

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2169 HCRA HB 172 (FILE 2)

2169

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Page 33, after line 28, insert:

"(26) AS 29.35.060 (franchise and permits)"
 Renumber following paragraphs accordingly.

Page 33, after line 29, insert:

"(28) AS 29.35.075 (disputes and conflicts with state
 certificated utilities)"
 Renumber following paragraphs accordingly.

Page 74, line 12, delete:

"utility services,"

Page 77, after line 6 add a new subsection to read:

"(c) This section applies to home rule and general
 law municipalities."

Page 77, lines 7 through 22, delete present language and
 replace it with the following:

"Sec. 29.35.070. PUBLIC UTILITIES. (a) The
 assembly for the area outside all cities in the borough
 and the council acting for the area in a city may
 regulate a utility service and fix, establish, and
 change the rates and charges imposed for a utility
 service provided to the municipality or its inhabitants
 by a utility except to the extent

(1) the utility is subject to regulation under AS
 42.05; or

(2) municipal regulation is prohibited by AS
 42.05.711(k) or other law.

(b) A municipality may provide for a reasonable
 deposit for meters and service to be given if interest
 is paid on the deposit.

(c) A municipality that owns or operates a utility
 may extend service to adjacent areas outside its
 municipal boundaries. For that purpose the
 municipality may acquire, maintain, and operate utility
 facilities together with necessary interests in real
 property outside its municipal boundaries.

(d) Unless a utility is owned by the municipality
 that is regulating it, all rates, charges, and
 regulations shall be established by the municipality in
 accordance with an ordinance that provides procedures
 for regulating service and establishing and changing

rates and charges. The ordinance shall provide for procedures necessary to guarantee due process, including notice and hearing requirements. Rates and charges established under this section shall be reasonable and permit a fair return on invested capital.

(e) A dispute involving a utility certificated under AS 42.05 as to the reasonableness of the fees for or the terms, conditions, or exceptions to a permit to use municipal streets shall be decided under AS 42.05.251.

(f) In case of a conflict between the provisions of this section and AS 42.05 or concerning an action taken under this section or AS 42.05 involving the regulation of service or the rates or charges of a utility certificated under AS 42.05, the provisions of AS 42.05.641 apply.

(g) This section applies to home rule and general law municipalities."

Page 195, after line 22, add a new section to read:

"* Sec. 62. AS 42.05.711 is amended by adding a new subsection to read:

(k) A public utility that is exempt or partially exempt under (d) through (j) of this section from the provisions of AS 42.05.010 - 42.05.721 may not be regulated by a municipality."

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

this
blic

sub-
not
s an
mis-
king
d or
on in

re of
5.010
r the
r the
order
nfor-
itten
blic.
ount,
in it.

in the
smally
rocess
heless
ity of
m'n &
t. Op.
d 493

Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978); B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

Sec. 42.05.711. Exemptions. (a) The provisions of AS 42.05.010 — 42.05.721 do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which he has an "affiliated interest."

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of AS 42.05.010 — 42.05.721, other than the provisions of AS 42.05.221 — 42.05.281, unless the owner and operator elects to be subject to all provisions of AS 42.05.010 — 42.05.721.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of AS 42.05.010 — 42.05.721.

(e) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under AS 42.05.010 — 42.05.721 unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of AS 42.05.010 — 42.05.721, an electric or telephone utility that does not gross \$325,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$100,000 annually may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721 other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25.010 — 10.25.650 may elect to be exempt from the provisions of AS 42.05.010 — 42.05.721, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281,

unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under AS 42.05.010 — 42.05.721 when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person. (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7-9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982)

Revisor's notes. — As enacted by chs. 83 and 136, SLA 1980, present subsections (j) and (i) were designated as subsections (n) and (j), respectively, but were redesignated by the revisor of statutes pursuant to AS 01.05.031(b). Former subsection (i) of this section was transferred as § 13, ch. 136, SLA 1980 to the 1980 Temporary and Special Acts and Resolutions by the revisor of statutes pursuant to AS 01.05.031(b).

Effect of amendments. — The first 1980 amendment added subsection (j).

The second 1980 amendment deleted "excepting the furnishing of collection and disposal service of garbage, refuse, trash or other waste material" following "none of whose utilities" near the beginning of subsection (b), deleted the former second sentence in subsection (b), which read: "Notwithstanding any other provisions of this chapter, municipalities providing collection and disposal service of garbage, refuse, trash or other waste material within their corporate boundaries are not subject to regulation by the Alaska Public Utilities Commission unless the municipality elects to be subject to the provisions of this chapter," substituted "\$50,000" for "\$25,000" following "does not gross" near the middle of subsection (e), substituted "under this chapter" for "hereunder" following "exempt from regulation" near the middle of subsection (e), and added subsections (n) through (i).

The 1982 amendment, effective May 28, 1982, deleted "on June 30, 1980" preceding

"a utility," and inserted "annual" preceding "gross revenue" in subsection (i).

Editor's notes. — Section 13, ch. 136, SLA 1980, as revised by the revisor of statutes, provides: "Cable television systems are exempt from the provisions of AS 42.05 [AS 42.05.010 — 42.05.721], other than the provisions of AS 42.05.221 — 42.05.281, until July 1, 1983. This exemption does not apply in cities or villages which have a population of less than 3,500 people and which are not located on a state road or marine highway. The effects of the exemption of cable television systems from rate regulation by the Alaska Public Utilities Commission provided in this section shall be reviewed by the legislature before July 1, 1983. If the legislature fails to extend the exemption before July 1, 1983, this section is repealed on that date and cable television systems lose their exempt status on that date and become subject to regulation by the Alaska Public Utilities Commission."

Opinions of attorney general. — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation pursuant to AS 10.20.005 et seq. June 7, 1976, Op. Att'y Gen.

(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05 and may permit them the use of streets and other public places under regulations prescribed by ordinance.

(b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least 55 per cent of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are

reasonable shall be decided by the Alaska Public Utilities Commission.

Sec. 29.48.060. PUBLIC UTILITIES RATES.

The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS 42.05.010 - 42.05.721 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.
TITLE PAGE ONLY HAS BEEN FILMED.

Alaska
MUNICIPAL
League

Juneau ★ November 2-5, 1983

33rd Annual Local Government Conference

HB 172

was read the first time and referred to the Community & Regional Affairs and the Judiciary Committees.

HB 172 was accompanied by a fiscal note which appears in House Journal Supplement No. 4, and the following letter:

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill revising the municipal code (AS 29). By our using the data prepared by the Legislative Affairs Agency, this bill is identical to the bill introduced this session as Senate Bill No. 1, except for the correction of a typographical error (page 35, line 5 -- "overridden"), the justification of the right-hand-margin on several pages, and 11 rather technical changes that are described below. The bill was modeled on the bill approved last session by the House Finance Committee as HCS CSSB 180 (Fin). A detailed section-by-section analysis of SB 1 is being prepared by the Legislative Affairs Agency.

The bill does not contain any of the provisions which were criticized by Governor Hammond in his July 15, 1982 veto message for HCS CSSB 180(Jud) am H. See 1982 Senate Journal, pages 1788 -- 1792. This bill makes many non-controversial improvements to our municipal code and I urge its prompt consideration and passage. It is my hope that the AS 29 issues on which last year's amendments created such a controversy will be addressed by separate legislation so that this needed code revision is not once again delayed.

For your convenience in comparing SB 1 and this bill, here is a list of the 11 changes from SB 1 which are contained in this bill (with page and line numbers referring to SB 1):

1. page 8, line 26 -- following "council" the phrase "in a first class city" is added;
2. page 11, line 1 -- between the words "city" and "incorporated," the phrase "in the unorganized borough" is added;
3. page 29, line 8 -- following the first use of "commission," the phrase "of seven elected members" is added;

HB 172

4. page 29, lines 14 and 15 -- following "shall be" on line 14, the phrase "prepared by the petitioners and" is added and the word "incorporation" is deleted; following "petition" on line 15, the phrase "to incorporate a home rule municipality" is added;

5. page 62, line 3 -- a sentence to read "The runoff election shall be between the two candidates receiving the greatest number of votes for the seat." is added to sec. 29.26.060(c);

6. page 63, lines 7 and 26, and page 64, line 15 -- replace the words "bill" and "Act" with the phrase "ordinance or resolution";

7. page 82, line 18 -- following "emergency," the word "services" is added, and following "center," the phrase "under AS 29.35.130" is added;

8. page 85, lines 4 and 5 -- subsection (c) is amended as follows:

(c) A third class borough acquires an additional power to exercise in a service area in accordance with AS 29.35.490(b) and (c) [AREAS BY HOLDING AN ELECTION ON THE QUESTION IN WHICH EACH PERSON WHO IS A VOTER OF THE BOROUGH MAY VOTE].

9. page 106, line 8 -- the first sentence of sec. 29.-45.040(b) is amended as follows:

(b) For purposes of determining payments to eligible persons, the department shall calculate at the rate of one percent per mill a property tax equivalent percentage for each municipality that levies a property tax [AT THE RATE OF ONE PERCENT PER MILL].

10. page 161, line 20 -- "29.60.120" is replaced with "29.60.130";

11. page 182, line 1 -- following "general law," the phrase "first or second class" is deleted.

Sincerely,

Bill Sheffield
Bill Sheffield

Governor

TITLE 29 FACT SHEET

SUMMARY OF HB 172/SB 1 - TITLE 29 (MUNICIPAL CODE)

HB 172 and SB 1 are comprehensive bills that reorganize and clarify Title 29 (Municipal Code), but do not substantially change that part of the state statutes that direct the operation of local government in Alaska.

History: The current Title 29, last revised in 1972, is a hodgepodge of 13 years worth of amendments. It is very difficult for the average citizen to read and understand.

Recognizing the problem, the Legislature adopted SCR 66 in 1980, directing the rewrite of Title 29. A broadly representative policy committee, with the assistance of a technical committee, prepared a revised code after an exhaustive series of meetings, hearings, and public presentations.

HB 170 and SB 180 were introduced in 1981. More hearings were held during the 1981 legislative session, during the interim, and continuing through the 1982 session. SB 180 passed the legislature, but because of controversial floor amendments, Governor Hammond vetoed the bill.

In 1983, SB 1 was introduced by Senators Sturgulewski and Gilman; HB 172, by Governor Sheffield. Both bills are basically the same as the bill that had passed the previous year minus the controversial amendments. More committee work was done in both the House and Senate on the 204 page bill.

Changes: For the most part, these bills reorganize and reword Title 29 for clarity and flexibility. Policy changes of any substance are very few. The main changes are:

Third Class Boroughs: The existing third class borough, Haines Borough, continues in existence, but there is no provision for incorporating new third class boroughs in the future.

Home Rule Status: Second class cities and unincorporated areas are authorized to adopt home rule charters, which must be ratified by a vote of the people.

Municipal Powers: A general grant of municipal powers is given to municipalities, instead of a long list of enumerated powers. The difference is more semantic than actual, since the list includes almost every conceivable municipal power. There is no change in the manner in which boroughs acquire powers.

Organizational Grants/Feasibility Studies: The organizational grants are increased and expanded, depending on the category of local government. Studies for the feasibility of local government are authorized.

Incorporation Requirements: The minimum number of people required for incorporation as either a first class or home rule city is increased from 400 to 600.

Ordinance Violation: Penalties for ordinance violations are increased from a maximum \$500 and 30-days to class B misdemeanor penalties, which are a maximum of \$1000 and 90-days.

Extraterritorial Jurisdiction: Solid and septic waste disposal, utility services, wharves, harbors, and other marine services are added to the list of powers that may be exercised outside the boundaries of the municipality, if the municipality has the authority to exercise the power inside its boundaries.

Economic Development: Allow economic development as a non-area-wide power for second class

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____
 Title "An Act Relating to Municipal Government"
 Requested by Governor's Office _____ Date: 1/5/83

II. FISCAL DETAIL

Agency Affected Department of Community & Regional Affairs
 Program Category Affected Development
 BRU, Program, Or Subprogram(s) Affected Local Government Assistance Grants
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL				175.0	175.0	
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		100	150	450.0	350.0	250.0
TOTAL		100.0	150.0	625.0	525.0	250.0

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		100.0	150.0	625.0	525.0	250.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME		0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

SEE ATTACHED

IV. DATE 1/5/83 PREPARED BY Terry Earley
 AGENCY Community & Regional Affairs
 Original: Legislative Finance PHONE 465-4730
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)

CJM

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____
 Title "An Act Relating To Municipal Government"
 Requested by _____ Committee by request of Governor _____ Date _____

II. FISCAL DETAIL

Agency Affected Dept. of Community & Regional Affairs
 Program Category Affected Development
 BRU, Program, Or Subprogram(s) Affected Local Government Assistance
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	100.0	150.0	625.0		

FUNDING (Thousands of Dollars)

	0	100.0	150.0	625.0		
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

RECEIVED

FEB 10 1983

LEGISLATIVE FINANCE

IV. DATE 1/27/83 PREPARED BY *Tommy Farley*
 AGENCY Community & Regional Affairs
 Original: Legislative Finance PHONE 465-4730
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

FISCAL NOTE
"An Act Relating to Municipal Government"

Article 3 of the Bill appears to be the only portion that has fiscal impact on this Division. That Article "TRANSITIONAL ASSISTANCE" provides for organizational grants to newly formed and newly reclassified cities. These grants are \$50,000 the first year and \$25,000 the second year.

Additionally, the bill provides for organization grants to newly formed Boroughs in the following amounts:

\$300,000 for the first fiscal year
\$200,000 for the second fiscal year
\$100,000 for the third fiscal year

Finally, it provides for the department to establish an initial sales tax structure and an initial property tax structure.

Assumptions: In estimating the fiscal impact of the bill the following assumptions were made.

1. There would be two incorporations or reclassifications each year. This would produce an FY 84 cost of \$100,000 and an annual cost of \$150,000 from that point forward.
2. There will be one Borough Incorporation in 1986. This incorporation would necessitate expenditure of the 3 step organization grant in 1986, 1987, and 1988. Based on this assumption it is also estimated that contractual costs for setting up the two tax systems would be \$350,000 in contractual costs spread over a 2 year period.

LAND
MANAGEMENT
REGULATIONS

NORTH SLOPE BOROUGH

WICKERSHAM & FLAVIN
PLANNING CONSULTANTS
1577 "C" ST. SUITE 226
ANCHORAGE, ALASKA 99501
(907) 272-9061

TABLE OF CONTENTS

CHAPTER		PAGE
10	INTRODUCTION, PURPOSE AND SCOPE AND MISCELLANEOUS PROVISIONS	
19.10.010	Introduction	1
19.10.020	Purposes	2
19.10.030	Geographic Scope	2
19.10.040	Severability	2
19.10.050	Consistency with Coastal Management Plan	3
19.10.060	Effective Date	3
20	DEFINITIONS	
19.20.010	Rules of Construction	5
19.20.020	Definitions	5
30	ADMINISTRATIVE PROVISIONS	
19.30.010	Administrator	19
19.30.020	Planning Commission — Creation and Membership	19
19.30.030	Commission Procedures	20
19.30.040	Commission — Powers and Duties	20
19.30.050	Fees	24
19.30.060	Enforcement	24
19.30.070	Interpretation	27

40	ZONING DISTRICTS	
19.40.010	Map Adoption	29
19.40.020	Village (V) Districts	30
19.40.030	Barrow (B) District	32
19.40.040	Conservation (C) District	33
19.40.050	Resource Development (RD) District	34
19.40.060	Rezoning	38
50	USE PERMITS FOR USES-BY-RIGHT IN RESOURCE DEVELOPMENT DISTRICTS	
19.50.010	Permit Required	41
19.50.020	Burden of Proof	41
19.50.030	Procedure - Administrator Decision	41
19.50.040	Appeals	43
60	DEVELOPMENT PERMITS FOR CONDITIONAL USES IN ALL DISTRICTS	
19.60.010	Permit Required	45
19.60.020	Burden of Proof	45
19.60.030	Decision-Making Standards	46
19.60.040	Application	48
19.60.050	Procedure and Decision - Normal Application	48
19.60.060	Variance from a Mandatory Policy	50
19.60.070	Appeals	54
19.60.080	Duration of Permits	55
19.60.090	Revocable Development Permits	55
70	CONDITIONS ON APPROVAL	
19.70.010	Development Schedule	57
19.70.020	Use	58
19.70.030	Common Maintenance Agreement	58
19.70.040	Dedications	58
19.70.050	Construction Guarantees	58
19.70.060	Commitment Letter	58
19.70.070	Covenants	58
19.70.080	Revocation of Permits	59
80	POLICIES	
19.80.010	Introduction	61
19.80.020	Mandatory Policies	61
19.80.030	Best Efforts Policies	65
19.80.040	Minimization of Negative Impacts	71
19.80.050	Beneficial Impacts	72

90 DENSITY AND INCENTIVES

19.90.010	Basic Density/Intensity	75
19.90.020	Basic Density/Intensity Non Public Facilities	76
19.90.030	Incentives - Application and Eligibility	76
19.90.040	Density Bonus	77
19.90.050	Industrial Development Bonds	77
19.90.060	Tap Fee Reduction	77
19.90.070	Operation, Security and Maintenance	78
19.100.080	Procedure of Incentives	78

*

*

*

CHAPTER 10

INTRODUCTION, PURPOSE, SCOPE AND MISC. PROVISIONS

19.10.010 Introduction. This Title creates a unique set of land management principles and procedures for development in the North Slope Borough. The ideas contained in this Title were developed by officials and residents of the Borough in many public meetings held between 1979 and 1982 to develop the Borough's Comprehensive Plan, Coastal Management Program, and other planning studies. Reliance has also been placed on the Borough's previous interim zoning ordinance and other draft regulations. Procedural and administrative matters are designed to be as efficient and fair as possible to all concerned, and to comply with legal requirements.

19.10.020 **Purposes.** This Title 19 is adopted:

- (a) To achieve the goals and objectives, and implement the policies, of the Borough Comprehensive Plan, including its Coastal Management Program;
- (b) To ensure that the future growth and development of the Borough is in accord with the values of its residents;
- (c) To identify and secure, for present and future residents, the beneficial impacts of growth;
- (d) To identify and avoid, mitigate, or prohibit the negative impacts of growth; and
- (e) To ensure that future growth is of the proper type, design and location, and is served by a proper range of public services and facilities.

~~19.10.030 **Geographic Scope.** This Title applies to all private, State-, Borough- and Municipally-owned land in the Borough. To the extent allowed by law or administrative regulation or policy, it also applies to federal lands in the Borough.~~

19.10.040 **Severability.** Should any provision of this Title be held to be in violation of State law, the State Constitution or the United States Constitution, such holding shall not affect the validity of any other provision.

19.10.050 **Consistency with Coastal Management Plan.** Issuance of a Use Permit pursuant to an adopted Resource Development Master Plan, or issuance of a Development Permit for a conditional use, together with conditions on approval if any, is conclusive evidence of the Development's compliance with the North Slope Borough Coastal Management Plan when adopted.

19.10.060 **Effective Date.** This ordinance shall become effective on January 1, 1983.

CHAPTER 20

DEFINITIONS

19.20.010 Rules of Construction.

For the purpose of this Title, certain terms or words used herein shall be interpreted as follows:

- (a) Words used in the present tense include the future tense;
- (b) The singular number includes the plural;
- (c) The word "person" includes a corporation, partnership, joint venture, the Borough and any other public agency, as well as an individual or individuals;
- (d) The word "lot" also includes the words "plot," "parcel," or "tract;"
- (e) The term "shall" is mandatory and the word "may" is permissive;
- (f) The word "used" or "occupied" as applied to any land, or structure or building includes the words "intended," "arranged," or "designed" to be used or occupied;
- (g) The word "including" means including but not limited to.

19.20.020 **Definitions.** The following words shall have the following meanings for the purpose of this Title 19:

Accessory Use or Structure means a use or structure customarily subordinate or incidental to, and located on the same lot with a principal use, building or structure.

Administrator means the Borough Land Management Administrator, or his designee.

Agenda Item. An agenda item shall state the address or location of the site, a brief description of the proposed Development (including variances and incentives if any), the action requested and the Administrator's decision or recommendation thereon.

Agenda, Posted. The agenda shall state the name of the hearing body; the time, date and place of the meeting; and a list of each agenda item. The Commission shall establish, by resolution, at least one location in each Village and two locations in Barrow, in addition to the Borough offices, for the posting of the agenda. The agenda shall be posted at the Borough office and the Village location, if applicable, at least five days prior to the date of the meeting.

Alteration. Means a change to a use or development. A **Minor Alteration** is a change which has no appreciable affect on its surroundings as conclusively determined by the Administrator. A **Major Alteration** is any alteration except a minor alteration.

Animal Husbandry is a use involving the keeping of any animal other than household pets or working dogs.

Area Special Area, or Area, is a term used to indicate the geographic extent of a policy or policies, such as the Coastal Area, where the Coastal Management Program policies apply. Areas may overlap each other and the various zoning districts.

Area, Building means the total of areas taken on a horizontal plane at the main grade level of the principal building, and all accessory buildings or structures, exclusive of steps and porches.

Assembly means the North Slope Borough Assembly.

Best Available Technology means the technology or technologies that best and most safely implements the relevant policy and that is available to the applicant at the time of application or within a reasonable time thereafter.

Best Efforts means the best available technology or (where that term is inapplicable) the methodology or course of conduct, which will most likely result in minimizing the negative impacts of the Development.

Block. A piece or parcel of land entirely surrounded by public highways, streets, shorelines, streams, railroads right-of-way, survey lines or a combination thereof.

Borough Means the North Slope Borough, Alaska.

Building means any structure which is enclosed on the top and sides, including dome-shaped structures.

Coastal Area means the area within the Borough below 200 feet in elevation, and certain other areas, as indicated on ZMP Map II-6.

Commercial Use is a use involving the storing, wholesaling or retailing of any substance, and accessory uses.

Commission means the Borough Planning Commission.

Conditional Use means any use except uses-by-right and prohibited uses. It is subject to a Development Permit pursuant to Chapter 60.

Density means the number of square feet of lot area per dwelling unit in any residential development except a group home or rooming house.

Developer means the person who makes the application for a Development Permit, and his successors in title or interest. If the Developer is other than the owner of the land subject to the application, the owner must also sign the application.

Development, unless specifically exempted below, means any of the following:

- (a) Construction, reconstruction or major alteration of a structure;
- (b) A Preliminary Subdivision Plat and the initial lease or sale of a parcel for resource exploration, extraction or development purposes;
- (c) Change in the use of a site, including any structure thereon, from one type of development to another;
- (d) Installation of a mobile home;
- (e) Construction or enlargement of a public, quasi-public or private facility or improvement, including airports, roads and trails, ice roads, water or sewer mains or treatment facilities; electric, telecommunications, telephone, cable TV and similar lines, substations, generating facilities, transmission facilities, etc.; schools, hospitals and clinics, fire stations, police and other public safety facilities; parks, recreation facilities and buildings; cemeteries; and meeting halls;
- (f) Disturbance of the surface of the ground (including submerged grounds) including but not limited to dredge or fill activities; construction of roads, or parking areas; creation of airstrips, piers, jetties, gravel pads, etc; creation of an equipment or material storage site, or tailing pile; creation of a refuse pile, dump or landfill; creation of a reservoir, settling or evaporation pond, or leach field; and creation of placer mining sites;

- (g) Setting off flares, fires or explosions, or vibrations, specifically including seismic exploration; and
- (h) Any site work in preparation or anticipation of the above except surveying.

The following are specifically excluded from the term "Development":

- (i) A single family dwelling or duplex, other than a mobile home, on a single lot;
- (j) Conduct of a home occupation;
- (k) Subsistence, including the construction or emplacement of structures in furtherance of subsistence activities;
- (l) Existing uses and minor alterations thereto;
- (m) Alterations to uses set forth in (i), (j), and (k) above;
- (n) Uses or structures accessory to those set forth in (i), (j), (k), and (l) above.
- (o) Projects adopted as part of the Borough's annual Capital Improvements Program.

Development Permit means the permit for development as set forth in Chapter 60, including Revocable Development Permits.

Duplex means a building designed for or occupied exclusively by two families and constituting two dwelling units.

Dwelling Unit means a building or portion thereof providing independent and complete cooking, living, sleeping and toilet facilities for one family.

Dwelling, Multifamily means a building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, Single-family means a detached building designed for long-term human habitation exclusively by one family, having complete living facilities and constituting one dwelling unit. The term includes factory-built and prefabricated dwellings, but not mobile homes.

Easement. A grant by the property owner to another person or to the public of the use of any designated part of his property for specific purposes.

Existing Use means a structure in existence and the use or uses to which it is put on the effective date of this Title 19.

Family means one or more persons occupying a physically secure premises and living as a single housekeeping unit, as distinguished from a group home, or rooming house.

Feasible and Prudent Alternative means an alternative to the Development's proposed conduct or method which is consistent with sound engineering practice and which does not cause environmental, social, or economic impacts that outweigh the net public benefit to be derived from compliance with the relevant policy.

Floor Area Ratio is the ratio of the floor area of all buildings on the site to the gross area of the site, or (if applicable) the area of the built-up surface (pads, roads, airstrips, etc.) to the area of the lease.

Floor Area means the total horizontal area of all of the floors of a building or structure, measured on the exterior perimeter.

Gross Area means the total site area, excluding bodies of water, to be included within a proposed development as indicated on a site plan.

Group Home is a use, which serves as a dwelling either for persons seeking rehabilitation or recovery from any physical, mental, emotional, or legal infirmity, or for the elderly.

Home Occupation is a commercial use conducted in a dwelling unit, by the occupants of that dwelling unit.

Industrial Use is a use involving manufacturing, processing, warehousing, storage, landfills and dumps, resource extraction, and any use which is not a residential, commercial, service/professional, or public facility; and accessory uses.

Intensity of Use means the density of residential developments, and the floor area ratio of nonresidential developments.

Lot means a distinct parcel of land for ownership and tax purposes unless otherwise specified, the lot will be deemed to be the site for a development. See site.

Master Plan is the program for development of a Resource Development District, and constitutes an amendment to the Comprehensive Plan and these Regulations. See Section 19.40.056.

Mobile Home is a use involving a detached, single-family dwelling designed for long-term human habitation and having complete living facilities, constructed and fabricated into a complete unit at a factory and capable of being transported to location of use on its own chassis and wheels, identified by a model number and serial number by its manufacturer, and designed primarily for placement on an impermanent foundation, and accessory uses.

Net Public Benefit means that the beneficial impacts of a Development outweigh its detrimental impacts, as set forth in the policies contained in Chapter 80. Impacts shall be measured on the Borough and its residents, with consideration given to residents of any Village Area of Influence.

Nonresidential Use means a commercial, service/professional, subsistence, resource extraction, recreational or industrial use, or a public facility.

Notice, Meeting. For variances, incentives, appeals and rezonings, notice shall consist of both of the following:

- (a) An agenda item in the posted agenda; and
- (b) Public notice

Notice, Public Public notice shall consist of: a minimum of five days prior to the date of the meeting:

- (a) Publication of the agenda item in a newspaper of general circulation in the Borough, and on Barrow radio;

- (b) Mailing a copy of the agenda item to the Developer, and to the Village Council(s) if the Development is in a Village Area of Influence; and
- (c) Delivering a copy of the agenda item to the Commission and the Mayor.

Plan means the North Slope Borough Comprehensive Plan, as amended from time to time.

Prohibited Use means a use not allowed in the zone.

Public Facility is a use involving a building or structure owned or used by a public body or utility company, or a dump or landfill, and accessory uses.

Recreational Use is a use involving activities or structures for recreational activities not for commercial or subsistence purposes, including but not limited to hunting, fishing, touring, sightseeing, boating, hiking, or athletics.

Regulations or Land Management Regulations means this Title 19, as amended from time to time.

Residential Use means a use involving the occupation of a building or structure for living, cooking, sleeping and associated recreation, and accessory uses.

Resource Extraction is a use involving the removal for commercial purposes of native vegetation, topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics.

Revocable Development Permit means a Development Permit issued pursuant to Sections 19.60.090 and 19.70.080.

Rooming House is a use in which three or more persons either individually or as families are housed or lodged, with or without meals. Oilfield or pipeline camps, base facilities and boarding houses are specifically included in the term.

Service/Professional Use is a use involving the provision of personal services, whether for profit or not, churches, and accessory uses.

Sign is an accessory structure involving any lettered or pictorial device designed to inform or attract attention. The surface area of a sign is the entire area used for the above purpose, including all of the elements of the matter displayed, but not including black masking, frames, or structural elements outside the advertising elements of the sign which bear no advertising matter.

Site The location of a development. The site is the lot in all cases except resource extraction and accessory uses, in which case the site is the surface area to be disturbed, plus a radius of 100 feet.

Special Habitat is either: Discrete geographical areas which support essential life functions of significant fish or wildlife species including breeding, nesting, pupping, calving, spawning, rearing, feeding and hauling out areas; or which provide unique population elements including very high concentrations or isolated occurrence; or which provide habitat essential to the maintenance of endangered species; or

Habitat which supports seasonal concentrations of a significant fish or wildlife species including winter, spring, summer or fall concentrations; supports highly productive fish or wildlife populations; provides elements necessary for special uses including migration corridors and feeding areas; or provides supporting habitat essential to the maintenance of critical habitat (i.e. stream banks).

Street. Any right-of-way, private or public, which provides for vehicular or pedestrian circulation, including snow machines and related vehicles commonly used in the Arctic.

Structure means anything which is placed, constructed or erected and located on or under the ground, or attached to something fixed to the ground, such as a floating structure anchored to submerged ground, regardless of size, purpose or temporality, including but not limited to:

- (a) A building;
- (b) A tower, sign, antenna, pole or similar structure;
- (c) Drilling or excavating apparatus, pipelines, pump stations and similar structures;
- (d) A foundation, or gravel pad

- (e) A fence;
- (f) A sign;
- (g) A street, road, ice road, parking area, pad or storage area;

Structure, Principal means a structure in which is conducted the main use of the lot on which the structure is situated.

Subdivision means the division of a tract or parcel of land into two or more lots or other divisions for the purpose, whether immediate or future, of sale, financing, lease, development or the transfer of any interest, including any resubdivision, and when appropriate to the context, relates to the process of subdividing or to the lands or areas subdivided. For the purposes of this title, "subdivision" does not include a division of land by the lease of subsurface right solely for the purpose of exploring such rights. The extraction of subsurface resources pursuant to each lease and related surface development, such as the construction of non-seasonal streets, utilities and structures necessarily incident to the extraction of subsurface resources shall be considered a "subdivision" subject to the provisions of this title.

Subsistence Use is a use and includes hunting, whaling, fishing, trapping camping, food gathering, and other traditional, and cultural activities performed in support of the basic beliefs and needs of the residents of the Borough.

Use-By-Right means a use, determined pursuant to the process for rezoning to the Resource Development District, as set forth in Section 19.40.052.

Use Permit is a permit issued for a use-by-right pursuant to Chapter 50.

Variance means the relaxation of the strict application of the terms of a Mandatory Policy. It does not apply to Best Efforts or Beneficial Policies, or use or intensity restrictions. See Sections 19.60.060.

Village means the communities of Point Hope, Point Lay, Wainwright, Atkasuk, Barrow, Nuiqsut, Anaktuvuk Pass, and Kaktovik.

Village Area of Influence means the area outside the City limits of a Village which is used in common by some or all of the residents thereof for subsistence, transportation, public facilities or other purposes, as indicated on Maps 11 A, B and C.

Village Council means the City Council of incorporated cities and the IRA Council of unincorporated villages.

Wetlands include areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

CHAPTER 30

ADMINISTRATIVE

PROVISIONS

19.30.010 Administrator. The Administrator is authorized and empowered to carry out all of the duties set forth for him in this Chapter, and shall have all other power and authority reasonably necessary or desirable to carry out those duties, including the power to delegate those duties to other employees of the Borough.

19.30.020 Planning Commission — Creation and Membership. There is hereby recreated the North Slope Borough Planning Commission (the "Commission") to consist of eight registered voters of the Borough. Members shall be appointed by the Mayor subject to confirmation by the Assembly for staggered terms of three years. Vacancies in the Commission shall be determined by the Mayor and shall be filled only for the unexpired portion of the term.

19.30.030 Commission Procedures. The Commission shall elect a chairman and such other officers as it deems advisable. It may establish such subcommittees as it deems necessary or desirable in the discharge of its powers and duties.

No action set forth in Section 19.30.040 below, shall be undertaken by the Commission except by the affirmative vote of a majority of members present and voting at a properly noticed public hearing.

The Commission shall meet on the last Friday of each month, and upon call of the Chairman.

The Commission shall keep a permanent record of its meetings and its actions.

The Commission shall make such other rules and regulations governing the conduct of its business as it deems necessary or desirable.

19.30.040 Commission - Powers and Duties

19.30.041 Comprehensive Plan and Land Management Regulations. The Commission may, from time to time, and shall at least once every five years, consider amendments to the Comprehensive Plan and Land Management Regulations, and if appropriate, recommended amendments to the Assembly for adoption. In this regard, it is the policy of the Borough to incorporate and integrate future environmental, sociocultural, capital improvements, and other studies into the Plan. The Borough intends to adopt the policy recommendations of these studies into the Plan

and these Regulations, to the end that there be a consistent body of policy to guide and direct public and private activities in the Borough.

The text of the Plan and the Regulations shall remain as consistent with each other as possible, and the policies set forth in each shall be substantially identical. Therefore, any proposed change should be examined for its effect on the goals, objectives and policies contained in the Plan, and any change in the Plan policies (i.e. addition, deletion or rewording of one or more policies) must automatically trigger an amendment to the comparable provisions of these Regulations.

19.30.042

Coastal Management Plan. The Commission shall consider and recommend adoption of a Coastal Management Plan for the Borough, and any future amendments thereto. The Coastal Management Plan, when adopted by all relevant parties, will become a component of the Comprehensive Plan, and the policies contained in the Coastal Management Plan shall be adopted as part of these Regulations and govern (together with all other applicable policies) development in the Coastal Area.

19.30.043 **Development Permits Involving Density Bonuses and Variances from Mandatory Policies.** The Commission shall hear and decide all permit applications involving a request for density bonus or a variance from a Mandatory Policy, and all appeals of permit decisions, and impose conditions and modifications thereon.

19.30.044 **Other Incentives and Rezonings.** The Commission shall make recommendations to the Borough Assembly on all permit applications involving incentives other than density bonuses and all proposed rezonings, indicating its opinion on the proposed Development's compliance with the Policies, and recommended conditions or modifications.

19.30.045 **Review of the Capital Improvements Program.** The Commission shall review annually the Capital Improvements Program of the Borough and submit its recommendations thereon to the Borough Assembly. The Mayor shall submit the Capital Improvements Program to the Commission in a reasonable period in advance of the fiscal year.

19.30.046 **Reports and Recommendations on Public Improvements.** The Commission shall review and report to the Borough Assembly regarding the location, design, construction, demolition or disposition of any public building, facility, collector or arterial street, park, greenbelt, playground or other public facility. The report and recommendation of

the Commission shall be based upon the Policies, the Plan, and the Capital Improvements Program.

19.30.047 **Subdivisions.** The Commission shall decide Preliminary Plats except for minor subdivisions. The decision shall be based on the Policies, the Plan, the Capital Improvements Program, and the Subdivision Regulations. The existing subdivision ordinance shall be a component of the Comprehensive Plan. The new draft subdivision ordinance shall, when adopted by the Borough Assembly, become a component of the Comprehensive Plan and all policies, standards and guidelines shall be adopted as part of these regulations.

19.30.048 **Rules.** The Commission may, by motion, establish its own rules of procedure and committees, meeting times, dates and places; media for public notice, development application and evidentiary forms, referral and review agencies and procedures, and any other matter reasonably necessary or desirable for the full and complete conduct of its duties, and those of the Administrator, pursuant to this Title 19 and any other provision of Borough or State law.

19.30.049 Statute. In addition, the Commission has all powers and duties of planning commissions of a Home Rule Borough as set forth in law.

19.30.050 Fees. The fee for a Use Permit shall be \$25.00. The fee for a Development Permit shall be \$100.00. The fee for a rezoning shall be \$1,000.00.

19.30.060 Enforcement.

19.30.061 Compliance. The developer of a use-by-right shall apply for and obtain a Use Permit prior to any initial site work, except surveying. The developer of all other Development shall apply for and obtain a Development Permit prior to any site work, except surveying.

19.30.062 Enforcement Orders. The Administrator may order:

- (a) The discontinuance of activity for any development which does not comply with the terms of this Title 19;
- (b) The removal or abatement of buildings or structures subject to the Revocable Development Permit provisions of Section 19.60.090; or
- (c) Any other action necessary to ensure compliance with all provisions of this Title 19, including, but not limited to, suspension of Use Permits and Development Permits.

Any such enforcement order shall be signed by the Administrator and served upon the developer or his agent or supervisor on the site (if known), or (if not known) posted in a conspicuous place on the site. The Administrator shall transmit a copy of the enforcement order to the Chairman of the Commission, and shall keep a copy thereof in permanent record.

Upon application of the developer, or upon its own motion, the Commission shall review the enforcement order at its next regular meeting. The review shall be limited to the presence of the violations stated in the enforcement order, and in such review the burden shall be upon the developer to prove that the violation does not exist or did not occur. The Commission, by resolution, may modify or rescind the enforcement order.

19.30.063 Violations, Penalties and Remedies.

- (a) **Civil Remedies.** Upon violation of any of the provisions of this Title 19, or any of the conditions placed upon any permit issued pursuant hereto, the Administrator, on behalf of the Borough, or any aggrieved citizen, may institute or cause to be instituted any appropriate civil action to prevent, enjoin, abate, estop, remove or punish such violation and to obtain monetary damages suffered

by such party. In addition to injunctive and compensatory relief, each violation shall be subject to a civil penalty not to exceed \$10,000.00 and attorney's fees as provided by law. An action to enjoin a violation of this Title 19 may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and the finding of an existing or threatened violation, the Court shall grant injunctive relief to restrain the violation.

- (b) **Criminal Remedies.** Every act where the maintenance of any condition prohibited by this Title 19, or by any condition placed upon any permit issued pursuant hereto, is unlawful, and the willful commission of such act or maintenance of such condition is a misdemeanor. Every person convicted of a violation of any provision of this Title 19 or of any condition placed upon any permit issued pursuant hereto shall be punished by a fine of not more than \$500.00, a jail term not to exceed 30 days, or both.

Each unlawful act or condition, and every day upon which such shall occur, shall constitute a separate violation of this section.

- (c) **Parties.** A proper party for any enforcement action under Subsections (a) and (b) hereof shall include, but shall not be limited to, the owner of the site

or any part thereof; any lessee or occupant of the site or any part thereof; and the developer, and its agents, contractors and subcontractors, and employees who participate in, assist, commit, or maintain a violation.

19.30.070 Interpretation. All questions of interpretation of the provisions of this Title 19 shall be treated as an appeal, either pursuant to the provisions of Section 19.50.040 or the provisions of 19.60.070, respectively.

CHAPTER 40

ZONING

DISTRICTS

19.40.010 **Map Adoption.** North Slope Borough Maps 1-10 and 11A, B and C, inclusive, are hereby adopted and made a part of this Title 19. The map attached hereto entitled, **Zoning Districts Map of the North Slope Borough, Alaska**, together with the Special Area Overlays thereto, is hereby adopted and made a part of this Title 19.

19.40.011 **Effect and Interpretation of the Zoning Districts Map.**
Map 1 - Zoning Districts - graphically depicts the geographic location of the zoning districts set forth in Sections 19.40.020, 19.40.030, 19.40.040 and 19.40.050. The map is binding and may be amended only by the process set forth in Sections 19.40.060 et seq. The map is not accurate because of scale, and therefore the following principles of interpretation apply:

- (a) The City limits of Barrow and each incorporated village are the boundaries of the applicable B and V districts, respectively;
- (b) The limits of the V district for Point Lay are the lots, tracts and right-of-way indicated on the H.V. Lounsbury and Associates Plot, which is adopted and incorporated herein by reference;
- (c) The limits of the seven designated unitization fields are the boundaries of the respective Resource Development Districts;
- (d) The Conservation District extends seaward to the full limit of the Borough's jurisdiction.

19.40.012 Other Maps — Effect and Interpretation. Comprehensive Plan Maps 2-10 and 11A, B and C, inclusive, indicate the probable existence of areas where various special policies apply. These maps are representational only, and in all instances, policies will be applied on an actual occurrence basis. The maps create a rebuttable presumption of the occurrence or nonoccurrence of the indicated element and, since this is their only legal effect, they may be amended merely by motion of the Commission.

19.40.020 Village (V) Districts.

19.40.021 Intent. The Village Districts govern the city limits of each incorporated Village, and the sites and immediate environs of unincorporated Villages in the Borough. The intent of the various Village Districts is to accomodate Development which:

- (a) Reinforces traditional values and lifestyles;
- (b) Is in accord with the Capital Improvements Program and Comprehensive Development Plan for the Village;
- (c) Is in accord with the desires of the residents of the Village.

19.40.022 Uses By Right. There are no uses-by-right in the Village Districts. (It should be noted that these Regulations only govern "Development", and uses and activities excluded from the definition of that term may take place without any form of regulation under this title).

19.40.023 Prohibited Uses. Industrial uses (except warehousing or storage of supplies or commercial goods to be used in the Village by the residents thereof) are prohibited in the Village Districts.

19.40.024 Conditional Uses. All other types of Development are conditional uses in the Village Districts, and are subject to a Development Permit pursuant to Chapter 60.

19.40.025 Special Policies. Special policies in the various Village Districts may be adopted as part of the Village Comprehensive Development Plan, if so, shall be incorporated into Chapter 80 by ordinance.

19.40.030 Barrow (B) District.

19.40.031 Intent. The Barrow District encompasses the city limits of the City of Barrow. The intent of the Barrow District is to accomodate a full range of urban development which:

- (a) Does not materially adversely impact existing and future subsistence activities by residents of the City;
- (b) Recognize and reinforces, through special policies, various existing neighborhoods in the City;
- (c) Is in accord with the Capital Improvements Program and Comprehensive Development Plan for the City; and
- (d) Is in accord with the desires of the residents of the City.

19.40.032 Uses-by-Right. There are no uses-by-right in the Barrow District. (It should be noted that these Regulations only govern "Development", and uses and activities excluded from the definition of that term may take place without any form of regulation under this title).

19.40.033 Prohibited Uses. Resource extraction is prohibited in the Barrow District.

19.40.034 Conditional Uses. All other types of Development are conditional uses in the Barrow District, and are subject to a Development Permit pursuant to Chapter 60.

19.40.035 Special Policies. Special policies governing the Barrow District may be adopted as part of the Barrow Comprehensive Development Plan and, if so, shall be incorporated into Chapter 80 by ordinance.

19.40.040 Conservation (C) District.

19.40.041 Intent. The Conservation District encompasses the entire area of the Borough, except the Villages, the City of Barrow, and areas specifically zoned for Resource Development pursuant to Sections 19.40.060 et seq., below. The District is intended to conserve the natural ecosystem for all the various species upon which Borough residents depend for subsistence. Subject to this overall intent, it can accommodate resource exploration and development on a limited scale, but major resource development projects will find it advantageous to apply for rezoning to the Resource Development District.

19.40.042 Uses-by-Right. There are no uses-by-right in the Conservation District. (It should be noted that these Regulations only govern "Development", and uses and activities excluded from the definition of that term may take place without any form of regulation under this title).

19.40.043 Prohibited Uses. There are no prohibited uses in the Conservation District.

19.40.044 Conditional Uses. All types of Development are conditional uses in the Conservation District, and are subject to a Development Permit pursuant to Chapter 60.

19.40.050 Resource Development (RD) District.

19.40.051 Intent. The intent of the Resource Development District is to accomodate large scale resource extraction and related activities which:

- (a) Does not permanently and seriously impair the capacity of the surrounding ecosystem to support the species upon which Borough residents depend for the major portion of their subsistence;
- (b) Is planned, phased and developed as a unit, or series of interrelated units, (the "Master Plan"), with provisions made for all necessary public and private facilities;
- (c) Meets the various special policies set forth for all Resource Development Districts, as well as those imposed on each individual Resource Development District at the time of designation.

The Resource Development District is designed and intended to handle the cumulative impacts of large scale development, and to offer developers quick, inexpensive, predictable permit approvals.

- 19.40.052 Uses-by-Right.** All Development indicated on the approved Master Plan, and minor alterations thereto, is a use-by-right in the Resource Development District, subject to any conditions on the Master Plan imposed pursuant to Chapter 70.
- 19.040.053 Prohibited Uses.** No type of Development is prohibited in the Resource Development District per se, although certain uses and activities may be restricted or prohibited by the Master Plan or by conditions imposed on it at the time of adoption.
- 19.040.054 Conditional Uses.** All uses not indicated on the approved Master Plan as uses-by-right or prohibited uses, and major alterations to uses-by-right, are conditional uses in the Resource Development District.
- 19.040.055 Application.** An application for a rezoning to the Resource Development District shall be accompanied by:
- (a) Maps, at a scale to be determined by the Administrator, indicating the site requested to be rezoned, the occurrence of all Special Areas on and within two miles of the site, all existing Development on the site and within two miles of the site, and all proposed Development, as defined in these Regulations, on the site to be governed by the proposed district;
 - (b) Engineering drawings and analyses of all proposed public or quasi-public facilities, and architectural renderings of all other proposed structures;

- (c) A phasing program for development of the proposed uses-by-right;
- (d) An analysis of the cumulative impact of the proposed Development in the proposed district pursuant to each applicable Policy in Chapter 80.
- (e) Requested policy changes (modification in wording or application of policies, additions of new policies, or suspension of existing applicable policies) for the proposed district, and an analysis of the cumulative impact of the proposed Development in the proposed district pursuant to the policies if changed;
- (f) Incentives, if any, requested pursuant to Chapter 90.
- (g) A Preliminary Plat;
- (h) The unitization Plan of Development if applicable; and
- (i) Such other information as the Commission by rule may prescribe.

19.040.056 Master Plan. Adoption of a Resource Development District shall be accomplished pursuant to the procedures set forth in Sections 19.40-020 et seq. for rezonings.

The ordinance shall contain a Master Plan consisting of:

- (a) A map or maps indicating all Development activity which will be a uses-by-right and conditional uses, identified as such;
- (b) Prohibited uses;

- (c) Special policies applicable in the District, and relevant supporting information if available;
- (d) Conditions on approval of the District, or on approval of any Development in it, pursuant to Chapter 70;
- (e) Incentives, if any, pursuant to Chapter 90; and
- (f) The approved final Plat; and
- (g) Such other material as the Commission and Assembly deem advisable.

19.40.057 Prudhoe Bay, Milne Point and Kuparuk River. The Prudhoe Bay, Milne Point and Kuparuk River unit fields are hereby zoned to the Resource Development District, and the relevant Plan of Development and Operations for the unitized fields as approved by the Alaska Department of Natural Resources on the effective date of this Ordinance, are hereby adopted as the Master Plan for each of those Districts.

19.40.058 Gwydyr Bay, Duck Island, West Mikkelsen and Point Thompson. The Gwydyr Bay, Duck Island, West Mikkelsen and Point Thompson unit fields are hereby zoned to the Resource Development District. No Master Plan is approved for any part of these districts, and until such time as a Master Plan is approved for all or part thereof pursuant to Sections 19.40.060 et. seq., there are no uses-by-right or prohibited uses in these districts, and all Development is subject to a Development Permit pursuant

to Chapter 60.

19.40.060 Rezoning.

19.40.061 Initiation. A rezoning may be initiated by the Administrator, the Commission, a Village Council, the Borough Assembly, or the owner or developer of the land. A rezoning from the Conservation District (but not the Resource Development District) to the Village or Barrow Districts, as applicable, will take place automatically upon official notification to the Borough that the boundaries of a City have been altered.

19.40.062 Restrictions on Rezoning. Rezoning covering less than ten acres may not be considered, unless the rezoning constitutes the expansion of an existing contiguous zone, or unless it comprises the alteration of City boundaries mentioned in Subsection 19.40.021, above. Rezoning which are substantially the same as a proposed amendment which was rejected within the previous three months may not be considered.

19.40.063 Procedure. A rezoning shall follow the procedure set forth in Sections 19.60.060 et seq. for variances, except that the Commission's decision shall merely constitute a recommendation to the Borough Assembly. As soon as possible after the Commission recommendation, the Borough Assembly shall post public notice and hold a public hearing on the proposed rezoning. At such hearing, the recommendation of the Commission shall be rebuttably

presumed to be correct, which presumption may be overcome with a preponderance of the evidence.

A rezoning shall be adopted by ordinance, and any conditions thereon shall be contained in the ordinance. Upon adoption of any rezoning, the Administrator shall cause the official zoning map to be changed, to reflect the operation of the ordinance.

CHAPTER 50

USE PERMITS FOR USES-BY-RIGHT IN RESOURCE DEVELOPMENT DISTRICTS

19.50.010 Permit Required. All uses-by-right are required to obtain a Use Permit pursuant to this Chapter 50 prior to commencement of site work.

19.50.020 Burden of Proof. In all applications for a Use Permit the burden shall be on the Administrator to prove by a preponderance of the evidence that the Development does not implement a policy.

19.50.030 Procedure - Administrator Decision.

19.50.031 Submission. The Developer shall submit one copy of a completed and properly executed Use Permit application to the Administrator.

19.50.032 Staff Procedure. The Administrator will:

- (a) On the same business day determine whether: (1) the Development contains no use other than uses-by-right; (2) whether the submission requirements are met; and (3) whether the

application is void of any major alterations. If not, he shall return the application to the Developer.

- (b) If the application for a use-by-right is complete and contains no major alterations, he shall determine, within three business days, whether the Development meets the requirements of the adopted Master Plan. He shall also indicate in the appropriate place on the application form any Master Plan conditions pursuant to Chapter 70 placed on his approval.
- (c) **Major Alterations.** The Administrator does not have the authority to process Use Permit applications for Development which contains a major alteration from the approved Master Plan. Such Development is processed as a conditional use pursuant to Chapter 60.

19.50.033 Decision. If the Development meets the requirements of the adopted Master Plan, the Administrator shall issue a Use Permit and the Master Plan conditions shall be part of the approved permit. If the Development does not meet the requirements, the Administrator shall deny the permit and note his reasons. The Administrator shall issue his decision within five business days of submission of the application.

The Administrator shall mail a copy of the application and the decision to the Developer and the Chairman of the Commission, and shall keep a permanent record thereof.

19.50.040 Appeals. An appeal to the Commission of the Administrator's decision on any Use Permit may be undertaken in the manner set forth in Sections 19.60.070 et seq.

CHAPTER 60

DEVELOPMENT PERMITS FOR CONDITIONAL USES IN ALL DISTRICTS

19.60.010 **Permit Required.** All conditional uses, and uses-by-right which contain major alterations from the approved Master Plan, are required to obtain a Development Permit prior to commencement of site work. Permits are decided by the Administrator unless a variance or a density bonus is requested by the Developer, in which case they are decided by the Commission.

19.60.020 **Burden of Proof.** In all applications for a Development Permit, the burden of proof shall be as follows:

- (a) **Permit Decision.** Except as noted below, the burden shall be on the Developer to prove, by a preponderance of the evidence, that the standards set forth in Section 19.60.030 are met, or that a variance should be granted from a Mandatory Policy.

- (b) **Appeals.** For the purposes of appeals from the Administrators decision to the Commission or from the Commission to the Assembly, the initial decision is presumed to be correct, but that presumption may be rebutted by a preponderance of the evidence.
- (c) **Village Districts and Village Areas of Influence.** Within the Village Districts and Village Areas of Influence, consideration will be given to the opinions of residents of the Village on all matters in which they have a special expertise.
- (d) **Special Areas Maps.** The Special Areas Maps are presumed correct, which presumption may be rebutted by a preponderance of the evidence.
- (e) **Referral Agencies.** Consideration will be given to the comments and recommendations of referral agencies, including regulations and lease stipulations by State and Federal agencies, if any.

19.60.030 **Decision-Making Standards.** The Borough shall issue a Development permit if it finds that all four of the standards set forth below are met by the Development, and shall not issue the permit otherwise:

19.60.031 **Mandatory Policies.** The Development implements each relevant Policy, or the grounds for granting a variance are met where a variance is requested;

19.60.032 Best Efforts and Minimization Policies. The Development represents the best effort possible to implement the Best Efforts and Minimization Policies;

19.60.033 Beneficial Policies. On the basis of its performance on the Policies taken as a whole, the Development represents a net public benefit; and

19.60.034 Conditions. The conditions imposed will be sufficient to guarantee compliance with the relevant policies.

Prior to denying, or placing a condition more restrictive than that placed by the State government upon a permit for a Use of State Concern as defined in Title 46, Alaska Statutes, or a Resource Development District Master Plan, the Administrator shall specifically:

- (a) consult with and consider the views of appropriate federal, state and regional agencies;
- (b) consider the availability of reasonable alternative sites in an adjacent location the use of which is authorized by the Administrator; and
- (c) base his decision on an analysis showing that the proposed Development is incompatible with the proposed site on the basis of the policies set forth in Chapter 80.

19.60.040 Application.

19.60.041 Pre-Application Conference. Prior to submission of an application, the Developer shall meet with or telephone the Administrator for the purpose of discussing the site, the proposed Development, and the Development Permit procedure. The Administrator shall discuss these matters with the Developer, with special attention to policies which may pose problems or constraints on the site or the proposed Development activity, (especially policies for which the Development may need a variance), and Beneficial Policies which may create opportunities for the Developer.

19.60.042 Submission. The Developer shall submit a completed and properly executed Development Permit application in the number of copies established by rule of the Commission. The application shall contain such information as the Commission, by rule, may prescribe, and shall be accompanied by maps, architectural drawings, and engineering plans as prescribed by rule of the Commission, and a completed evidentiary form for each relevant policy. To the maximum extent possible without violating the intent of the policies set forth in Chapter 80, submission requirements shall conform to the submission requirements of State and/or Federal agencies.

19.60.050 Procedure and Decision - Normal Application. Within three days of submission, the Administrator shall:

- (a) Determine whether the application is complete and the submission requirements of Section 19.60.042 are met. If not, the Administrator shall return the application to the Developer. If so, the Administrator shall;
- (b) Determine whether a variance or an incentive is requested. If so, he shall follow the procedure set forth in Sections 19.060.060 et seq. If not, he shall then:

19.60.051 Cause public notice to be made and transmit copies of the application (or the relevant portions thereof) to designated referral agencies, including Villages for Development within a Village Area of Influence. Such referral agencies shall be indicated by rule of the Commission and may vary depending on the location of the site and the type of use proposed. Referral agencies and the public shall have fifteen days to respond, or longer if allowed by rule of the Commission.

19.60.052 Within twenty days of his determination that the requirements of Section 19.60.042 are met, or longer if the response time for referral agencies and the public has been extended, the Administrator shall determine:

- (a) Whether the Development meets the requirements of each Mandatory Policy. He shall indicate in the appropriate place on the evidentiary form: 1) whether the policy is applicable to the Development; and 2) (if so) whether the Development implements the policy or does not implement the policy; and 3) any conditions or

requirements for guarantees pursuant to Chapter 70;

(b) The Development's performance on each Best Efforts, Minimization and Beneficial Policy. He shall indicate on the appropriate place on the evidentiary form: 1) whether he agrees or disagrees with the Developer's statement of performance for the policy; and 2) (if he disagrees) his reasons for disagreement and; 3) any conditions pursuant to Chapter 70.

(c) His decision on the permit application, pursuant to the standards set forth in Section 19.60.030, with the conditions set forth on the evidentiary forms.

19.60.053 On or before the close of business on the last available day, he shall transmit his decision to the Developer and to the Commission.

19.60.060 **Variance From A Mandatory Policy.** For applications involving a violation of a Mandatory Policy, the Development Permit application shall be denied unless the Developer applies for, and obtains, a variance.

19.60.061 **Grounds for Variances.** No variances may be granted from the terms of a Best Efforts, Minimization or Beneficial Policy. Variances from the terms of a Mandatory Policy may be granted by the Commission if, and only if, the Developer shows by a preponderance of evidence that both of the following requirements have been met:

- (a) The development implements the spirit, but not the letter, of the Mandatory Policy; and
- (b) Enforcement of the strict terms of the Mandatory Policy would either:
 - * Work an undue hardship on the developer and/or the future occupants or users of the Development, without a concomitant public purpose; or
 - * Require a site design or building design which is completely out of character with the surroundings, and which is not justified by a concomitant public benefit.

19.60.062

Administrator's Recommendation. Within three days of submission the Administrator shall determine whether the application is complete and the submission requirements of Section 19.60.042 are met. If not, the Administrator shall return the application to the Developer. If so, the Administrator shall as soon as reasonably possible:

- (a) Schedule the application for a public hearing, notify the Developer of the date of the hearing, and cause notice of the meeting to be made;
- (b) Transmit copies of the application (or the relevant portions thereof) to designated referral agencies, including Villages for Development within a Village Area of Influence. Such referral agencies shall be indicated by rule of the Commission and may vary depending on the location of the site and the type of use proposed. Referral agencies and the public

have fifteen days to respond, or longer if allowed by rule of the Commission.

(c) Within twenty days of his determination that the requirements of Section 19.60.042 are met, or longer if the response time for referral agencies and the public has been extended, the Administrator shall determine:

- * Whether the development meets the requirements of each relevant Mandatory Policy. He shall indicate in the appropriate place on the evidentiary form: 1) whether the policy is applicable to the Development; and 2) (if so) whether the Development implements the policy or does not implement the policy; and 3) any conditions or requirements for guarantees pursuant to Chapter 70; or 4) (if the Development does not implement the policy) whether he recommends that a variance be granted therefrom together with his reasons.
- * The Development's performance on each Best Efforts, Minimization and Beneficial Policy. He shall indicate on the appropriate place on the evidentiary form: 1) whether he agrees or disagrees with the Developer's statement of performance for the policy; and 2) (if he disagrees) his reasons for disagreement and; 3) any conditions pursuant to Chapter 70.

* His recommendation for action by the Commission, pursuant to Section 19.60.030.

(d) On or before the close of business on the last available day he shall transmit his recommendations to the Developer and to the Commission.

19.60.063 Commission's Action and Decision. The Commission shall hold a public hearing on the Development Permit application. If the proposed Development is located in a Village District or a Village Area of Influence, it may hold the hearing in the affected Village (or Villages) and may hold another hearing in Barrow if such is deemed necessary or desirable. The Commission shall adopt the Administrator's recommendation on each policy unless it finds, by a preponderance of the evidence, that the Administrator's recommendation was in error, and states its reasoning for such finding with particularity. In addition, for good cause, the Commission in its discretion may alter the conditions on approval recommended by the Administrator.

If the Commission finds that the Development meets all the standards of Section 19.60.030, it shall issue a Development Permit and the conditions and requirements shall be part of the approved permit. If the Development does not meet the standards of Section 19.60.030, the Commission shall deny the permit and note with particularity its reasons for the decision.

The Administrator shall then transmit a copy of the decision to the Developer and the Borough Assembly, and shall keep a permanent record thereof.

19.60.070 Appeals.

19.60.071 Appeals to the Commission.

Any aggrieved person, including the Developer, may appeal the Administrator's decision on any Use or Development Permit by serving written notice to the secretary of the Commission and the Developer prior to the Commission's next regularly scheduled meeting. The notice shall state the policy or policies on which the appellant disagrees with the Administrator and the reasons why the appellant believes the Administrator is incorrect. The Commission may, but need not, hold a hearing on the appeal. The issues before the Commission shall be limited to those raised on appeal, and the evidence shall be limited to a review of the record, although further argument may be allowed. The burden of proof shall be on the appellant. The Commission may affirm or reverse the Administrator's decision, return the matter to the Administrator for further evidence, or change the conditions on approval.

19.60.072 Appeal to the Assembly.

An appeal to the Assembly of a Commission decision may be made in the same manner as set forth in Section 19.60.071 for appeals to the Commission. The Assembly's decision shall be final.

19.60.080 **Duration of Permits.** Development Permits are valid for the duration of the occupancy and existence of the Development and the Developer's compliance with the terms and conditions thereof, except that they expire automatically upon the earliest of any of the following:

- (a) Twelve months after approval if no actual construction has commenced; or
- (b) The expiration date of a Revocable Development Permit.

19.60.090 **Revocable Development Permits.**

19.60.091 **Issuance.** Revocable Development Permits may be issued for any Development except uses-by-right, pursuant to Section 19.70.080. Revocable Development Permits are issued pursuant to the same standards and procedures as set forth for Development Permits in this Chapter 60.

19.60.092 **Effect.** On or before the expiration date of a Revocable Development Permit, the Developer shall cease the use or occupancy subject thereto. The Developer may apply for a new Development Permit or Revocable Development Permit prior to expiration but, unless specifically allowed by the Commission in advance, the pendency of such application shall not extend the expiration date.

CHAPTER 70

CONDITIONS ON APPROVAL

The Administrator may place conditions upon issuance of a permit which he deems necessary or desirable to ensure that a policy will be implemented in the manner indicated in the application. To the maximum extent possible without violating the intent of the policies set forth in Chapter 80, the Administrator shall conform the conditions to the conditions, restrictions and stipulations contained in State or Federal permits, leases or similar instruments. The conditions may consist of one or more of the following:

19.70.010 Development Schedule. The conditions may place a reasonable time limit on construction activity associated with the Development, or any portion thereof, to prevent speculation in permits, to enable new applications or revisions to come forward for unviable projects, to minimize construction-related disruption to ensure that Development is not used or occupied prior to substantial completion of required public or quasi-public facilities, or to implement other policies.

- 19.70.020** **Use.** The conditions may restrict the future use of the Development to that indicated in the application and uses of similar impact or effect on the policies.
- 19.70.030** **Common Maintenance Agreement.** The conditions may require that if an agreement among Developers or users, or a homeowner's association or special district is necessary or desirable to hold or maintain common property, that it be created prior to occupancy.
- 19.70.040** **Dedications.** The conditions may require conveyances of title or easements to the public, to public utilities or to a common entity. They may require construction to public standards, and then dedication, of public facilities to serve the Development and the public.
- 19.70.050** **Construction Guarantees.** The conditions may require the posting of a bond or other surety or collateral (which may provide for partial releases), to ensure that all construction features required by a policy are in fact constructed as represented and approved.
- 19.70.060** **Commitment Letter.** The conditions may require a letter from a utility company or public agency legally committing it to serve the Development.
- 19.70.070** **Covenants.** The conditions may require the recording of covenants on the site to ensure continued implementation of a policy by future owners or occupants.

19.70.080 **Revocation of Permits.** The conditions may provide that the permit shall be automatically revoked upon the occurrence of a certain event or events, or at a date certain. In such case, it shall be the sole responsibility of the owner to apply for a new permit. Any condition mandating the revocation of a permit shall state with particularity, the grounds therefor and the policy or policies to be reviewed upon reissuance. Thereafter, reissuance shall be determined solely on the issue of the Development's compliance with the specified policy or policies.

CHAPTER 80

POLICIES

19.80.010 Introduction The policies contained in this Chapter constitute the rules by which a Development other than a use-by-right is reviewed and approved or denied. They are reformatted from the Development Policies in the Comprehensive Plan, and the citations are to the relevant Development Policy in the Plan.

19.80.020 Mandatory Policies All Development must comply with each of the policies set out in Section 19.80.021 and 19.80.025 unless:

- (a) The Administrator determines that the policy is not applicable to the Development; or
- (b) The Commission grants a variance from the policy pursuant to Sections 19.60.060 et seq.

19.80.021 Prohibited Development The following Development is prohibited:

- (a) Development which will likely result in depleting a subsistence resource, as set forth in Section 3.5.1 of the Plan, below the subsistence needs of local residents of the Borough. (3-1.1, 5-1.2)
- (b) Drilling and other high-impact activities within the area of bowhead whale migration routes during the migration season. (3-3.1)
- (c) Development that does not meet the standards of the Borough Coastal Management Program, when adopted, for management of Sensitive Areas such as estuaries, wetlands, tideflats, beaches, rivers, streams and lakes, permafrost landscape, and high energy ice impacted shorelines. (3-3.3)
- (d) Deposition of toxic materials and untreated solid waste on the barrier islands, sea ice, artificial islands, at sea, in any wetlands, rivers or lakes which support or are capable of supporting significant populations of fish and wildlife. (3-7.1, 5-7.2)

- (e) Development which precludes subsistence user access to subsistence resource. (3-1.4)
- (f) Development which significantly disturbs cultural or historic sites listed on the National Register of Historic Places or eligible for inclusion on the National Register. (4-1).
- (g) Development which significantly interferes with traditional activities at cultural or historic sites identified in this Plan. (4-1).
- (h) Surface disturbance of newly discovered historic sites prior to archaeological investigation. (4-2)
- (i) Development which grossly violates guidelines on the rate or amount of growth adopted by a Village as a part of its Comprehensive Development Plan. (4-3)
- (j) Mining during portions of the year when there would likely be substantial harm to the environment, such as the excessive silting of rivers and streams. (5-5.5)

- (k) Any development located outside the Prudhoe Bay Base Area, Pump Station 3, or the Chandalar Base Area, and tourist and recreational facilities located anywhere, within the Haul Road Corridor Special Area. (7-3)

19.80.025 Required Features The following policies are required for applicable development:

- (a) Vehicles, vessels, and aircraft usage in Special Habitat Areas is required to be confined to corridors designated in the permit. (3-2.3)
- (b) Offshore exploration, development and production drilling outside the landfast ice area (Plan Map 9, CMP Map I-2 and Plan Section 5.5.3.5 Zone AO) is required to be sited on a barrier island or artificial islands. A variance from this policy to allow offshore platforms will be granted only if the requirements of Sections 19.60.060 et seq. are met and, in addition, the Developer demonstrates the actual capability of the structure to withstand all natural forces, specifically including ice. (3-5.3)
- (c) Development with water or airborne emissions is required to comply with all State Department of Environmental requirements. (5-5.2)

- (d) Industrial and commercial development is required to be served by solid waste disposal facilities which meet state and federal regulations. (5-7.1)
- (e) Development not on a sewer system is required to impound and process effluent to state and federal quality standards. (5-7.3)
- (f) Marine tankers to be utilized in offshore areas must be specially designed to withstand environmental hazards specifically including sea ice. (3-6.8).
- (g) Residential development associated with industrial and resource extraction development must be removed when the industrial or extractive use is completed unless pursuant to Plan policies removal is more harmful than non-removal. (5-3.2, 3-8.3)
- (h) Development in a Village is required to be consistent with the relevant Village Comprehensive Development Plan, when adopted. (3-8.1)

19.080.030 Best Efforts Policies All Development must comply with each of the policies set out in Sections 19.80.031 and 19.80.032 unless:

- (a) The Administrator determines that the policy is not applicable to the Development; or
- (b) The Administrator determines that the Developer has used his best efforts to comply with the policy and that there is no feasible and prudent alternative to the proposed compliance:

19.80.031 Prohibited Development

- (a) Development that will likely result in significantly decreased productivity of subsistence resources or their ecosystems. (3-1.2)
- (b) Development which restricts subsistence user access to a subsistence resource (3-1.3, 3-7.4)
- (c) Development within Special Habitat Areas identified in Section 10.4.1 of this Plan. (3-2.1)
- (d) Resource extraction uses within a Special Habitat Area. (3-2.2)
- (e) Development in Sensitive Areas such as estuaries, tideflats, beaches, rivers, streams and lakes, and high energy ice impacted shorelines. (3-3.2)

- (f) Facility siting, drilling or other high-impact activities at Barrier Islands that are intensively used by Beluga whales as feeding and resting areas as identified on CMP Map II-3. (3-3.4)
- (g) Development on a shoreline that does not require a shoreline location, landfills, fuel or toxic material storage areas and dumps on or near a shoreline. (3-4.2, 5-2.3)
- (h) Public highway development, except for village roads and streets and highways indicated in the Capital Improvements Program. (3-6.3)
- (i) Transportation development including pipelines which significantly obstructs wildlife migration. (3-6.5)
- (j) Development to accomodate petroleum transportation via marine tankers. (3-6.6)
- (k) Duplicative transportation corridors from resource extraction sites to tidewater or railroads. (3-6.7)
- (l) Development associated with purely recreational uses of land and wildlife habitat, such as commercial hunting and fishing camps or lodges and recreational second home subdivisions. (3-9.1, 6-2.2.1)

- (m) Development of tourist facilities except as provided for pursuant to a Village Comprehensive Plan. (3-9.2, 6-2.2.2)
- (n) Development which significantly violates guidelines on the rate or amount of growth adopted by a Village and adopted as a part of its Comprehensive Development Plan. (4-3)
- (o) Development which substantially pollutes the natural environment (including water, air, noise and vibration). (5-1.1)
- (p) Development in flood plains and other geologic hazard areas. (5-4.1)
- (q) Siting, design, construction, and maintenance of transportation and utility facilities (including ice roads) are required to minimize alteration of shorelines, water courses, wetlands, and tidal marshes and significant disturbance to special habitat; and to avoid critical fish migration periods. (7-5)
- (r) Disturbance of subsistence resource habitat, or migration routes during migration periods, by transportation modes or development. (7-4)

- (s) Resource development which uses suppliers or subcontractors from outside the Borough for work which can be accomplished competitively by local private businesses or regional or village corporations. (8-2.2)
- (t) Resource development which will not significantly employ local Borough residents, unless residents of the local village expresses no interest in the work. (8-1.2)

19.80.032 Required Features The following features are required of applicable Development:

- (a) Industrial and commercial development and resource extraction development are required to be located, designed, and maintained in a manner that prevents significant adverse impacts upon subsistence resources and their habitat, including water circulation and drainage patterns and coastal processes. (3-4.3, 3-5.1)
- (b) Resource extraction development for administration, operations, residence and other uses not absolutely required in the field is required to be located in a designated service base which is sited, designed, constructed and

maintained to be as compact as possible; and to share facilities to the maximum extent possible. (5-5.1)

(c) Development is required to maintain the natural permafrost insulation quality of existing soil and vegetation. (5-4.3)

(d) New subdivisions or other residential development near the shoreline or in Special Habitat Areas are required to provide adequate water and sewer service to prevent damage to the environment and habitat of subsistence species. (5-3.1, 3-8.2)

(e) Mining on beaches or offshore is prohibited unless no alternatives exist for extraction of the resource, and in those circumstances substantial alteration of shoreline dynamics is prohibited. (5-5.6)

(f) Independent verification by a Borough approved agent is required for a developer's environmental assessment and design and engineering criteria for offshore development outside the landfast ice zone. [Plan Map 9, CMP Map I-2 and Section 5.5.3.5 Zone AO of this Plan] (5-4.5)

- (g) Transportation facilities for resource development and extraction are required to be consolidated to the maximum extent possible. (7-1)

19.80.040 Minimization of Negative Impacts Applicable development is required to minimize its impact on the following features:

- (a) Airports and helicopter pads are required to be sited, designed, constructed and operated to minimize their impact upon significant wildfowl migration routes, breeding grounds and nesting areas. (7-2, 3-6.1)
- (b) Siting, design, construction and maintenance of transportation and utility facilities (including ice roads) are required to minimize alteration of shorelines, water courses, wetlands, and tidal marshes and significant disturbance to special habitat; and to avoid critical fish migration periods. (3-6.2, 3-4.1, 3-7.2, 5-2.2, 5-6.2, 5-7.4)
- (c) When linear structures such as roads and pipelines are located in areas used as corridors by migratory species of wildlife, a means of crossing shall be included for those migratory species. Pipelines shall be designed, using the best available information, to minimize disruptions of migratory patterns and other major movements of wildlife. Above ground pipelines shall be elevated a minimum of