold a public hearing on the appeal at its first regular meeting which must be at least seven (7) calendar days after the appeal record has been completed and provided to the Planning Commission Members.
- B. Appeal hearings will be recorded.
- C. At the hearing before the Planning Commission, only persons who have received written notice of the appeal or submitted written comments on the appeal may present oral argument. Oral argument shall be subject to the following order and time limitations, unless the Planning Commission, for good cause shown, permits a change in the order or an enlargement of time.
  - 1. Administrator: 10 minutes to present the decision and to set forth the evidence and reasons relied upon for the decision.
  - 2. Permit Applicant, Appellant: 10 minutes each.
  - 3. Private persons supporting or opposing the appeal: 10 minutes each.
  - 4. Permit Applicant, Appellant, and Administrator: 10 minutes each for rebuttal.
- D. Failure to observe the above procedures in a hearing shall not affect the validity of the decision so long as the Appellant has had a reasonable opportunity to be heard.
- E. The Planning Commission shall decide the appeal upon the appeal record and the written and oral argument presented on the appeal.

**40.02.050            Decision.**

- A. The Planning Commission shall either affirm or reverse the decision of the Administrator in whole or in part.

- B. Every decision of the Planning Commission to affirm or reverse an action of the Administrator shall be based upon findings and conclusions adopted by the Planning Commission. Such findings must be reasonably specific so as to provide the Applicant, Appellant, any other Aggrieved Party, the community and, where appropriate, reviewing authorities, a clear and precise understanding of the reason for the decision.
  
- C. The Planning Commission's decision affirming or reversing the decision of the Administrator shall be sent by certified mail to the Permit Applicant, Appellant, adjoining property owners, and all persons that submitted written comments on the decision under appeal within five working days after the appeal decision and approval of findings of fact. A copy of the decision will also be provided to each Assembly Member.

TITLE 40

PLANNING, PLATTING AND LAND USE

Chapter 40.03

Appeals to the Board of Adjustment

Sections:

40.03.010	Organization
40.03.020	Powers of the Board.
40.03.030	Persons Who May Appeal
40.03.040	Commencement of Appeal - Stay
40.03.050	Appeal Hearing – Notice, Preparation of Record
40.03.060	Appeal Hearing.
40.03.070	Decision
40.03.080	Judicial Review

**40.03.010**                    **Organization.**

The Assembly is the Board of Adjustment for the Aleutians East Borough.

**40.03.020**                    **Powers of the Board.**

The Board of Adjustment shall hear and decide appeals from the decisions of the Planning Commission.

**40.03.030**                    **Persons Who May Appeal.**

A written decision of the Planning Commission granting or denying approval under the requirements of this Title may be appealed by the Applicant or any person who submitted timely written comments on the permit application, met the requirements of Chapter 40.02, or gave oral testimony at the public hearing before the Planning Commission.

**40.03.040**                    **Commencement of Appeal - Stay.**

- A. A decision of the Planning Commission is final unless appealed to the Board of Adjustment within 14 calendar days of receipt of the Planning Commission's decision received by certified mail.

- B. A written notice of appeal must be filed with the Borough Clerk, specifically stating the reason for the appeal, the relief sought, and payment of a \$500 appeal fee. In the event the Appellant prevails, the appeal fee will be returned.
- C. The decision of the Planning Commission is stayed upon receipt of an appeal.

**40.03.050 Appeal Hearing – Notice, Preparation of Record.**

- A. Upon timely commencement of an appeal, the Borough Clerk shall schedule the appeal hearing, mail notice of the appeal, prepare the appeal record, and notify the Administrator, Planning Commission and Board of Adjustment of the appeal.
- B. Within 15 calendar days of receipt of an appeal, notice of the appeal shall be given by certified mail, at a minimum, to the: Permit Applicant, Appellant, adjoining property owners, any person who submitted timely written comments on the permit application, met the requirements of Chapter 40.02, or gave oral testimony at the public hearing before the Planning Commission, the Administrator, Planning Commission Members, and Board of Adjustment. The appeal notice shall include the Appellant's notice of appeal, describe the decision appealed from, state the date of the appeal hearing and time within which written argument supporting or opposing the appeal may be submitted, and contain the substance of subsection F of this section regarding the availability of the appeal record.
- C. The Permit Applicant, Appellant, adjoining property owners, and all persons that submitted written comments on the decision under appeal may submit to Borough Clerk written argument supporting or opposing the appeal within 15 calendar days of receipt of the notice of appeal. Written argument submitted shall become part of the appeal record.
- D. The appeal record shall be completed within 30 calendar days from the date that the notice of appeal was mailed by certified mail. The appeal record shall include the Planning Commission's written decision, the appeal, any written comments received supporting or opposing the appeal, minutes of the proceedings before the Planning Commission, and any written documents considered by the Planning Commission, and supporting documentation.
- E. Following completion of the record, the Borough Clerk shall, by certified mail, serve a copy of the appeal record on the Permit Applicant and the Appellant. The Borough Clerk shall deliver a copy of the appeal record to the Borough staff assigned responsibility for the appeal, the Planning Commission and the Board of Adjustment.
- F. A copy of the appeal record shall be available for public inspection at the Borough Clerk's office or Borough Administrator's office. Any person may obtain a copy of the record upon payment of the copying and postage charges

**40.03.060 Appeal hearing.**

- A. The Board of Adjustment shall hold an appeal hearing on the appeal at its first regular meeting which must be at least seven (7) calendar days after the appeal record has been completed and provided to the Board of Adjustment.
- B. Appeal hearings will be recorded.
- C. At the hearing before the Board of Adjustment only persons who have received written notice of the appeal, submitted written argument on the appeal, or testified before the Planning Commission, or submitted written comments to the Planning Commission may present oral argument. Oral argument shall be subject to the following order and time limitations, unless the Board of Adjustment for good cause shown, permits a change in the order or an enlargement of time.
  - 1. Planning Commission Chairman: 10 minutes to present the decision below and to set forth the evidence and reasons relied upon for the decision.
  - 2. Permit Applicant, Appellant: 10 minutes each.
  - 3. Private person supporting or opposing the appeal: 10 minutes each.
  - 4. Permit Applicant, Appellant and Planning Commission Chairman, for rebuttal, 10 minutes each.
- D. Failure to observe the above procedures in a hearing shall not affect the validity of the decision so long as the appellant has had a reasonable opportunity to be heard.
- E. The Board of Adjustment shall decide the appeal upon the appeal record, the written and oral argument, and the testimony and evidence presented on the appeal. The Board of Adjustment may exercise its independent judgment on the legal and factual issues raised by the Appellant.

**40.03.070 Decision.**

- A. The Board of Adjustment shall either affirm or reverse the decision of the Planning Commission in whole or in part. The Board of Adjustment may make its own findings on factual issues, based upon the evidence in the record.
- B. Every decision of the Board of Adjustment to affirm or reverse an action of the Planning Commission shall be based upon findings and conclusions adopted by the Board of Adjustment. Such findings must be reasonably specific so as to provide the Applicants, Appellant, any other Aggrieved Party, the community and,

where appropriate, reviewing authorities, a clear and precise understanding of the reason for the decision.

- C. The Board of Adjustment's decision affirming or reversing the decision of the Administrator shall be sent by certified mail to the Permit Applicant, Appellant, adjoining property owners, and all persons that submitted written comments on the decision under appeal within five working days after the appeal decision and approval of findings of fact. A copy of the decision will also be provided to the Administrator, and each Planning Commission Member.

**40.03.080**                    **Judicial review.**

An Aggrieved Party may appeal the final decision of the Board of Adjustment under this chapter to the Superior Court within 30 days of the date of the decision. An appeal to the Superior Court shall be heard solely on the record before the Board of Adjustment or its Hearing Examiner and the Planning Commission. The appeal procedure shall be governed by the rules set forth in Part Six of the Rules of Appellate Procedure of the State of Alaska. The findings of the Board of Adjustment shall not be reversed if, in light of the whole record, they are supported by substantial evidence.

G.

TITLE 40

PLANNING, PLATTING AND LAND USE

Chapter 40.04

Appeals to Superior Court

Sections:

- 40.04.010                    Persons Who May Appeal
- 40.04.020                    Judicial Review

**40.04.010**                    **Persons Who May Appeal.**

A written decision of the Assembly or a final decision of the Board of Adjustment may be appealed by the Applicant or any person who submitted timely written comments or gave oral testimony pursuant to the requirements of Chapter 40, may appeal that decision to the Superior Court within 30 days of the date of the decision.

**04.04.020**                    **Judicial review.**

An appeal to the Superior Court shall be heard solely on the Assembly's record of decision or the record before the Board of Adjustment. The appeal procedure shall be

governed by the rules set forth in Part Six of the Rules of Appellate Procedure of the State of Alaska. The findings of the Assembly or Board of Adjustment shall not be reversed if, in light of the whole record, they are supported by substantial evidence.

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.
40.05.105	Platting Board
40.05.110	Financial Disclosure

**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.**

- A. 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.
- B. The Mayor may appoint one youth representative as an advisory nonvoting member to be seated on the Planning Commission for a term of one year.

Appointments to fill vacancies in the youth position shall be for the unexpired term. No youth representative may serve more than one term as youth member on the Planning Commission. The youth representative position shall be open to all Borough residents between the ages of 16 and 25 years of age.

**40.05.030            Term of Membership.**

- A. 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.
- B. Members first appointed shall draw lots for one, two and three-year terms.
- C. Appointments to fill vacancies are for the unexpired term.

(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;
- E. If a member moves its permanent residence from the Borough;
- F. If a members resignation is submitted to and accepted by the Mayor;
- G. If a member is convicted of a felony or an offense involving a violation of his oath of office, or
- H. 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 Mayor 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 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.

The Planning Commission shall establish and publish in accordance with the publication requirements of Sec. 1.12.010 regular meeting dates for the Planning Commission. The Planning Commission will meet at least quarterly each year. Schedule revisions shall 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. At its first meeting of each year, the Planning Commission shall elect a chairperson to conduct the affairs of the Planning Commission and a vice-chairperson in his absence.
- C. 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.
- D. All formal actions of the Planning Commission shall be made by resolution or permit approval or denial.
- E. 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. Meetings of the Planning Commission shall be held as set out in the schedule of meetings pursuant to Sec. 40.05.060.
- B. All reports, communications, ordinances, resolutions, permit applications or other matters to be submitted to the Planning Commission shall, at least seventy-two

hours prior to each Planning Commission meeting, be delivered to the Borough Clerk, whereupon the Planning Commission Chairperson shall arrange a list of such matters according to the order of business. At least forty-eight hours in advance of the Planning Commission meeting, the Borough Clerk shall furnish each member of the Planning Commission a copy of the same in packet form. Distribution shall be by electronic mail to each Planning Commission member's email address of record as well as by posting on the Borough's website. If distribution by electronic means is not available, distribution shall be by delivery in person or mail to the Planning Commission member.

- C. 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.
- D. At every regular meeting of the Borough Assembly the order of business shall be as follows:
  - 1. Call to Order;
  - 2. Invocation;
  - 3. Roll Call;
  - 4. Minutes of Previous Meeting;
  - 5. Consent Agenda;
  - 6. Hearings, Ordinances, Resolutions, and Permit Applications;
  - 7. Old Business;
  - 8. New Business;
  - 9. Administrator/Manager Reports;
  - 10. Audience Participation;
  - 11. Planning Commission Comments; and,
  - 12. Adjournment.
- E. Minutes of all regular and special meetings shall be taken. Minutes shall be in the form of a summary of discussion including a verbatim report of motions made and actions taken plus a report of each vote cast by Planning Commission members when a roll call vote is made. Summary notes shall be provided for each work session.
- F. All minutes of regular and special meetings, and Planning Commission. Paper copies of all minutes of the Planning Commission shall be distributed by the Borough Clerk to the public desiring same after payment of a reasonable charge. One copy of the minutes shall be given free of charge to any person appearing in person and requesting same with extra copies in person or by mail available at twenty-five cents per copy per page, and subscriptions available by mail at the rate

of ten dollars per year. All minutes shall also be posted on the Borough's website and available to the public free of charge.

- G. Unless a reading of the minutes of a Planning Commission meeting, regular or special, is requested by a member of the Planning Commission, such minutes may be approved without a reading if the Borough Clerk has previously furnished each member with a synopsis thereof.
- H. The Borough Clerk shall give notice of Planning Commission meetings, shall attend all meetings of the Planning Commission and keep the journal of its proceedings, shall authenticate by his signature and record in full in a book or file kept for that purpose all ordinances and resolutions duly indexed and open to public inspection. In case of the temporary absence of the Borough Clerk, the Borough Assembly may appoint a clerk pro tempore, with all the powers, duties and obligations of the Borough Clerk, who shall be duly qualified.

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

Each member of the Planning Commission shall receive a meeting fee of three hundred dollars for each Planning Commission meeting day attended, including appeal hearings. The meeting fee shall be paid monthly and shall be subject to all applicable taxes and withholdings.

#### **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)

**40.05.105 Platting Board**

- (a) In the event that the Aleutians East Borough Planning Commission is unable to meet, then the Aleutians East Borough Assembly shall act as the Aleutians East Borough Platting Board;
- (b) If an appeal is filed regarding a Platting Board decision issued by the Assembly acting as the Platting Board, then the Aleutians East Borough will retain a Hearing Officer to hear the appeal;
- (c) Hearing Officer is an individual designated to conduct a hearing involving a question concerning the appropriateness of a plat approval or such other matters as may be assigned.
- (d) For abbreviated plats, the Platting Authority is granted to the Mayor and/or his delegate.

(Ord. 18-04, New Section 40.05.105)

**40.05.110 Financial Disclosure.**

- A. Planning Commission members shall submit a financial and business disclosure form in accordance with and as required by Chapter 1.28.
- B. Participation in all borough governmental activities without the required disclosure is prohibited.

(Ord. 12-03, New Sec. 40.05.110)

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 Planning Department Functions.

**40.06.010 Planning Department.**

The Planning Department Director is appointed by the Mayor, confirmed by the Assembly, and reports to the Administrator. If a Planning Department Director is not appointed, the Administrator or his designee completes these duties. 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 on whether to approve, deny, or approve permit applications 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 requirements, and notifying state or federal authorities of potential non-compliance with state or federal requirements;
- F. Preparing written recommendations on whether to conduct enforcement actions;  
and
- G. Maintaining complete and accurate maps and documentation on each Resource Development project within a electronic mapping system and/or hard copy.

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 Transportation Improvement Program, prepared by HDR Alaska, Inc., dated September 2001.
- B. Overall Economic Development Plan 1999, City of False Pass, prepared by The Stadum Group for the City of False Pass, dated July, 1999.
- C. Strategic Economic and Community Development Plan 2001, Nelson Lagoon, prepared for Nelson Lagoon by The Stadum Group, dated November 2001.
- D. Overall Economic Development Plan 1999, City of Cold Bay, prepared for the City of Cold Bay by The Stadum Group, dated July 1999.
- E. 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.
- F. Coastal Resources Inventory and Environmental Sensitivity Maps, prepared by Research Planning, Inc Columbia, South Carolina, dated September 2001.
- G. Aleutians East Borough, Alaska, Overall Economic Development Plan, dated March 1, 1994.

(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.

**40.15.010 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
M	Municipality
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. **Municipality:** Municipality zones include all areas exempted from the Geographic Scope (Sec. 40.01.020) where planning, platting and land use is administered by a municipality within the Borough.
5. **Resource Development:** A Resource Development Zoning District has been established which includes all Borough Land except lands zoned Residential, Commercial, Industrial or as a Municipality.

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 Permits

**Sections:**

- 40.20.010 Commercial Recreation Land Use Permit Required.
- 40.20.020 Sand, Gravel and Rock Mining Land Use Permit Required.
- 40.20.030 Research Land Use Permit Required.
- 40.20.040 Mineral & Coal Exploration & Small Mining Operations Land Use Permit.
- 40.20.050 Offshore & Direct Marketing Seafood Processing Land Use Permit.
- 40.20.060 Onshore Seafood Processing Land Use Permit
- 40.20.070 Large Mining Operations Land Use Permit Required.
- 40.20.080 Oil and Gas Land Use Permit Required.

**40.20.010 Commercial Recreation Operator Land Use Permit Required.**

A. Land Use Permit Required

1. Effective January 1, 2015, Commercial Recreation Operators conducting business within the Resource Development District must apply for and receive an approved Commercial Recreation Operator Land Use Permit from the Borough prior to conducting Commercial Recreation activities within the Borough each year, using the application form required by the Borough.
2. A separate permit application must be submitted by each Commercial Recreation Operator.
3. The land use permit shall be valid for a period of one year commencing on January 1<sup>st</sup> and expiring December 31<sup>st</sup>, provided applicant is in compliance with permit terms and conditions.
4. The land use permit must be renewed at least 30 days prior to expiration if continued operations are planned.
5. Once the land use permit is issued, the permit may be amended. An amended permit is only valid for the remaining term on the originally issued permit.
6. The land use permit is not transferable and cannot be assigned or subleased, in whole or in part, to another party.

7. Commercial Recreation Operators are only authorized to conduct activities described in the permit application and authorized in the approval. Any change to the operation will require a permit amendment application to be submitted and approved prior to conducting those activities.
8. Casual Recreational Use does not require a permit.

B. Land Owner Authorization Required

1. Commercial Recreation Operator's activities on private, local, state, or federal land may not commence without land owner approval, including travel across lands and use of lands.
2. The Borough reserves the right to request a copy and verify any and all land owner authorizations related to a Commercial Recreation Operator Land Use Permit.
3. Land owner approval to access lands described in the land use permit must be maintained during the permit term or the permit is null and void.

C. Permanent Facilities, Structures and Access Routes

1. Commercial Recreation Operator Land Use Permits do not grant the Commercial Recreation Operator the right to construct any road, dock, port, runway or erect, construct or place any building, structure, or other fixture on lands within the AEB boundaries.
2. The Commercial Recreation Operator must obtain legal access and the authorization from the landowner prior to these activities.
3. A separate lease or contract is required to construct permanent facilities, structure and access routes on AEB lands.

D. Land Use Permit Approval Process

1. Commercial Recreation Operator Land Use Permits are approved by the Borough Administrator or his designee.
2. Within 10 calendar days of application receipt, excluding Saturday, Sunday and Borough holidays, the Borough will: approve the permit; send a letter to the Applicant explaining why the application is incomplete or requires modification; elevate the permit application for a decision by the Planning Commission pursuant to Sec. 40.01.070; or, deny the permit application.

3. Incomplete applications will be retained at the Borough for a period of 60 calendar days. If after 60 calendar days the applicant has not provided sufficient information to approve the permit, the permit application will be denied.
4. Final permit decisions will be mailed to the Permit Applicant or Permit Operator, adjoining property owners, and all persons that submitted written comments on the decision, by certified mail. A copy of the final permit decision will be provided to each Planning Commission member.
5. Permit decisions may be appealed pursuant to Sec. 40.01.080.

E. Fees and Penalties

Commercial Recreation Operators doing business within Borough boundaries are subject to the fee and penalty schedule approved by the Borough Assembly, pursuant to Chapter 1.24 and Sec. 40.01.060.

F. Inspection and Recordkeeping

1. Authorized representatives of the Borough have the right to enter and inspect land uses approved under a Borough permit to ensure uses are being or have been conducted in accordance with the terms and conditions of the permit.
2. Commercial Recreation Operators must keep and preserve all records of business activities conducted within the Borough boundaries for a period of at least five (5) years.
3. Commercial Recreation Operators must permit the Borough, or its authorized representatives, to examine, inspect, and copy the business records.
4. If an enforcement action commences, business records must be kept and preserved until enforcement action proceedings are complete.

G. Reporting Obligation

On or before February 1st of each year, after this permit expires, the Permittee shall submit a report to the Borough, confirming that all permit stipulations and requirements have been met and that the area used is clean and restored as nearly as possible to pre-existing conditions.

**40.20.020 Sand, Gravel and Rock Land Use Permit Required.**

A. Land Use Permit Required

1. Effective January 1, 2015, Sand, Gravel, and Rock Miners conducting business within the Resource Development District must apply for and receive an approved Sand, Gravel, and Rock Mining Land Use Permit from the Borough prior to conducting Sand, Gravel, and Rock Mining activities within the Borough, using the application form required by the Borough.
2. A separate land use permit application must be submitted for each separate Sand, Gravel, and Rock mining location.
3. The land use permit shall be valid for the mining operation period requested in the application, up to a maximum period of five (5) years.
4. Once approved by the Borough, the land use permit is valid for the approved permit term, provided applicant is in compliance with permit terms and conditions.
5. The land use permit must be renewed at least 60 days prior to expiration if continued operations are planned.
6. An amended land use permit is only valid for the remaining term on the originally issued permit.
7. The land use permit is not transferable and cannot be assigned or subleased, in whole or in part, to another party.
8. Sand, Gravel, and Rock Miners are only authorized to conduct activities described in the permit application and authorized in the approval. Any change to the operation will require a permit amendment application to be submitted and approved prior to conducting those activities.

## B. Land Owner Authorization Required

1. Sand, Gravel and Rock Mining on private, local, state, or federal land may not commence without land owner approval, including travel across lands and use of lands.
2. The Borough reserves the right to request a copy and verify any and all land owner authorizations related to a Sand, Gravel, and Rock Mining Land Use Permit.
3. Land owner approval to access lands described in the permit must be maintained during the permit term or the permit is null and void.

## C. Permanent Facilities, Structures and Access Routes

1. Sand, Gravel and Rock Mining Land Use Permits do not grant the Sand, Gravel, and Rock Miner the right to construct any road, dock, port, runway or erect, construct or place any building, structure, or other fixture on lands within the AEB boundaries.
2. The Sand, Gravel and Rock Miner must obtain legal access and the authorization from the landowner prior to these activities.
3. A separate lease or contract is required to construct permanent facilities, structure and access routes on AEB lands.

## D. Land Use Permit Approval Process

1. Sand, Gravel and Rock Mining Permits are approved by the Borough Administrator or his designee.
2. Within 30 calendar days of application receipt, excluding Saturday, Sunday and Borough holidays, the Borough will: approve the permit; send a letter to the Applicant explaining why the application is incomplete or requires modification; elevate the permit application for a decision by the Planning Commission pursuant to Sec. 40.01.070; or deny the permit application.
3. Incomplete applications will be retained at the Borough for a period of 60 calendar days. If after 60 calendar days the applicant has not provided sufficient information to approve the permit, the permit application will be denied.
4. Final permit decisions will be mailed to the Permit Applicant or Permit Operator, adjoining property owners, and all persons that submitted written

comments on the decision, by certified mail. A copy of the final permit decision will be provided to each Planning Commission member.

5. Permit decisions may be appealed pursuant to Chapter 40.01.080.

E. Fees and Penalties

Sand, Gravel and Rock Miners doing business within Borough boundaries are subject to the fee and penalty schedule approved by the Borough Assembly, pursuant to Chapter 1.24 and Sec. 40.01.060.

F. Inspection and Recordkeeping

1. Authorized representatives of the Borough have the right to enter and inspect land uses approved under a Borough permit to ensure uses are being or have been conducted in accordance with the terms and conditions of the permit.
2. Sand, Gravel and Rock Miners must keep and preserve all records of business activities conducted within the Borough boundaries for a period of at least five (5) years after the site has been remediated to the Borough's satisfaction and the permit has been discontinued.
3. Sand, Gravel and Rock Miners must permit the Borough, or its authorized representatives, to examine, inspect, and copy the business records.
4. If an enforcement action commences, business records must be kept and preserved until enforcement action proceedings are complete.

G. Severance Tax

Sand, Gravel and Rock Miners are subject to Borough Severance Tax pursuant to Chapter 60.40.

H. Reporting Obligation

Within 180 days of permit expiration, the Sand, Gravel, and Rock Miner must submit a report to the Borough confirming that all permit stipulations and requirements have been met and that the area used is clean and restored as required in the approved Reclamation Plan.

**40.20.030 Research Land Use Permit Required.**

**A. Land Use Permit Required**

1. Effective January 1, 2015, Professional Researchers conducting Research within the Resource Development District must apply for and receive an approved Research Land Use Permit from the Borough prior to conducting Research within the Borough, using the application form required by the Borough.
2. A separate land use permit application must be submitted for each separate Research project.
3. The land use permit shall be valid for the Research period requested in the application, up to a maximum period of five (5) years.
4. Once approved by the Borough, the land use permit is valid for the approved permit term, provided applicant is in compliance with permit terms and conditions.
5. The land use permit must be renewed at least 30 days prior to expiration if continued operations are planned.
6. An amended land use permit is only valid for the remaining term on the originally issued permit.
7. The land use permit is not transferable and cannot be assigned or subleased, in whole or in part, to another party.
8. Researchers are only authorized to conduct activities described in the land use permit application and authorized in the approval. Any change to the Research will require a permit amendment application to be submitted and approved prior to conducting those activities.
9. Research conducted by local elementary, junior-high or high-school students in support of school educational activities does not require a permit.

**B. Land Owner Authorization Required**

1. Research activities on private, local, state, or federal land may not commence without land owner approval, including travel across lands and use of lands.
2. The Borough reserves the right to request a copy and verify all land owner authorizations related to a Research Land Use permit.

3. Land owner approval to access lands described in this permit must be maintained during the permit term or the permit is null and void.

C. Permanent Facilities, Structures and Access Routes

1. Research Land Use Permits do not grant the Professional Researcher the right to construct any road, dock, port, runway or erect, construct or place any building, structure, or other fixture on lands within the AEB boundaries.
2. The Professional Researcher must obtain legal access and the authorization from the landowner prior to these activities.
3. A separate lease or contract is required to construct permanent facilities, structure and access routes on AEB lands.

D. Land Use Permit Approval Process

1. Research Land Use Permits are approved by the Borough Administrator or his designee.
2. Within 10 calendar days of application receipt, excluding Saturday, Sunday and Borough holidays, the Borough will: approve the land use permit; send a letter to the Applicant explaining why the application is incomplete or requires modification; elevate the permit application for a decision by the Planning Commission pursuant to Sec. 40.01.070; or, deny the permit application.
3. Incomplete applications will be retained at the Borough for a period of 60 calendar days. If after 60 calendar days the applicant has not provided sufficient information to approve the permit, the permit application will be denied.
4. Final permit decisions will be mailed to the Permit Applicant or Permit Operator, adjoining property owners, and all persons that submitted written comments on the decision, by certified mail. A copy of the final permit decision will be provided to each Planning Commission member.
5. Permit decisions may be appealed pursuant to Sec. 40.01.080.

E. Fees and Penalties

Professional Researchers doing business within Borough boundaries are subject to the fee and penalty schedule approved by the Borough Assembly, pursuant to Chapter 1.24 and Sec. 40.01.060.

F. Inspection and Recordkeeping

1. Authorized representatives of the Borough have the right to enter and inspect land uses approved under a Borough permit to ensure uses are being or have been conducted in accordance with the terms and conditions of the land use permit.
2. Professional Researchers must keep and preserve all records of business activities conducted within the Borough boundaries for a period of at least five (5) years.
3. Professional Researchers must permit the Borough, or its authorized representatives, to examine, inspect, and copy the business records.
4. If an enforcement action commences, business records must be kept and preserved until enforcement action proceedings are complete.

G. Reporting Obligation

1. On or before February 1st of each year, the Professional Researcher must submit an interim report to the Borough, providing an update on the status of the research, summarize any significant findings, and provide a schedule update on the time required to complete the research.
2. Within 180 days of completing its research, the Professional Researcher must submit a copy of its final research report to the Borough.

**40.20.040 Mineral & Coal Exploration & Small Mining Operations Land Use Permit Required.**

A. Land Use Permit Required

1. Effective January 1, 2015, Mineral & Coal Exploration & Small Mining Operations (less than 5 acres at any one time) anywhere within the Resource Development District must apply for and receive an approved Mineral & Coal Exploration & Small Mining Operations Land Use Permit from the Borough prior to conducting Mineral & Coal Exploration or Small Mining Operations within the Borough, using the application form required by the Borough.
2. A separate land use permit application must be submitted for each separate project.
3. The land use permit shall be valid for the period requested in the application, up to a maximum period of five (5) years.

4. Once approved by the Borough, the land use permit is valid for the approved permit term, provided applicant is in compliance with permit terms and conditions.
5. The land use permit must be renewed at least 60 days prior to expiration if continued operations are planned.
6. An amended land use permit is only valid for the remaining term on the originally issued permit.
7. The land use permit is not transferable and cannot be assigned or subleased, in whole or in part, to another party.
8. Exploration and small mining Operators are only authorized to conduct activities described in the land use permit application and authorized in the approval. Any change to the operation will require a permit amendment application to be submitted and approved prior to conducting those activities.
9. Recreational Mining does not require a permit.

#### B. Land Owner Authorization Required

1. Mineral and/or coal exploration and Small Mining Operations on private, local, state, or federal land may not commence without land owner approval, including travel across lands and use of lands.
2. The Borough reserves the right to request a copy and verify any and all land owner authorizations related to a Mineral & Coal Exploration & Small Mining Operations Land Use Permit.
3. Land owner approval to access lands described in the land use permit must be maintained during the permit term or the permit is null and void.

#### C. Permanent Facilities, Structures and Access Routes

1. Mineral & Coal Exploration & Small Mining Operations Land Use Permits do not grant the Operator the right to construct any road, dock, port, runway or erect, construct or place any building, structure, or other fixture on lands within the AEB boundaries.
2. The Operator must obtain legal access and the authorization from the landowner prior to these activities.
3. A separate lease or contract is required to construct permanent facilities, structure and access routes on AEB lands.

#### D. Land Use Permit Approval Process

1. Mineral & Coal Exploration & Small Mining Operations Land Use Permits are approved by the Borough Administrator or his designee.
2. Within 30 calendar days of application receipt, excluding Saturday, Sunday, and Borough holidays, the Borough will: approve the permit; send a letter to the Applicant explaining why the application is incomplete or requires modification; elevate the permit application for a decision by the Planning Commission pursuant to Sec. 40.01.070; or deny the permit application.
3. Incomplete applications will be retained at the Borough for a period of 60 calendar days. If after 60 calendar days the applicant has not provided sufficient information to approve the permit, the permit application will be denied.
4. Final permit decisions will be mailed to the Permit Applicant or Permit Operator, adjoining property owners, and all persons that submitted written comments on the decision, by certified mail. A copy of the final permit decision will be provided to each Planning Commission member.
5. Permit decisions may be appealed pursuant to Sec. 40.01.080.

#### E. Fees and Penalties

Mineral & Coal Exploration & Small Mining Operators doing business within Borough boundaries are subject to the fee and penalty schedule approved by the Borough Assembly, pursuant to Chapter 1.24 and Sec. 40.01.060.

#### F. Inspection and Recordkeeping

1. Authorized representatives of the Borough have the right to enter and inspect land uses approved under a Borough permit to ensure uses are being or have been conducted in accordance with the terms and conditions of the permit.
2. Mineral & Coal Exploration & Small Mining Operators must keep and preserve all records of business activities conducted within the Borough boundaries for a period of at least five (5) years after the site has been remediated to the Borough's satisfaction and the permit has been discontinued.
3. Mineral & Coal Exploration & Small Mining Operators must permit the Borough, or its authorized representatives, to examine, inspect, and copy the

business records.

4. If an enforcement action commences, business records must be kept and preserved until enforcement action proceedings are complete.

G. Severance Tax

Mineral & Coal Exploration & Small Mining Operators are subject to Borough Severance Tax pursuant to Chapter 60.40.

H. Reporting Obligation

Within 180 days of permit expiration, the Mineral & Coal Exploration & Small Mining Operators must submit a report to the Borough confirming that all permit stipulations and requirements have been met and that the area used is clean and restored as required in the approved Reclamation Plan.

**40.20.050 Offshore & Direct Marketing Seafood Processing Land Use Permit Required.**

A. Land Use Permit Required

1. Effective January 1, 2015, Offshore Seafood Processors and Direct Marketing Seafood Processors anywhere within the Resource Development District must apply for and receive an approved Offshore & Direct Marketing Seafood Processing Land Use Permit from the Borough prior to conducting operations within the Borough, using the application form required by the Borough.
2. A separate land use permit application must be submitted for each separate Offshore Seafood Processor and each Direct Marketing Seafood Processor.
3. The land use permit shall be valid for a period of one year commencing on January 1<sup>st</sup> and expiring December 31<sup>st</sup>, provided applicant is in compliance with permit terms and conditions.
4. The land use permit must be renewed at least 30 days prior to expiration if continued operations are planned.
5. Once the land use permit is issued, the permit may be amended. An amended permit is only valid for the remaining term on the originally issued permit.
6. The land use permit is not transferable and cannot be assigned or subleased, in whole or in part, to another party.

7. Offshore Seafood Processors and each Direct Marketing Seafood Processors are only authorized to conduct activities described in the permit application and authorized in the approval. Any change to the operation will require a permit amendment application to be submitted and approved prior to conducting those activities.

B. Permanent Facilities, Structures and Access Routes

1. Offshore & Direct Marketing Seafood Processing Land Use Permits do not grant the Operator the right to construct any road, dock, port, runway or erect, construct or place any building, structure, or other fixture on lands within the AEB boundaries.
2. The Operator must obtain legal access and the authorization from the landowner prior to these activities.
3. A separate lease or contract is required to construct permanent facilities, structure and access routes on AEB lands.

C. Land Use Permit Approval Process

1. Offshore & Direct Marketing Seafood Processing Land Use Permits are approved by the Borough Administrator or his designee.
2. Within 30 calendar days of application receipt, excluding Saturday, Sunday, and Borough holidays, the Borough will: approve the permit; send a letter to the Applicant explaining why the application is incomplete or requires modification; elevate the permit application for a decision by the Planning Commission pursuant to Sec. 40.01.070; or deny the permit application.
3. Incomplete applications will be retained at the Borough for a period of 60 calendar days. If after 60 calendar days the applicant has not provided sufficient information to approve the permit, the permit application will be denied.
4. Final permit decisions will be mailed to the Permit Applicant or Permit Operator, adjoining property owners, and all persons that submitted written comments on the decision, by certified mail. A copy of the final permit decision will be provided to each Planning Commission member.
5. Permit decisions may be appealed pursuant to Sec. 40.01.080.

D. Fees and Penalties

Offshore Seafood Processors and each Direct Marketing Seafood Processors doing business within Borough boundaries are subject to the fee and penalty schedule approved by the Borough Assembly, pursuant to Chapter 1.24 and Sec. 40.01.060.

E. Inspection and Recordkeeping

1. Authorized representatives of the Borough have the right to enter and inspect land uses approved under a Borough permit to ensure uses are being or have been conducted in accordance with the terms and conditions of the permit.
2. Offshore Seafood Processors and each Direct Marketing Seafood Processors must keep and preserve all records of business activities conducted with the Borough boundaries for a period of at least five (5) years after the site has been remediated to the Borough's satisfaction and the permit has been discontinued.
3. Offshore Seafood Processors and each Direct Marketing Seafood Processors must permit the Borough, or its authorized representatives, to examine, inspect, and copy the business records.
4. If an enforcement action commences, business records must be kept and preserved until enforcement action proceedings are complete.

F. Severance Tax

Offshore Seafood Processors and each Direct Marketing Seafood Processors are subject to Borough Tax pursuant to Chapter 60.20.

G. Reporting Obligation

On or before February 1st of each year, after this permit expires, the Permittee shall submit a report to the Borough, confirming that that it is complying with all approved plans, permit stipulations and requirements.

**40.20.060 Onshore Seafood Processing Land Use Permit Required.**

A. Land Use Permit Required

1. Effective January 1, 2015, Onshore Seafood Processors operating within the Resource Development District must apply for and receive an approved Onshore Seafood Processing Land Use Permit from the Borough prior to conducting operations within the Borough, using the application form required by the Borough.

2. A separate land use permit application must be submitted for each separate Onshore Seafood Processing Operation.
3. The land use permit shall be valid for the mining operation period requested in the application, up to a maximum period of five (5) years.
4. Once approved by the Borough, the land use permit is valid for the approved permit term, provided applicant is in compliance with permit terms and conditions.
5. The land use permit must be renewed at least 180 days prior to expiration if continued operations are planned.
6. An amended land use permit is only valid for the remaining term on the originally issued permit.
7. The land use permit is not transferable and cannot be assigned or subleased, in whole or in part, to another party.
8. Onshore Seafood Processors are only authorized to conduct activities described in the land use permit application and authorized in the approval. Any change to the operation will require a land use permit amendment application to be submitted and approved prior to conducting those activities.

#### B. Land Owner Authorization Required

1. Onshore Seafood Processing operations on private, local, state, or federal land may not commence without land owner approval, including travel across lands and use of lands.
2. The Borough reserves the right to request a copy and verify any and all land owner authorizations related to an Onshore Seafood Processing Land Use Permit.
3. Land owner approval to access lands described in the permit must be maintained during the permit term or the permit is null and void.

#### C. Permanent Facilities, Structures and Access Routes

1. Onshore Seafood Processing Land Use Permits do not grant the Operator the right to construct any road, dock, port, runway or erect, construct or place any building, structure, or other fixture on lands within the AEB boundaries.
2. The Operator must obtain legal access and the authorization from the landowner prior to these activities.

3. A separate lease or contract is required to construct permanent facilities, structure and access routes on AEB lands.

D. Land Use Permit Application and Approval Process

1. Pre-application Meeting

The Onshore Seafood Processor must meet with the Borough for a pre-application meeting at least 180 days prior to submitting the land use permit application for approval. At the pre-application meeting the Applicant shall 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

2. Application Meeting

The Onshore Seafood Processor must meet with the Borough at least 180 days prior to construction or operation to submit an application for Borough approval.

3. Land Use Permit Application Contents

The Applicant must fill out all the information required by the Onshore Seafood Processing Land Use Permit Application Form and follow all instructions. The application shall contain, at a minimum the following:

- a. Plan of Operations;
- b. Local Economic Development Plan;
- c. Design Plans
- d. Historical and Cultural Resources Protection Plan;
- e. Water, Waste Water, and Solid Waste Management Plan;
- f. Emergency & Medical Plan;
- g. Hazardous Materials and Hazards Assessment Plan;
- h. A copy of all required State and Federal permits
- i. Reclamation Plan;
- j. Copy of State of Alaska Business Licenses; and,
- k. Fees & Payments.

4. Approval Process

- a. The Borough Administrator or his designee will have 90 days to review the land use permit application excluding Saturday, Sunday and Borough holidays, including a 30 calendar day public notice period requesting written comments. Public notice will be made in accordance with the publication requirements of Sec. 1.12.010. The Borough Administrator or his designee may extend review time periods for

complex projects. The public notice period will not commence until the Borough Administrator or his designee has determined that the application is complete and ready for Borough consideration.

- b. Within 30 calendar days of application receipt, excluding Saturday, Sunday and Borough holidays, the Borough will issue the permit for public review or send a letter to the Applicant explaining why the application is incomplete or requires modification.
- c. Incomplete applications will be retained at the Borough for a period of 60 calendar days. If after 60 calendar days the Applicant has not provided sufficient information to approve the permit, the permit application will be returned to the Applicant. By the end of the 90 day review period, the Borough Administrator or his designee will submit a written recommendation to the Planning Commission. The Planning Commission will have 60 days, excluding Saturday, Sunday and Borough holidays to develop a written recommendation to the Assembly and will hold one meeting with the opportunity for oral or written public comment.
- e. The Assembly will grant the approval with or without conditions, or deny the application with explanation within 30 days excluding Saturday, Sunday and Borough holidays of receiving the Planning Commission's written recommendation and will hold one meeting with the opportunity for oral or written public comment before making its decision. The Assembly may extend review period for complex projects.
- f. Final permit decisions will be mailed to the Permit Applicant or Permit Operator, adjoining property owners, and all persons that submitted written comments on the decision, by certified mail. A copy of the final permit decision will be provided to each Planning Commission and Assembly member.
- g. Approved permits are valid for the period specified in the permit; a period not to exceed five years. A renewal application must be submitted at least 180 days before your permit expires. Permittees that have operated in compliance for the prior permit term (with no violations), may be eligible for an expedited renewal process if the renewal application does not increase impact over the original permit approval. Renewal applications that meet these criteria will be processed in 30 days by the.
- h. A permit amendment may be submitted at any time during the period that the existing permit is valid. The permit applicant must explain the reason for the permit amendment. Minor amendments are approved by the Administrator within 30 days. Major amendments require Assembly approval and can take 3-6 months. A minor amendment includes administrative, scope or timing changes that do not increase impact over

the original permit approval. Major amendments increase impact over the original permit approval.

5. Approval Criteria

The Planning Commission will establish procedures for the Planning Director to follow when reviewing land use permit 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:

a. Plan of Operations

The plan of operations shall be submitted in written form by the Owner/Operator and must include, at a minimum the following information:

1. Information on proposed Applicant (Operator) and any partners in the planned seafood processing operation;
2. Proposed seafood processing operations, location and timing;
3. Size and purpose of the operation;
4. Landownership and legal agreements that allow seafood processing plant on the property and any past seafood processing operations at this site;
5. A list and description of the required equipment, facilities, infrastructure and personnel;
6. Amount and type of fuel and chemicals that will be used and stored at the seafood processing plant and spill prevention measures that will be used;
7. Amounts and type of seafood to be processed and how the seafood will be processed;
8. Environmentally or culturally sensitive areas at or near the seafood processing plant;
9. Water and fish habitat protection measures that will be used;

10. Water requirements (i.e., intended use of appropriated waters, sources and methods of obtaining water, rate of acquisition, design of wastewater treatment systems, and instream requirements);
11. Anticipated restrictions on other surface uses of the area, including public access;
12. Noise, smell, and visual mitigation measures that will be implemented to lessen impacts on surrounding neighbors and properties;
13. Safety and security that will be used at the site; and,
14. A summary of all required local, state and federal permits and the status of those permits. If the permits have been obtained provide the permit number and date of expiration. If permits are in the process of being issued provide information on the date you applied for the permit and the expected date of issue.

The project scope and schedule must be compatible with existing and proposed adjacent uses, commercial fisheries, subsistence activities, and projected community needs.

The seafood processing operation must adhere to the goals and objectives of the Aleutians East Borough Comprehensive Plan.

Maps of proposed project must be submitted electronically for incorporation into the Borough's Geographic Information System.

b. Local Economic Development Plan

A Local Economic Development Plan shall include a local hire manpower plan, local business contracting plan, training program, and mentoring program for both construction and operation phases of the project.

The Local Economic Development Plan shall, at a minimum, include the following:

1. A plan to train local residents to become qualified for jobs at the project prior to start-up and during the period the seafood processing plant is actively operating. Training shall be provided in the lease area, or the Operator shall provide transportation and funding for local residents to obtain training in an alternate location. Paid apprenticeship positions shall provide hands-on training as part of this program;

2. A plan for recruiting and hiring local residents, including a mechanism for announcing jobs and recruiting locally qualified applicants in the lease area;
3. A plan for using local contractors and local businesses, including mandatory notification to qualified local contractors and businesses announcing contract opportunities; and,
4. A quarterly and annual reporting process documenting the success of the Economic Opportunity Plan in providing local hire and contracting opportunities to AEB residents.

c. Transportation Plan

Transportation Plan shall describe existing and new transportation infrastructure needed, anticipated haul routes, and points of ingress and egress to the seafood processing plant (including a map of these routes).

Transportation infrastructure (e.g., roads, bridges, runways, marine facilities, etc.) built by the Applicant on Borough, state, or federal lands must be available for all AEB resident use and access, unless waived by the Assembly.

Wherever possible, existing transportation infrastructure should be expanded to meet the Applicant's needs to minimize duplication and environmental impact.

The Applicant is responsible for construction, maintenance, and operating costs for the transportation infrastructure required to support their activities.

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.

d. 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 seafood processing plant.

e. Good Neighbor Plan

The Good Neighbor Plan shall, at a minimum, include the following:

1. A plan to ensure surrounding residential properties and residents are not adversely impacted by excessive noise, fumes, odors, pollution, contamination, glare, smoke, light, vibration, dust, litter, interference with media reception;
  2. Charitable and/or in-kind contributions to support local education, art, and charities, provide employment training programs to maximize local hire.
  3. A plan for providing services that includes contracting locally for fuel, power, waste, water, transportation, medical services, emergency and other services. If local service capacity is insufficient to meet the Operator's needs, the Operator shall expand capacity, unless it is infeasible. In cases where it is infeasible to expand existing services, the Operator may provide their own. The Operator's activities shall not adversely impact community access to existing services, and should improve and provide opportunities for more cost-effective services;
  4. A plan for communicating with the affected community members, to obtain their input and address their concerns on a regular basis; and,
  5. An annual reporting process to document the success of the Good Neighbor Policy.
- f. Pollution Prevention Plan. The Pollution Prevention Plan must include best management practices for protecting drinking water, air, and local food sources from pollution, including a recycling program. The Pollution Prevention Plan must include:
1. A zero water pollution discharge standard unless the Applicant proves to the Borough that it is not technically feasible;
  2. Best available air emission control technology for criteria air pollutants (including oxides of nitrogen and sulfur, carbon monoxide, particulate matter, volatile organic compounds), and hazardous air pollutants;
  3. The lowest air pollution impact fuel sources. Solar, wind and other alternative power sources must be considered when technically feasible. Where alternative energy options are not technically feasible, natural gas fired combustion systems shall be used whenever possible. Ultra-low sulfur diesel fuels shall be used;
  4. Vapory recovery systems on all equipment and facilities to reduce volatile organic compounds (VOCs) and Hazardous Air Pollutants (HAP) by at least 98%. Direct venting of VOCs and HAPs to the atmosphere is prohibited;
  5. An inspection maintenance and repair program to ensure that all pollution prevention systems are inspected, maintained, and

repaired, including a Quality Assurance/Quality Control (QA/QC) Program for all pollution prevention systems;

6. Secondary containment systems for all fuel, hazardous materials and chemicals that will hold at least 110% of the tank capacity;
7. Cathodic protection, leak detection systems and overfill alarms for all tanks;
8. Double hull vessels for all supply and fuel vessels operating in the presence of ice; and,
9. Sufficient spill response equipment and trained personnel to contain and clean up any fuel and chemical spills that may occur.

g. Hazardous Materials and Hazards Assessment Plan

The plan must include an evaluation of all hazardous materials used at the seafood processing plan and any potential hazards including, but not limited to, geophysical hazards, fire, flood, landslides, erosion, earthquake, coastal storms, and ice. The plan must include proposed mitigation measures to eliminate or reduce the risk of the hazard.

h. Reclamation Plan

The Reclamation Plan must be provided in sufficient detail to determine surety requirements, provide a timetable for each step in the reclamation process, and describe the reclamation actions to be completed at cessation of operations. The plan must include a description of the measures to ensure that all debris and toxic materials are disposed of in a sound manner, a description of the steps to be taken to comply with applicable water quality laws and statutes, and restore, stabilize and re-vegetate all disturbed areas. The Reclamation Plan must be developed using best management practices and shall comply with AEB's Coastal Zone Enforceable Policies.

i. Emergency & Medical Plan

The Emergency & Medical Plan must provide for adequate medical, rescue, fire, spill response 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 mining project.

j. Fees & Payments

E. Fees and Penalties

Onshore Seafood Processors doing business within Borough boundaries are subject to the fee and penalty schedule approved by the Borough Assembly, pursuant to Chapter 1.24 and Sec. 40.01.060.

F. Inspection and Recordkeeping

1. Authorized representatives of the Borough have the right to enter and inspect land uses approved under a Borough land use permit to ensure uses are being or have been conducted in accordance with the terms and conditions of the permit.
2. Onshore Seafood Processors must keep and preserve all records of business activities conducted within the Borough boundaries for a period of at least five (5) years after the site has been remediated to the Borough's satisfaction and the permit has been discontinued.
3. Onshore Seafood Processors must permit the Borough, or its authorized representatives, to examine, inspect, and copy the business records.
4. If an enforcement action commences, business records must be kept and preserved until enforcement action proceedings are complete.

G. Tax

Onshore Seafood Processors are subject to Borough Tax pursuant to Chapter 60.20.

H. Reporting Obligation

Compliance with Borough approval is required. Onshore Seafood Processors must submit annual reports demonstrating compliance with the approved plans listed in Sec. 40.20.060 by February 15<sup>th</sup> of each calendar year.

Within 180 days of permit expiration, the Onshore Seafood Processor must submit a report to the Borough confirming that all permit stipulations and requirements have been met and that the area used is clean and restored as required in the approved Reclamation Plan.

**40.20.070 Large Mining Operations Land Use Permit Required.**

**A. Land Use Permit Required**

1. Mineral and Coal Miners conducting Large Mining Operations (5 acres or more at any one time) within the Resource Development District must apply for and receive an approved Large Mineral & Coal Mining Operations Land Use Permit from the Borough prior to conducting Large Mining Operations within the Borough, using the application form required by the Borough. Mineral and Coal Exploration must obtain a permit pursuant to the requirements of Sec. 40.20.040.
2. A separate land use permit application must be submitted for each separate Large Mining Operation.
3. The land use permit shall be valid for the mining operation period requested in the application, up to a maximum period of five (5) years.
4. Once approved by the Borough, the land use permit is valid for the approved permit term, provided applicant is in compliance with permit terms and conditions.
5. The land use permit must be renewed at least 180 days prior to expiration if continued operations are planned.
6. An amended land use permit is only valid for the remaining term on the originally issued permit.
7. The land use permit is not transferable and cannot be assigned or subleased, in whole or in part, to another party.
8. Large Mining Operations are only authorized to conduct activities described in the land use permit application and authorized in the approval. Any change to the operation will require a land use permit amendment application to be submitted and approved prior to conducting those activities.

**B. Land Owner Authorization Required**

1. Large Mining Operations on private, local, state, or federal land may not commence without land owner approval, including travel across lands and use of lands.

2. The Borough reserves the right to request a copy and verify any and all land owner authorizations related to a Large Mining Operation Land Use Permit.
3. Land owner approval to access lands described in the permit must be maintained during the permit term or the permit is null and void.

C. Permanent Facilities, Structures and Access Routes

1. Large Mining Operation Land Use Permits do not grant the Mineral and/or Coal Miner the right to construct any road, dock, port, runway or erect, construct or place any building, structure, or other fixture on lands within the AEB boundaries.
2. The Mineral and/or Coal Miner must obtain legal access and the authorization from the landowner prior to these activities.
3. A separate lease or contract is required to construct permanent facilities, structure and access routes on AEB lands.

D. Land Use Permit Application and Approval Process

1. Pre-application Meeting

The Mineral and/or Coal Miner must meet with the Borough for a pre-application meeting at least 180 days prior to submitting the land use permit application for approval. At the pre-application meeting the Applicant shall 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 \$25,000 to be placed in a Large Mining Operations Permit Fee Fund for this project. The Applicant must maintain a minimum balance of \$10,000 in this fund at all times. The Borough will use these funds to pay for the cost of reviewing and approving the proposed application and administering the permit during operations. Payment of the application fee does not guarantee approval of the project.

2. Application Meeting

The Mineral and/or Coal Miner must meet with the Borough at least 180 days prior to construction or operation to submit an application for Borough approval.

3. Land Use Permit Application Contents

The Applicant must fill out all the information required by the Large Mining Operations Land Use Permit Application Form and follow all instructions. The application shall contain, at a minimum the following:

- a. Project Scope and Schedule;
- b. Conflict Avoidance Plan (Fisheries & Subsistence Use);
- c. Study & Project Monitoring Plan;
- d. Local Economic Development Plan;
- e. Field Office Plan;
- f. Infrastructure Support Plan;
- g. Transportation Plan;
- h. Historical and Cultural Resources Protection Plan;
- i. Good Neighbor Plan;
- j. Pollution Prevention Plan;
- k. Hazard Assessment Plan;
- l. Surety Bond;
- m. Reclamation Plan;
- n. Emergency Plan;
- o. Copy of State of Alaska Business Licenses; and, Fees & Payments.

4. Approval Process

- a. The Borough Administrator or his designee will have 90 days to review the land use permit application excluding Saturday, Sunday and Borough holidays, including a 30 calendar day public notice period requesting written comments. Public notice will be made in accordance with the publication requirements of Sec. 1.12.010. The Borough Administrator or his designee may extend review time periods for complex projects. The public notice period will not commence until the Borough Administrator or his designee has determined that the application is complete and ready for Borough consideration.
- b. Within 30 calendar days of application receipt, excluding Saturday, Sunday and Borough holidays, the Borough will issue the permit for public review or send a letter to the Applicant explaining why the application is incomplete or requires modification.
- c. Incomplete applications will be retained at the Borough for a period of 60 calendar days. If after 60 calendar days the Applicant has not provided sufficient information to approve the permit, the permit application will be returned to the Applicant. d. By the end of the 90 day review period, the Borough Administrator or his designee will submit a written recommendation to the Planning Commission. The Planning Commission will have 60 days, excluding Saturday, Sunday and Borough holidays to develop a written recommendation to the Assembly

and will hold one meeting with the opportunity for oral or written public comment.

- e. The Assembly will grant the approval with or without conditions, or deny the application with explanation within 30 days excluding Saturday, Sunday and Borough holidays of receiving the Planning Commission's written recommendation and will hold one meeting with the opportunity for oral or written public comment before making its decision. The Assembly may extend review period for complex projects.
- f. Final permit decisions will be mailed to the Permit Applicant or Permit Operator, adjoining property owners, and all persons that submitted written comments on the decision, by certified mail. A copy of the final permit decision will be provided to each Planning Commission and Assembly member.
- g. Approved permits are valid for the period specified in the permit; a period not to exceed five years. A renewal application must be submitted at least 180 days before your permit expires. Permittees that have operated in compliance for the prior permit term (with no violations), may be eligible for an expedited renewal process if the renewal application does not increase impact over the original permit approval. Renewal applications that meet these criteria will be processed in 30 days by the.
- h. A permit amendment may be submitted at any time during the period that the existing permit is valid. The permit applicant must explain the reason for the permit amendment. Minor amendments are approved by the Administrator within 30 days. Major amendments require Assembly approval and can take 3-6 months. A minor amendment includes administrative, scope or timing changes that do not increase impact over the original permit approval. Major amendments increase impact over the original permit approval.

i. Approval CriteriaThe Planning Commission will establish procedures for the Planning Director to follow when reviewing land use permit 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:

j. Project Scope and Schedule

The project scope and schedule shall be submitted in written form by the Owner/Operator and must include, at a minimum the following information:

1. Information on proposed Applicant (Operator) and any partners in the planned mine;
2. Proposed mining operations, location and timing;
3. Size and purpose of the operation;
4. Landownership and legal agreements that allow mining on the property and any past mining operations at this site;
5. A list and description of the required equipment, facilities, infrastructure and personnel;
6. Mining methods including overburden removal and storage and the amounts of material to be handled, processed or removed, and whether blasting, drilling, crushing, or screening will be performed.
7. Area and depth of the mining operation, including a map showing the topography, vegetation, distance to waterbodies, wetlands, residential areas, and other private structures or operations;
8. Amount and type of fuel and chemicals that will be used and stored at the mine site and oil spill prevention measures that will be used;
9. Amounts of material to be handled, processed, or removed; how the material will be processed; and how the tailings will be disposed of;
10. The actions to be taken to minimize detrimental effects to fish and wildlife;

11. Environmentally or culturally sensitive areas at or near the mine site (e.g. fish spawning habitat, subsistence use area, nearby residential properties or schools);
12. Water and fish habitat protection measures that will be used;
13. Water requirements (i.e., intended use of appropriated waters, sources and methods of obtaining water, rate of acquisition, design of wastewater treatment systems, and instream requirements);
14. Type and quantity of any elements or chemicals to be used in mining or mineral recovery and storage plans;
15. Location and size of camp facilities and overland transportation;
16. Anticipated restrictions on other surface uses of the lease area, including public access;
17. Noise, visual and dust suppression mitigation measures that will be implemented to lessen impacts on surrounding neighbors and properties;
18. Plans to comply with AEB's Coastal Zone Enforceable Policies if mining is planned in the coastal lands and waters of the Borough;
19. Safety and security that will be used at the site; and,
20. A summary of all required local, state and federal permits and the status of those permits. If the permits have been obtained please provide the permit number and date of expiration. If permits are in the process of being issued please provide information on the date you applied for the permit and the expected date of issue.

The project scope and schedule must be compatible with existing and proposed adjacent uses, commercial fisheries, subsistence activities, and projected community needs.

The mining operation must adhere to the goals and objectives of the Aleutians East Borough Comprehensive Plan. The mining operation must be consolidated as practical; site selection must include sufficient acreage to allow for reasonable expansion of the mine and should minimize site clearing, dredging, and disturbance of productive habitats. The mine operation 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.

- k. Conflict Avoidance Plan (Fisheries & Subsistence Use)

1. Mining shall not adversely affect fish habitat, populations or productivity. Commercial fishing, subsistence use, and sport harvest have priority.
2. 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.
3. Commercial fishing, subsistence use, and sport harvest priority use means that mining shall be restricted in order to prevent conflicts with local commercial, subsistence, and sport harvest activities and achieve the following goals.
  - a. Commercial, subsistence, and sport harvest activities must not be displaced or precluded from access to fishing or hunting areas, unless they are adequately compensated for the displacement;
  - b. Fishermen must not be precluded from participating in designated fishing seasons, unless they are adequately compensated for the lost season(s);
  - c. Fishermen must be compensated in a timely manner for damage to fishing equipment, vessels, gear or decreased harvest value or loss of fishing quota caused by the mine;
  - d. Established patterns of navigation and shipping for commercial fishermen must not be interrupted;
  - e. Port infrastructure must be expanded to accommodate increased vessel traffic for the mine. This will ensure that fishermen have adequate harbor slips, long-term boat storage and maintenance facilities, and are not unnecessarily delayed for supply and refueling. The cost of port expansion and any increase in port operating costs is the sole burden of the mine.

I. Study & Project Monitoring Plan

A Study and Project Monitoring Plan shall be comprehensive and collect sufficient baseline and periodic monitoring data to ensure protection of human health and the environment is being achieved. The plan must be reviewed and approved by the Borough Scientific Advisory Council or an expert designated by the Borough. The Study and Project Monitoring Plan shall, at a minimum, include a:

1. Commercial, Subsistence and Sports Fisheries Baseline Data Assessment to assess potential impacts of the proposed mine, including an assessment of all commercial, subsistence and sports

fisheries species, as well as the marine flora, fauna, habitat and prey species on which they rely for survival. The assessment shall be of sufficient quality to:

- a. Document the fisheries' distribution, abundance, productivity, movement and migration patterns, and quality as a food source; include data that documents natural variation in fish stock such that incremental impact from mining operations can be distinguished from natural variation;
  - b. Document past, present and future commercial, subsistence and sports fisheries use areas;
  - c. Be of sufficient quality, quantity, and age to allow scientists to collect additional data in the future (for comparison) and draw scientifically valid conclusions, as to whether or not the fisheries resources are being impacted the mine;
  - d. Include a complete economic assessment of the economic value of the fisheries including the economic value of wild Alaska seafood harvested in pristine waters; and,
  - e. Provide a well documented, scientifically supported, and statistically significant analysis sufficient to compensate fisherman for decreased harvest value, decreases in fisheries stock, and/or displacement or loss of work due to a catastrophic event such as mine pollution contamination.
2. Commercial, Subsistence and Sports Fisheries Monitoring and Mitigation Plan to monitor impacts of the proposed mine. Adverse impacts identified via the monitoring program shall be mitigated;
  3. Baseline water quality assessment and/or additional baseline data collection plan;
  4. Cumulative water pollution impact assessment;
  5. Assessment of the technical feasibility for zero water pollution discharge;
  6. Water quality monitoring system(s) that will be used to continuously monitor effluents to ensure compliance with pollutant limitations if zero water pollution discharge is not technically feasible;
  7. Baseline air quality and meteorological data assessment and/or additional baseline data collection plan;
  8. Cumulative air pollution impact assessment;
  9. Assessment of the technical feasibility for air pollution discharge control and reduction;
  10. Air quality monitoring system(s) that will be used to continuously monitor emissions to ensure compliance with pollutant limitations;

11. A Baseline Health and Socioeconomic Assessment to: document the current public health status of communities that will potentially be affected by the mine; document ways the mine can improve the quality of life for local residents; identify ways the mining Operator can work with the local communities to design, install and operate facilities that improve the quality of life for local residents; identify community or village-level health indicators to detect changes in public health and in social and economic conditions that influence health in the region; identify health disparities and vulnerable populations; identify the likely social, economic, environmental, and behavioral influences on health; and identify appropriate social, economic, environmental and health indicators for use in monitoring the effects (in terms of health risk and health outcomes);
12. Impact Analysis and Mitigation Plan summarizing the potential public health and socioeconomic impacts of mine and a means proposed to mitigate these impacts completed under the direction of a medical doctor with recognized expertise in Alaska Native public health and a socio-economist with recognized expertise in Aleutian Region;
13. Public Health Monitoring Program and Mitigation Plan to be implemented under the direction of a medical doctor with recognized expertise in Alaska Native public health that addresses the public health indicators identified in the Baseline Health and Socioeconomic Assessment. Adverse impacts identified via the monitoring program shall be mitigated;
14. Socioeconomic Monitoring Program and Mitigation Plan to be implemented under the direction of a socio-economist with recognized expertise in issues affecting the Aleutian Region. Adverse social and economic impacts identified via the monitoring program shall be mitigated; and,
15. A Noise Mitigation Plan that minimizes adverse health effects from aircraft and other noises associated with the mine operations. The plan shall include a baseline assessment of ambient noise level in the affected community must be completed for a mine requiring more than two flights per day to, through or from a community that estimates indoor and outdoor ambient noise levels and assess the anticipated contribution of the proposed activity to overall noise levels in the community using an FAA-approved noise model. Activities for ambient noise levels above safe thresholds, or noise levels that cause unacceptable disruptions to community activities and sleep, shall not be permitted. Mitigation including flight path routing, airport siting and sound proofing equipment must be proposed and implemented.

m. Local Economic Development Plan

A Local Economic Development Plan shall include a local hire manpower plan, local business contracting plan, training program, and mentoring program for both construction and operation phases of the mining project.

The Local Economic Development Plan shall, at a minimum, include the following:

1. A plan to train local residents to become qualified for jobs at the mine prior to mine start-up and during the period the mine is actively operating. Training shall be provided in the lease area, or the Operator shall provide transportation and funding for local residents to obtain training in an alternate location. Paid apprenticeship positions shall provide hands-on training as part of this program;
2. A plan for recruiting and hiring local residents, including a mechanism for announcing jobs and recruiting locally qualified applicants in the lease area;
3. A plan for using local contractors and local businesses, including mandatory notification to qualified local contractors and businesses announcing contract opportunities; and,
4. A quarterly and annual reporting process documenting the success of the Economic Opportunity Plan in providing local hire and contracting opportunities to AEB residents.

n. Field Office Plan

Large Mining Operations 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 the 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, unless waived by the Assembly.

o. Infrastructure Support Plan

The Applicant 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 Applicant agreement on this issue must be reached, approved by all parties, and submitted to the Borough.

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.), the Applicant is responsible for construction, maintenance, and operation costs of expanding these facilities to support their activities.

p. Transportation Plan

Transportation Plan shall describe existing and new transportation infrastructure needed, anticipated haul routes, and points of ingress and egress to the mine site (including a map of these routes).

Transportation infrastructure (e.g., roads, bridges, runways, marine facilities, etc.) built by the Applicant on Borough, state, or federal lands must be available for all AEB resident use and access, unless waived by the Assembly.

Wherever possible, existing transportation infrastructure should be expanded to meet the Applicant's needs to minimize duplication and environmental impact.

The Applicant is responsible for construction, maintenance, and operating costs for the transportation infrastructure required to support their activities.

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.

q. 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 mine.

r. Good Neighbor Plan

The Good Neighbor Plan shall, at a minimum, include the following:

1. A plan to ensure surrounding residential properties and residents are not adversely impacted by excessive noise, fumes, odors, pollution,

contamination, glare, smoke, light, vibration, dust, litter, interference with media reception;

2. Charitable and/or in-kind 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;
  3. A plan for providing services that includes contracting locally for fuel, power, waste, water, transportation, medical services, emergency and other services. If local service capacity is insufficient to meet the Operator's needs, the Operator shall expand capacity, unless it is infeasible. In cases where it is infeasible to expand existing services, the Operator may provide their own. The Operator's activities shall not adversely impact community access to existing services, and should improve and provide opportunities for more cost-effective services;
  4. A system to compensate subsistence hunters and fishermen for disruptions to subsistence activities or to compensate for additional costs associated with relocating subsistence activities;
  5. A system to compensate subsistence hunters and fishermen for costs of providing alternative food sources in the event of a spill;
  6. A plan for communicating with the affected community members, to obtain their input and address their concerns on a regular basis; and,
  7. A quarterly and annual reporting process to document the success of the Good Neighbor Policy.
- s. Pollution Prevention Plan

1. The Pollution Prevention Plan must include best management practices for protecting drinking water, air, and local food sources from pollution, including a recycling program. The Pollution Prevention Plan must include: A zero water pollution discharge standard unless the Applicant proves to the Borough that it is not technically feasible;
2. Best available air emission control technology for criteria air pollutants (including oxides of nitrogen and sulfur, carbon monoxide, particulate matter, volatile organic compounds), and hazardous air pollutants;
3. The lowest air pollution impact fuel sources. Solar, wind and other alternative power sources must be considered when technically feasible. Where alternative energy options are not technically feasible, natural gas fired combustion systems shall be used whenever possible. Ultra-low sulfur diesel fuels shall be used;

4. Vapor recovery systems on all equipment and facilities to reduce volatile organic compounds (VOCs) and Hazardous Air Pollutants (HAP) by at least 98%. Direct venting of VOCs and HAPs to the atmosphere is prohibited;
5. An inspection maintenance and repair program to ensure that all pollution prevention systems are inspected, maintained, and repaired, including a Quality Assurance/Quality Control (QA/QC) Program for all pollution prevention systems;
6. Secondary containment systems for all fuel, hazardous materials and chemicals that will hold at least 110% of the tank capacity;
7. Cathodic protection, leak detection systems and overfill alarms for all tanks;
8. Double hull vessels for all supply and fuel vessels operating in the presence of ice; and,
9. Sufficient spill response equipment and trained personnel to contain and clean up any fuel and chemical spills that may occur.

t. Hazard Assessment Plan

A Hazard Assessment Plan must include an evaluation of all potential hazards to the mine including, but not limited to, geophysical hazards, fire, flood, landslides, erosion, earthquake, coastal storms, and ice. The plan must include proposed mitigation measures to eliminate or reduce the risk of the hazard.

u. Surety Bond

A Surety Bond, or other financial instrument approved by the Assembly, must be appropriate for the magnitude, type, cost, nature, and duration of the development.

Surety must be provided in an amount sufficient to fund:

1. Environmental clean-up and restoration requirements;
2. Compensate residents for any adverse human health impacts
3. Compensate commercial fisherman and subsistence users for adverse impacts;
4. Dismantle, remove, and restore the Resource Development site to its original condition prior to development; and
5. The liability under the surety provisions shall continue until such time as released, or in its entirety, by the Administrator.

v. Reclamation Plan

The Reclamation Plan must be provided in sufficient detail to determine surety requirements, provide a timetable for each step in the reclamation process, and describe the reclamation actions to be completed at cessation of operations. The plan must include a description of the measures to ensure that all debris and toxic materials are disposed of in a sound manner, a description of the steps to be taken to comply with applicable water quality laws and statutes, and restore, stabilize and re-vegetate all disturbed areas. The Reclamation Plan must be developed using best management practices and shall comply with AEB's Coastal Zone Enforceable Policies if mining is planned in the coastal lands and waters of the Borough.

w. Emergency Plan

The Emergency Plan must provide for adequate medical, rescue, fire, spill response 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 mining project.

x. Fees & Payments

Large Mining Operations Permit Fee Fund must be paid.5. Amendments

Large Mining Land Use Permit Amendments will require Borough approval. The Borough Administrator or his designee will determine the significance of the proposed amendment. Minor amendments may be approved by the Borough Administrator or his designee within 30 days. A minor amendment is defined as an administrative, scope or timing change that does not increase impact over the original permit approval. A major amendment requires Assembly approval and a 30 day public comment period.

6. Appeals

Land use permit decisions may be appealed pursuant to Sec. 40.01.080.

E. Fees and Penalties

Mineral and Coal Miners doing business within Borough boundaries are subject to the fee and penalty schedule approved by the Borough Assembly, pursuant to Chapter 1.24 and Sec. 40.01.060.

Large Mining Operations are 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.

Large Mining Operations Permit Fee Fund requirements are triggered at the pre-application meeting, or at the discretion of the Borough Administrator, 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 \$25,000 to be placed in a Large Mining Operations Permit Fee Fund for this specific project. Quarterly, the Finance 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 \$12,500 in this fund at all times.

Failure to maintain and provide adequate funding within the Large Mining Operations Permit Fee Fund for the project will trigger compliance actions under Sec 40.01.050 and will automatically suspend all work on permit application review, processing, and approval.

Unused funds will be returned to the Applicant at the completion of the project and the site has been remediated to the Borough's satisfaction, or if an application is withdrawn from consideration.

#### F. Inspection and Recordkeeping

1. Authorized representatives of the Borough have the right to enter and inspect land uses approved under a Borough land use permit to ensure uses are being or have been conducted in accordance with the terms and conditions of the permit.
2. Mineral and Coal Miners must keep and preserve all records of business activities conducted within the Borough boundaries for a period of at least five (5) years after the site has been remediated to the Borough's satisfaction and the permit has been discontinued.
3. Mineral and Coal Miners must permit the Borough, or its authorized representatives, to examine, inspect, and copy the business records.
4. If an enforcement action commences, business records must be kept and preserved until enforcement action proceedings are complete.

#### G. Severance Tax

Mineral and Coal Miners are subject to Borough Severance Tax pursuant to Chapter 60.40.

## H. Reporting Obligation

Compliance with Borough approval is required. Mineral and Coal Miners must submit quarterly reports demonstrating compliance with the approved plans listed in Sec. 40.20.070 by January 15th, April 15th, July 15th and October 15th and of each calendar year.

Within 180 days of permit expiration, the Mineral and/or Coal Miner must submit a report to the Borough confirming that all permit stipulations and requirements have been met and that the area used is clean and restored as required in the approved Reclamation Plan.

## **40.20.080 Oil and Gas Land Use Permit Required.**

### A. Land Use Permit Required

1. Oil and Gas projects anywhere within the Resource Development District must apply for and receive an approved Oil and Gas Land Use Permit from the Borough prior to conducting operations within the Borough, using the application form required by the Borough.
2. A separate land use permit application must be submitted for each separate Oil and Gas project.
3. The land use permit shall be valid for the Oil and Gas project period requested in the application, up to a maximum period of five (5) years.
4. Once approved by the Borough, the land use permit is valid for the approved permit term, provided applicant is in compliance with permit terms and conditions.
5. The land use permit must be renewed at least 180 days prior to expiration if continued operations are planned.
6. An amended land use permit is only valid for the remaining term on the originally issued permit.
7. The land use permit is not transferable and cannot be assigned or subleased, in whole or in part, to another party.
8. Oil and Gas Operators are only authorized to conduct activities described in the land use permit application and authorized in the approval. Any change to the operation will require a land use permit amendment application to be submitted and approved prior to conducting those activities.

### B. Land Owner Authorization Required

1. Oil and Gas projects on private, local, state, or federal land may not commence without land owner approval, including travel across lands and use of lands.
2. The Borough reserves the right to request a copy and verify any and all land owner authorizations related to an Oil and Gas Land Use Permit.
3. Land owner approval to access lands described in the permit must be maintained during the permit term or the permit is null and void.

C. Permanent Facilities, Structures and Access Routes

1. Oil and Gas Land Use Permits do not grant the Oil and Gas Operator the right to construct any road, dock, port, runway or erect, construct or place any building, structure, or other fixture on lands within the AEB boundaries.
2. The Oil and Gas Operator must obtain legal access and the authorization from the landowner prior to these activities.
3. A separate lease or contract is required to construct permanent facilities, structure and access routes on AEB lands.

D. Land Use Permit Application and Approval Process

1. Pre-application Meeting

The Oil and Gas Operator must meet with the Borough for a pre-application meeting at least 180 days prior to submitting the land use permit application for approval. At the pre-application meeting the Applicant shall 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 Oil and Gas Permit Fee Fund for this project. The Applicant must maintain a minimum balance of \$25,000 in this fund at all times. The Borough will use these funds to pay for the cost of reviewing and approving the proposed application and administering the permit during operations. Payment of the application fee does not guarantee approval of the project.

2. Application Meeting

The Oil and Gas Operator must meet with the Borough at least 180 days prior to construction or operation to submit an application for Borough approval.

3. Land Use Permit Application Contents

The Applicant must fill out all the information required by the Oil and Gas Land Use Permit Application Form and follow all instructions. The application shall contain, at a minimum the following:

- a. Project Scope and Schedule;
- b. Conflict Avoidance Plan (Fisheries & Subsistence Use);
- c. Study & Project Monitoring Plan;
- d. Local Economic Development Plan;
- e. Field Office Plan;
- f. Infrastructure Support Plan;
- g. Transportation Plan;
- h. Historical and Cultural Resources Protection Plan;
- i. Good Neighbor Plan;
- j. Pollution Prevention Plan;
- k. Hazard Assessment Plan;
- l. Surety Bond;
- m. Reclamation Plan;
- n. Emergency Plan;
- o. Copy of State of Alaska Business Licenses; and,
- p. Fees & Payments.

#### 4. Approval Process

- a. The Borough Administrator or his designee will have 90 days to review the land use permit application excluding Saturday, Sunday and Borough holidays, including a 30 calendar day public notice period requesting written comments. Public notice will be made in accordance with the publication requirements of Sec. 1.12.010. The Borough Administrator or his designee may extend review time periods for complex projects. The public notice period will not commence until the Borough Administrator or his designee has determined that the application is complete and ready for Borough consideration.
- b. Within 30 calendar days of application receipt, excluding Saturday, Sunday and Borough holidays, the Borough will issue the permit for public review or send a letter to the Applicant explaining why the application is incomplete or requires modification.
- c. Incomplete applications will be retained at the Borough for a period of 60 calendar days. If after 60 calendar days the Applicant has not provided sufficient information to approve the permit, the permit application will be returned to the Applicant.
- d. By the end of the 90 day review period, the Borough Administrator or his designee will submit a written recommendation to the Planning Commission. The Planning Commission will have 60 days, excluding

Saturday, Sunday and Borough holidays to develop a written recommendation to the Assembly and will hold one meeting with the opportunity for oral or written public comment.

- e. The Assembly will grant the approval with or without conditions, or deny the application with explanation within 30 days excluding Saturday, Sunday and Borough holidays of receiving the Planning Commission's written recommendation and will hold one meeting with the opportunity for oral or written public comment before making its decision. The Assembly may extend review period for complex projects.
- f. Final permit decisions will be mailed to the Permit Applicant or Permit Operator, adjoining property owners, and all persons that submitted written comments on the decision, by certified mail. A copy of the final permit decision will be provided to each Planning Commission and Assembly member.
- g. Approved permits are valid for the period specified in the permit; a period not to exceed five years. A renewal application must be submitted at least 180 days before your permit expires. Permittees that have operated in compliance for the prior permit term (with no violations), may be eligible for an expedited renewal process if the renewal application does not increase impact over the original permit approval. Renewal applications that meet these criteria will be processed in 30 days by the.
- h. A permit amendment may be submitted at any time during the period that the existing permit is valid. The permit applicant must explain the reason for the permit amendment. Minor amendments are approved by the Administrator within 30 days. Major amendments require Assembly approval and can take 3-6 months. A minor amendment includes administrative, scope or timing changes that do not increase impact over the original permit approval. Major amendments increase impact over the original permit approval.

## 5. Approval Criteria

The Planning Commission will establish procedures for the Planning Director to follow when reviewing land use permit 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 Oil and Gas Land Use Permits:

a. Project Scope and Schedule

The project scope and schedule shall be submitted in written form by the Owner/Operator and must include, at a minimum the following information:

1. Information on proposed Applicant (Operator) and any partners in the planned Oil and Gas project;
2. Proposed Oil and Gas operations, location and timing;
3. Size and purpose of the operation;
4. Landownership and legal agreements that allow Oil and Gas operations on the property and any past mining operations at this site;
5. A list and description of the required equipment, facilities, infrastructure and personnel;
6. Area of Oil and Gas operations, including a map showing the topography, vegetation, distance to waterbodies, wetlands, residential areas, and other private structures or operations;
7. Amount and type of oil, fuel, and chemicals that will be used and stored at the mine site and oil spill prevention measures that will be used;
8. The actions to be taken to minimize detrimental effects to fish and wildlife;
9. Environmentally or culturally sensitive areas at or near the project (e.g. fish spawning habitat, subsistence use area, nearby residential properties or schools);
10. Water and fish habitat protection measures that will be used;
11. Water requirements (i.e., intended use of appropriated waters, sources and methods of obtaining water, rate of acquisition, design of wastewater treatment systems, and in stream requirements);
12. Location and size of camp facilities and overland transportation;
13. Anticipated restrictions on other surface uses of the lease area, including public access;
14. Noise, visual and dust suppression mitigation measures that will be implemented to lessen impacts on surrounding neighbors and properties;

15. Plans to comply with AEB's Coastal Zone Enforceable Policies if Oil and Gas is planned in the coastal lands and waters of the Borough;
16. Safety and security that will be used at the site; and,
17. A summary of all required local, state and federal permits and the status of those permits. If the permits have been obtained please provide the permit number and date of expiration. If permits are in the process of being issued please provide information on the date you applied for the permit and the expected date of issue.

The project scope and schedule must be compatible with existing and proposed adjacent uses, commercial fisheries, subsistence activities, and projected community needs.

The Oil and Gas project must adhere to the goals and objectives of the Aleutians East Borough Comprehensive Plan. The Oil and Gas project must be consolidated as practical; site selection must include sufficient acreage to allow for reasonable expansion of the project and should minimize site clearing, dredging, and disturbance of productive habitats. The project 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.

b. Conflict Avoidance Plan (Fisheries & Subsistence Use)

1. Oil and Gas operations shall not adversely affect fish habitat, populations or productivity. Commercial fishing, subsistence use, and sport harvest have priority.
2. 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.
3. Commercial fishing, subsistence use, and sport harvest priority use means that Oil and Gas operations shall be restricted in order to prevent conflicts with local commercial, subsistence, and sport harvest activities and achieve the following goals.
  - a. Commercial, subsistence, and sport harvest activities must not be displaced or precluded from access to fishing or hunting areas, unless they are adequately compensated for the displacement;

- b. Fishermen must not be precluded from participating in designated fishing seasons, unless they are adequately compensated for the lost season(s);
- c. Fishermen must be compensated in a timely manner for damage to fishing equipment, vessels, gear or decreased harvest value or loss of fishing quota caused by the Oil and Gas project;
- d. Fishermen must be compensated for any lost fishing opportunities caused by additional Endangered Species Act (ESA) restrictions put in place because of oil and gas activities;
- e. Established patterns of navigation and shipping for commercial fishermen must not be interrupted;
- f. Season restrictions on oil and gas activities may be required to avoid commercial fisheries and subsistence seasonal impacts;
- g. Additional seismic activity, if needed, must not impact fish resources, and must be planned and implemented to maximize data sharing and reduce the number of surveys required;
- h. Offshore oil and gas facilities may not be used for aquaculture; and
- i. Port infrastructure must be expanded to accommodate increased vessel traffic for the Oil and Gas project. This will ensure that fishermen have adequate harbor slips, long-term boat storage and maintenance facilities, and are not unnecessarily delayed for supply and refueling. The cost of port expansion and any increase in port operating costs is the sole burden of the mine.

c. Study & Project Monitoring Plan

A Study and Project Monitoring Plan shall be comprehensive and collect sufficient baseline and periodic monitoring data to ensure protection of human health and the environment is being achieved. The plan must be reviewed and approved by the Borough Scientific Advisory Council or an expert designated by the Borough. The Study and Project Monitoring Plan shall, at a minimum, include a:

- 1. Commercial, Subsistence and Sports Fisheries Baseline Data Assessment to assess potential impacts of the proposed Oil and Gas project, including an assessment of all commercial, subsistence and sports fisheries species, as well as the marine flora, fauna, habitat and prey species on which they rely for survival. The assessment shall be of sufficient quality to:
  - a. Document the fisheries' distribution, abundance, productivity, movement and migration patterns, and quality as a food source; include data that documents natural variation in fish stock such

- that incremental impact from Oil and Gas project can be distinguished from natural variation;
- b. Document past, present and future commercial, subsistence and sports fisheries use areas;
  - c. Be of sufficient quality, quantity, and age to allow scientists to collect additional data in the future (for comparison) and draw scientifically valid conclusions, as to whether or not the fisheries resources are being impacted the mine;
  - d. Include a complete economic assessment of the economic value of the fisheries including the economic value of wild Alaska seafood harvested in pristine waters; and,
  - e. Provide a well documented, scientifically supported, and statistically significant analysis sufficient to compensate fisherman for decreased harvest value, decreases in fisheries stock, and/or displacement or loss of work due to a catastrophic event such as mine pollution contamination.
2. Commercial, Subsistence and Sports Fisheries Monitoring and Mitigation Plan to monitor impacts of the proposed Oil and Gas project. Adverse impacts identified via the monitoring program shall be mitigated;
  3. Baseline water quality assessment and/or additional baseline data collection plan;
  4. Cumulative water pollution impact assessment;
  5. Assessment of the technical feasibility for zero water pollution discharge;
  6. Water quality monitoring system(s) that will be used to continuously monitor effluents to ensure compliance with pollutant limitations if zero water pollution discharge is not technically feasible;
  7. Baseline air quality and meteorological data assessment and/or additional baseline data collection plan;
  8. Cumulative air pollution impact assessment;
  9. Assessment of the technical feasibility for air pollution discharge control and reduction;
  10. Air quality monitoring system(s) that will be used to continuously monitor emissions to ensure compliance with pollutant limitations;
  11. A Baseline Health and Socioeconomic Assessment to: document the current public health status of communities that will potentially be affected by the mine; document ways the mine can improve the quality of life for local residents; identify ways the Oil and Gas Operator can work with the local communities to design, install and

operate facilities that improve the quality of life for local residents; identify community or village-level health indicators to detect changes in public health and in social and economic conditions that influence health in the region; identify health disparities and vulnerable populations; identify the likely social, economic, environmental, and behavioral influences on health; and identify appropriate social, economic, environmental and health indicators for use in monitoring the effects (in terms of health risk and health outcomes);

12. Impact Analysis and Mitigation Plan summarizing the potential public health and socioeconomic impacts of mine and a means proposed to mitigate these impacts completed under the direction of a medical doctor with recognized expertise in Alaska Native public health and a socio-economist with recognized expertise in Aleutian Region;
13. Public Health Monitoring Program and Mitigation Plan to be implemented under the direction of a medical doctor with recognized expertise in Alaska Native public health that addresses the public health indicators identified in the Baseline Health and Socioeconomic Assessment. Adverse impacts identified via the monitoring program shall be mitigated;
14. Socioeconomic Monitoring Program and Mitigation Plan to be implemented under the direction of a socio-economist with recognized expertise in issues affecting the Aleutian Region. Adverse social and economic impacts identified via the monitoring program shall be mitigated; and,
15. A Noise Mitigation Plan that minimizes adverse health effects from aircraft and other noises associated with the Oil and Gas project. The plan shall include a baseline assessment of ambient noise level in the affected community must be completed for a project requiring more than two flights per day to, through, or from a community that estimates indoor and outdoor ambient noise levels and assess the anticipated contribution of the proposed activity to overall noise levels in the community using an FAA-approved noise model. Activities for ambient noise levels above safe thresholds, or noise levels that cause unacceptable disruptions to community activities and sleep, shall not be permitted. Mitigation including flight path routing, airport siting and sound proofing equipment must be proposed and implemented.

d. Local Economic Development Plan

A Local Economic Development Plan shall include a local hire manpower plan, local business contracting plan, training program, and mentoring

program for both construction and operation phases of the Oil and Gas project.

The Local Economic Development Plan shall, at a minimum, include the following:

1. A plan to train local residents to become qualified for jobs at the Oil and Gas project prior to mine start-up and during the period the project is actively operating. Training shall be provided in the project area, or the Operator shall provide transportation and funding for local residents to obtain training in an alternate location. Paid apprenticeship positions shall provide hands-on training as part of this program;
2. A plan for recruiting and hiring local residents, including a mechanism for announcing jobs and recruiting locally qualified applicants in the lease area;
3. A plan for using local contractors and local businesses, including mandatory notification to qualified local contractors and businesses announcing contract opportunities; and,
4. A quarterly and annual reporting process documenting the success of the Economic Opportunity Plan in providing local hire and contracting opportunities to AEB residents.

e. Field Office Plan

Oil and Gas projects 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 the project. 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, unless waived by the Assembly.

f. Infrastructure Support Plan

The Applicant 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 Applicant agreement on this issue must be reached, approved by all parties, and submitted to the Borough.

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.), the Applicant is responsible for construction, maintenance, and operation costs of expanding these facilities to support their activities.

g. Transportation Plan

Transportation Plan shall describe existing and new transportation infrastructure needed, anticipated routes and points of ingress and egress to the project site (including a map of these routes).

Transportation routes, utility corridors and infrastructure shall be carefully sited and constructed to allow for the free passage and movement of fish and wildlife, to avoid construction during critical migration periods for fish and wildlife. Pipelines shall be buried wherever possible. The siting of facilities, other than docks, roads, utility or pipeline corridors, or terminal facilities, is prohibited within one-half mile of the coast, barrier islands, reefs and lagoons, fish bearing waterbodies and 1,500 feet from all surface water drinking sources.

Transportation infrastructure (e.g., roads, bridges, runways, marine facilities, etc.) built by the Oil and Gas Operator on Borough, state, or federal lands must be available for all AEB resident use and access, unless waived by the Assembly.

Wherever possible, existing transportation infrastructure should be expanded to meet the Applicant's needs to minimize duplication and environmental impact.

The Applicant is responsible for construction, maintenance, and operating costs for the transportation infrastructure required to support their activities.

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.

h. 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 Oil and Gas project.

i. Good Neighbor Plan

The Good Neighbor Plan shall, at a minimum, include the following:

1. A plan to ensure surrounding residential properties and residents are not adversely impacted by excessive noise, fumes, odors, pollution, contamination, glare, smoke, light, vibration, dust, litter, or interference with media reception;
2. Charitable and/or in-kind 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;
3. A plan for providing services that includes contracting locally for fuel, power, waste, water, transportation, medical services, emergency and other services. If local service capacity is insufficient to meet the Operator's needs, the Operator shall expand capacity, unless it is infeasible. In cases where it is infeasible to expand existing services, the Operator may provide their own. The Operator's activities shall not adversely impact community access to existing services, and should improve and provide opportunities for more cost-effective services;
4. A system to compensate subsistence hunters and fishermen for disruptions to subsistence activities or to compensate for additional costs associated with relocating subsistence activities;
5. A system to compensate subsistence hunters and fishermen for costs of providing alternative food sources in the event of a spill;
6. A plan for communicating with the affected community members, to obtain their input and address their concerns on a regular basis; and,
7. A quarterly and annual reporting process to document the success of the Good Neighbor Policy.

j. Pollution Prevention Plan

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

1. A zero water pollution discharge standard unless the Applicant proves to the Borough that it is not technically feasible;
2. Best available air emission control technology for criteria air pollutants (including oxides of nitrogen and sulfur, carbon

monoxide, particulate matter, volatile organic compounds), and hazardous air pollutants;

3. The lowest air pollution impact fuel sources. Solar, wind and other alternative power sources must be considered when technically feasible. Where alternative energy options are not technically feasible, natural gas fired combustion systems shall be used whenever possible. Ultra-low sulfur diesel fuels shall be used;
4. Vapor recovery systems on all equipment and facilities to reduce volatile organic compounds (VOCs) and Hazardous Air Pollutants (HAP) by at least 98%. Direct venting of VOCs and HAPs to the atmosphere is prohibited;
5. An inspection maintenance and repair program to ensure that all pollution prevention systems are inspected, maintained, and repaired, including a Quality Assurance/Quality Control (QA/QC) Program for all pollution prevention systems;
6. An oil spill trajectory analysis representing the worst-case oil spill volume to determine the maximum impacted region from a spill and identification of spill prevention measures that will be implemented to reduce the risk or impact of a spill. Drilling, pipeline and tank discharge scenarios must be considered. Tanker discharge scenarios must be considered for offshore projects;
7. Secondary containment systems for all fuel, oil, hazardous materials and chemicals that will hold at least 110% of the tank capacity;
8. Cathodic protection, leak detection systems and overfill alarms for all tanks;
9. Tank and pump systems capable of evacuating pipeline contents;
10. Cathodic protection and redundant leak detection systems for all pipelines;
11. Blowout prevention systems installed prior to drilling into over-pressured or hydrocarbon bearing zones on all drilling rigs;
12. Double hull tankers with redundant navigation and safety systems for all oil or LNG transportation;
13. Double hull vessels for all supply and fuel vessels operating in the presence of ice;

k. Hazard Assessment Plan

A Hazard Assessment Plan must include an evaluation of all potential hazards to the Oil and Gas project including, but not limited to, geophysical hazards, fire, flood, landslides, erosion, earthquake, coastal

storms, marine hazards, and ice. The plan must include proposed mitigation measures to eliminate or reduce the risk of the hazard.

I. Surety Bond

A Surety Bond, or other financial instrument approved by the Assembly, must be appropriate for the magnitude, type, cost, nature, and duration of the Oil and Gas project.

Surety must be provided in an amount sufficient to fund:

1. Environmental clean-up and restoration requirements;
2. Compensate residents for any adverse human health impacts;
3. Compensate commercial fisherman and subsistence users for adverse impacts;
4. Dismantle, remove, and restore the Resource Development site to its original condition prior to development; and
5. The liability under the surety provisions shall continue until such time as released, or in its entirety, by the Administrator.

m. Reclamation Plan

The Reclamation Plan must be provided in sufficient detail to determine surety requirements, provide a timetable for each step in the reclamation process, and describe the reclamation actions to be completed at cessation of operations. The plan must include a description of the measures to ensure that all debris and toxic materials are disposed of in a sound manner, a description of the steps to be taken to comply with applicable water quality laws and statutes, and restore, stabilize and re-vegetate all disturbed areas. The Reclamation Plan must be developed using best management practices and shall comply with AEB's Coastal Zone Enforceable Policies if Oil and Gas is planned in the coastal lands and waters of the Borough.

n. Emergency Plan

The Emergency Plan must provide for adequate medical, rescue, fire, spill response 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 Oil and Gas project.

o. Fees & Payments

Oil and Gas Permit Fee Fund must be paid.

## 6. Amendments

Oil and Gas Land Use Permit amendments will require Borough approval. The Borough Administrator or his designee will determine the significance of the proposed amendment. Minor amendments may be approved by the Borough Administrator or his designee within 30 days. A minor amendment is defined as an administrative, scope or timing change that does not increase impact over the original permit approval. A major amendment requires Assembly approval and a 30 day public comment period.

## 7. Appeals

Land use permit decisions may be appealed pursuant to Sec. 40.01.080.

## E. Fees and Penalties

Oil and Gas Operators doing business within Borough boundaries are subject to the fee and penalty schedule approved by the Borough Assembly, pursuant to Chapter 1.24 and Sec. 40.01.060.

Oil and Gas projects are 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.

Oil and Gas Permit Fee Fund requirements are triggered at the pre-application meeting, or at the discretion of the Borough Administrator, 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 Oil and Gas Permit Fee Fund for this specific project. Quarterly, the Finance 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 Oil and Gas Permit Fee Fund for the project will trigger compliance actions under Sec. 40.01.050 and will automatically suspend all work on permit application review, processing, and approval.

Unused funds will be returned to the Applicant at the completion of the project and the site has been remediated to the Borough's satisfaction, or if an application is withdrawn from consideration.

F. Inspection and Recordkeeping

1. Authorized representatives of the Borough have the right to enter and inspect land uses approved under a Borough land use permit to ensure uses are being or have been conducted in accordance with the terms and conditions of the permit.
2. Oil and Gas Operators must keep and preserve all records of business activities conducted within the Borough boundaries for a period of at least five (5) years after the site has been remediated to the Borough's satisfaction and the permit has been discontinued.
3. Oil and Gas Operators must permit the Borough, or its authorized representatives, to examine, inspect, and copy the business records.
4. If an enforcement action commences, business records must be kept and preserved until enforcement action proceedings are complete.

H. Reporting Obligation

Compliance with Borough approval is required. Oil and Gas Operators must submit quarterly reports demonstrating compliance with the approved plans listed in Sec. 40.20.080 by January 15th, April 15th, July 15th and October 15th and of each calendar year.

Within 180 days of permit expiration, the Oil and Gas Operator must submit a report to the Borough confirming that all permit stipulations and requirements have been met and that the area used is clean and restored as required in the approved Reclamation Plan.

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