

Title 9
PLANNING POWERS

Chapters:

9.01 Area of Service

9.02 Responsibility of the Borough

9.03 Planning Commission

9.04

9.05 *(repealed by Ordinance 12-02 2/21/2012)*

9.06 Subdivision Regulations

9.07 Development Permits

9.08 Large Project Permits

9.09 Flood Hazard Management and Flood Insurance

Chapter 9.01 AREA OF SERVICE

Sections:

9.01.010 Area of Service

9.01.010 Area of Service

The Lake and Peninsula Borough shall provide for area wide Planning, Platting and Land Use Regulation consistent with Alaska Statutes and the Home Rule Charter and Peninsula Borough.

Sections:

9.01.020 Comprehensive Plan

(a) The comprehensive plan developed by the Borough Planning Commission dated September 17, 2012 is adopted as the Lake and Peninsula Borough Comprehensive Plan.

(b) The Comprehensive Plan shall be made available to the public through the Borough web site, and copies provided to the general public upon request at the Borough's cost.

Section 9.01.020 added by Ordinance 09-06 on October 20, 2009; Amended by Ordinance 12-10 10/16/2012

Chapter 9.02 RESPONSIBILITY OF THE BOROUGH

Sections:

9.02.010 Responsibility of the Borough

9.02.010 Responsibility of the Borough

- A. The Borough shall provide for area wide Planning, Platting and Land Use Regulation.
- B. The Borough Assembly shall sit as the Planning Commission until such time as one is appointed.

Chapter 9.03 PLANNING COMMISSION

Sections:

- 9.03.010 Planning Commission Established**
- 9.03.020 Terms of Office**
- 9.03.030 Qualifications of Commission Members**
- 9.03.040 Compensation of Commission Members**
- 9.03.050 Appointment and Duties of Officers**
- 9.03.060 Removal and Vacancies**
- 9.03.070 Meetings**
- 9.03.080 Quorum**
- 9.03.090 Conflict of Interest - Voting**
- 9.03.100 Public Meetings - Minutes**
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- 9.03.120 Order of Business**
- 9.03.130 Formal Acts By Resolution**
- 9.03.140 Powers of Planning Commission**
- 9.03.150 Duties and Responsibilities**

Section 9.03.010 Planning Commission Established *(Ordinance 92-21, 8/18/92)*

A Borough Planning Commission is established consisting of seven (7) members. The Planning Commission shall be appointed by the Mayor and confirmed by the Borough Assembly.

Section 9.03.020 Terms of Office

Commission members shall serve at the pleasure of the Borough Assembly. Members of the Planning Commission shall be appointed for a term of three years except those first appointed, who shall determine their respective terms of office by lot so that three shall be appointed for a term of three years, two for two years and two for one year.

Section 9.03.030 Qualifications of Commission Members

A Borough resident is eligible to be a Planning Commissioner if he/she resides in the Borough immediately prior to appointment and during his/her term of office and is a qualified voter of the Borough.

Section 9.03.040 Compensation of Commission Members

Planning Commission members may be compensated at a per meeting rate set by resolution of the Borough Assembly. Members shall receive per diem and reimbursement of travel expenses associated with attendance at meetings and performance of other official duties. *Amended by Ordinance 05-02, 10/18/05. Rate set by Resolution 05-18, 10/18/05.*

Section 9.03.050 Appointment and Duties of Officers

At their first regular meeting following appointment, the members of the Planning Commission shall meet and organize by electing one of their members chairperson and another as vice-chairperson to serve for a term of one year and until the successor of each takes office.

- A. Chairperson: The Chairperson shall preside at all meetings of the Planning Commission. He/she shall appoint all committees and shall perform the duties necessary or incidental to the office.
- B. Vice-Chairperson: The vice-chairperson shall act as chairperson in the absence of the chairperson or in case of the inability of the chairperson to act.

Section 9.03.060 Removal and Vacancies

A member of the Planning Commission may be removed by a majority vote of the Borough Assembly or by the Mayor with the approval of the Assembly. A vacancy is filled in the same manner as the original appointment. A person appointed to fill a vacancy serves for the remainder of the unexpired term.

- A. A vacancy shall be declared when a member:
 - 1. Fails to qualify and take his/her office within thirty days after his/her confirmation by the Assembly.
 - 2. Departs from the Borough with the intent to remain away for a period of ninety or more days or is physically absent from the Borough for a period of ninety or more days.
 - 3. Submits his/her resignation and the resignation is accepted by the Mayor.
 - 4. Is physically or mentally unable to attend Planning Commission meetings for a period of more than ninety days.
 - 5. Misses three or more consecutive regular meetings, unless excused by the Planning Commission.
 - 6. Is convicted of a felony or of an offense involving a violation of his/her oath of office.

Section 9.03.070 Meetings

The Planning Commission shall establish a regular place and time of meeting and shall hold at least one regular meeting each month. Special meetings may be called by the presiding officer or at the request of three members if a majority of the Planning Commission is given at least 24 hours oral or written notice and reasonable efforts are made to notify each member as to time, place and subject of the meeting. All meetings shall be open to the public. Closed or executive sessions shall be held only in compliance with State law. Notice of regular meetings shall be posted at least ten (10) days prior to every meeting.

Section 9.03.080 Quorum

Four members shall constitute a quorum. Any act of the Planning Commission requires a quorum and the affirmative vote of a majority of members present and voting, which shall, in no event, be fewer than two affirmative votes. Every member who is present when a question is put, where he/she is not disqualified due to a conflict of interest shall vote. Members who are present but are excused from voting shall be counted for purposes of a quorum.

Section 9.03.090 Conflict of Interest - Voting

The Planning Commission shall follow the provisions of Section 2.20.090 regarding conflict of interest voting.

Section 9.03.100 Public Meetings - Minutes

The Planning Commission shall keep a record of all business, resolutions, transactions, findings, determinations, minutes and other matters coming before it. Such record shall be filed with the Borough Clerk and retained as public records.

Section 9.03.110 Rules of Proceedings

Meetings shall be conducted under Robert's Rules of Order and such modified or amended rules as may be adopted by the Planning Commission.

Section 9.03.120 Order of Business

The order of business at regular meetings shall be:

- A. Call To Order
- B. Roll Call

- C. Approval of Agenda
- D. Approval of Minutes
- E. Public Hearings
- F. Communications and Appearances
- G. Unfinished Business
- H. New Business
- I. Committee Reports and Comments
- J. Citizen Comments
- K. Adjournment

Section 9.03.130 Formal Acts by Resolution

All formal acts of the Planning Commission shall be by resolution bearing the following:

- 1. The heading: “The Lake and Peninsula Borough Planning Commission”;
- 2. Space for the serial number to be assigned: “Resolution No.____”;
- 3. A short and concise title descriptive of it’s subject and purposes;
- 4. Short premises and whereas clauses descriptive of the reasons for the resolution, if appropriate;
- 5. The resolving clause: “Be It Resolved”, date adopted, and designated lines for the signature of the Planning Commission presiding officer and an attesting signature.

Section 9.03.140 Powers of the Planning Commission

- A. The Planning Commission is advisory in nature and may not be delegated administrative authority or responsibility beyond that which the Borough Assembly may authorize.
- B. The Planning Commission may assist and cooperate with any existing agency or group which has as it’s object the development or improvement of the Borough.
- C. The Planning Commission may plan for the orderly growth and development of the Borough and make recommendations to the Borough Assembly.
- D. The Planning Commission shall have the responsibility of keeping generally aware of the needs of the Borough. The Commission shall not have direct power to effect policy determinations, but shall be able to make recommendations to the Borough Assembly. Such recommendations may evolve into policy decisions of the Assembly affecting matters relating to the development of the Borough. The Commission is not empowered to distribute it’s findings to any individual or group other than the Borough Manager and Borough Assembly.

Section 9.03.150 Duties and Responsibilities

- A. The Planning Commission shall prepare and recommend to the Borough Assembly a comprehensive plan and related texts for the systematic development of the Borough. The Planning Commission shall undertake an overall review of the plan at least every five years and shall present recommendations based on the review to the Borough Assembly.
- B. The Planning Commission may consider and investigate subject matter tending to the development and betterment of the Borough and make recommendations as it considers appropriate to the Borough Assembly.
- C. The Planning Commission shall act as the Plat Review Board and shall formulate, subject to approval by the Borough Assembly, rules and regulations to implement the plat review and approval process.
- D. The Planning Commission shall assist in the preparation of the Borough Capital Improvement Plan and an annual capital improvement budget and present the proposed capital improvement budget to the Borough Assembly no later than April 1st of each year.
- E. The Planning Commission shall report it’s actions and recommendations to the Borough Assembly on a monthly basis.

Chapter 9.06 SUBDIVISION REGULATIONS

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- 9.06.120 Definitions**
- 9.06.130 Applicability of Chapter**
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Article 1. In General

9.06.110 Purpose of Chapter and General Standards.

The purpose of this chapter is to promote the public health, safety and general welfare of the residents of the Borough. These regulations are made with consideration, among other things, of the character of and conditions in the Borough with the intent of conserving the value of buildings and property and providing the best possible conditions and safety for the people of the Borough. It is the further intent of the Borough to ensure that its interests and responsibilities are protected and adequately considered in any action within its boundaries involving the subdividing of land; including the development of streets, utilities and new communities. It is the intent of the Borough to assert its rights and interests over all such actions, both private and public.

- A. The Platting Authority may approve a preliminary or final plat only if it finds that the Plat:
 - 1. Conforms to the provisions of this Chapter and other applicable Borough ordinances;
 - 2. promotes the public health, safety and welfare;
 - 3. mitigates the effects of incompatibilities between land uses or residential densities in the subdivision and the land uses and residential densities in the surrounding neighborhood, including visual, noise, traffic and environmental effects;
 - 4. provides for the proper arrangement of streets in relation to existing or proposed streets;
 - 5. provides for the efficient movement of vehicular and pedestrian traffic;
 - 6. assures adequate and properly placed utilities;
 - 7. provides access for emergency vehicles;
 - 8. facilitates the orderly and efficient layout and use of land; and
 - 9. furthers the goals and policies of the Borough Comprehensive Plan and other adopted policies and plans (*Amended by Ordinance 12-02 2/12/2012*)

- B. The Platting Authority may impose conditions upon the approval of a preliminary or final plat that it finds necessary to conform the plat to the standards of this chapter.

9.06.120 Definitions.

- A. For the purpose of this chapter, any word or term not interpreted or defined by this section shall be used with a meaning of common or standard utilization. The term “shall” is always mandatory and not discretionary; the word “may” is permissive. The word “including” means including but not limited to.
- B. The following words and phrases shall have the meanings respectively ascribed to them by this section:

“Borough” means the Lake and Peninsula Borough.

“Commission” means the Planning Commission of the Lake and Peninsula Borough.

“Manager” means the Lake and Peninsula Borough Manager or designee.

“Plat”. The map prepared, as required by this chapter, for the purpose of recording subdivision or other divisions of land as provided in this chapter.

“Platting Authority”. The Planning Commission is the platting authority for major subdivisions and variances. The Manager is the platting authority for all other actions.

“Street”. A way for vehicular traffic.

1. Major streets are the roadways which serve as the principal arteries of through-traffic movement. They are generally highways that connect communities or connect developed areas with facilities including airports and landfills.
2. Collector streets are those which carry traffic from minor streets to the system of major streets including the principal entrance streets of a residential development.
3. Minor streets are those which are used primarily for access to the abutting community.
4. Pioneer access streets provide access to areas outside the developed areas of a community.

“Subdivider”. The owner or agent of the owner of land which is being divided pursuant to this chapter.

“Subdivision”. Subdivision means the division of a tract or parcel of land into two or more or other divisions irrespective of their size before or after division and further includes the dedication to public use of a street or other specified area in or through a tract of land. “Subdivision” is not limited to the conveyance of title but includes contracts to convey title, leases of land for ten or more years, and conveyance by metes and bounds description.

1. A major subdivision is the creation of more than four lots.
2. A minor subdivision is the creation of four lots or less or meeting the four other requirements of 9.06.140.

9.06.130 Applicability of Chapter.

This chapter applies to, except as provided in subsection “A” of this section, all subdivisions or re-subdivisions which result in the partitioning, dividing, combining or altering of any lot, parcel or tract of land, including subdivisions or re-subdivisions created by an exercise of the power of eminent domain by an agency of the state or a municipality.

No provision of this chapter applies to any lot or lots in a subdivision legally created and filed of record before the effective date of the provision, unless the lot or lots are further subdivided or re-divided. Subdivisions given preliminary or final approval by the Platting Authority under regulations existing prior to this ordinance shall comply only with the regulations existing at the time of that approval.

A. Waiver. In individual cases and in accordance with AS 29.40.090, the Manager may exempt a subdivision from the requirements of this chapter when it finds after a public hearing that:

1. each parcel in the subdivision will have adequate physical and legal public access to a public highway or street; and
2. each parcel in the subdivision is five acres in size or larger and that the land is divided into four or fewer parcels; and
3. the subdivision is not made for the purpose of, or in connection with, a present or projected subdivision development; and
4. no dedication of a street, alley, thoroughfare or other public area is involved or required.

9.06.140 Sale Of Land Prior to Compliance Prohibited

No owner or agent of the owner of land located within a subdivision shall transfer, sell or agree to enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in compliance with this chapter. Each sale of a lot or parcel in violation of this section shall be a separate offense. The Borough may enjoin a transfer or sale or agreement to sell, and may recover the penalty therefor by appropriate legal action.

9.06.150 Variances

When, in the judgement of the Commission and after giving proper notice and conducting a public hearing, it would be inappropriate because of physical constraints of the land to apply literally a provision of this chapter, the Commission may waive or vary such provisions so that substantial justice may be done and the public interest secured; provided, that in no event shall the requirement of filing and recording the plat or survey map be waived.

9.06.160 Appeals

- A. All decisions as to approval or disapproval of a subdivision by the platting authority shall be final unless appealed to the Assembly.
- B. Any person may file an appeal to the Assembly on a decision of the platting authority within thirty (30) days of such a decision. The appeal must be in writing and must state specifically the reason for the appeal and the relief sought. All appeals shall be heard by the Assembly within sixty (60) days of the appeal being filed.
- C. The person filing the appeal shall be given the opportunity to be present when the appeal is considered by the Assembly, and shall be notified by certified or registered letter of the time and place of the hearing at least thirty (30) days prior to the date of the hearing. The Assembly shall issue its decision on the appeal within ten (10) days of the hearing. Any municipal officer or person aggrieved by the decision of the Assembly may seek judicial review as provided by law.

9.06.170 Fees

The Assembly shall adopt by resolution a fee schedule for all actions, reviews and approvals under this Title.

9.06.180 Public Hearing and Notification

- A. The Commission shall hold a public hearing prior to taking any action on:
 - 1. an application for vacation of a public right-of-way;
 - 2. an application for a preliminary plat except for an application under the minor subdivision plat procedure;
 - 3. an application for a final plat when the final plat differs significantly from the preliminary plat; and
 - 4. the modification or removal of a condition of approval.
- B. The public hearing shall be held not more than sixty (60) days after the acceptance of the preliminary subdivision plat application, unless extended with the written consent of the applicant. Public notice shall be given stating when and by whom the subdivision application is filed, its purpose, and the time and place of the hearing. The notice shall generally describe the area for which the plat is sought. The notice shall be published once a week for two (2) consecutive weeks in an Anchorage daily newspaper or through radio or television media with broadcast coverage within the Borough. A copy of the notice shall also be posted in a public place in the community nearest to the subdivision at least thirty (30) days prior to the date of public hearing. A copy of the notice shall be sent to all owners of record of property adjacent to the perimeter of the proposed subdivision at least thirty (30) days prior to the date of the public hearing.
- C. The Commission may delegate its public hearing authority to a city council, or village council in an unincorporated village, for any plat located within 10 miles of the community. The delegation and community public hearing shall take place within 45 days of acceptance of a preliminary plat. The community shall transmit to the Commission a written report and advisory recommendations based on the hearing, within 15 days after the hearing. The Commission may hold another hearing if it is deemed necessary or desirable.

Article II. Preliminary Plats

9.06.210 Preliminary Consultation

- A. The subdivider shall, before submitting the preliminary plat of a subdivision for review, contact the Manager for preliminary consultation in order to insure that the plat is acceptable for processing.
- B. The following information shall be provided by the subdivider at the time of the preliminary consultation:
 - 1. **General.** Information including data on existing covenants, land characteristics and available community facilities and utilities, and information describing the subdivision proposal such as number of residential lots, typical lot width and depth, business areas, playgrounds, park areas and other public areas, proposed protective covenants and proposed utilities and street improvements.
 - 2. **Location Map.** A location map showing the relationship of the proposed subdivision area and its location to existing community facilities which serve or would be influenced by it, and nearby subdivided areas.
 - 3. **Proposed Layout.** A map showing a simple sketch of the proposed layout of streets, lots and other features in relation to existing conditions. The map may be a free-hand pencil sketch made directly on a print of an existing topographic survey or map.

9.06.220 Preliminary Plat Required

Before submitting a final plat of any subdivision for approval and recording, the subdivider shall submit a preliminary plat for approval by the Platting Authority. The form and data required for preliminary plat submittal is designated under this article.

9.06.230 Form and Content

The preliminary plat of a subdivision shall be clearly and legibly drawn. The subdivider shall submit on reproducible copy and a number of copies as determined by the Manager for distribution. The size of the map shall not be less than eighteen inches by twenty four inches. The map of a subdivision containing six acres or less shall be drawn at a scale of one inch equals fifty feet. All other subdivisions shall be drawn at a scale of one inch equals one hundred feet, unless otherwise required or authorized by the Manager. The preliminary plat shall contain the following information unless otherwise authorized by the Manager after preliminary consultation:

- A. The date, scale and north point.
- B. The proposed subdivision name, which shall not be the same as any name of any plat previously recorded in the Borough.
- C. The name and address of the owner(s), the surveyor preparing the plat and the name, address and telephone number of the primary contact person.
- D. The location of the subdivision by township and range, section and meridian.
- E. A small scale vicinity map at a scale of not less than 1 inch to the mile of the section or government subdivision of the section in which the subdivision lies, with the location of the subdivision indicated thereon.
- F. Unless waived and made a condition of preliminary approval, the exact length and bearing of the exterior boundaries of the subdivision based on a boundary survey.
- G. The location and names of adjacent subdivisions and the owners of adjoining parcels of un-subdivided land.
- H. Zoning on and adjacent to the subdivision, if applicable.
- I. Location, widths and names of all existing and platted streets, or other public ways and easements, and utility rights-of-way, parks, cemeteries, watercourses,

- drainage ditches, permanent buildings, bridges and other pertinent data as determined by the Manager.
- J. The water elevation of adjoining bays, lakes or streams at the date of the survey and the approximate mean high and mean low water elevations of such bays, lakes or streams.
 - K. Areas known to be susceptible to geophysical hazards including soil erosion, land slide, mud and earth flow, soil creep, soil liquidification, avalanche chutes, and run-outs, shall be indicated. Subdivisions which include areas within the tidal wave run up zone as indicated on official Borough maps and adopted studies shall have these areas identified and labeled "tidal wave run-up area."
 - L. Areas designated as wetlands by the U.S. Corps of Engineers or in adopted Borough plans or studies.
 - M. The layout, width and approximate grades of all new streets and rights-of-way, including easements for sewers, water mains and other public utilities.
 - N. The direction and distance to the nearest water and sewer mains.
 - O. The approximate dimensions and areas of lots.
 - P. The proposed building area for each lot.
 - Q. The approximate radii of all curves and length of the tangent between curves.
 - R. The approximate location and area of property proposed to be dedicated for public use or to be reserved by deed covenant for use of all property owners in the subdivision with the conditions, if any, of such dedication or reservation.
 - S. Utility easements along rear lot lines shall be at least 10 feet wide, or a total of 20 feet wide along adjoining rear lots. Utility easements along side lot lines shall be 5 feet wide, or a total of 10 feet wide along adjoining side lots. Where a front-yard easement is needed to accommodate a utility, the easement shall generally be 10 feet wide. The Platting Authority may require wider utility easements along the rear lot lines of hillside lots. Whenever possible, utilities shall be placed in dedicated rights-of-way except where that placement conflicts with a Borough or state transportation project.
 - T. Contours at sufficiently close intervals to reasonably depict the important features of the area. The area for which contour data is to be shown shall extend beyond the boundaries of the actual property being platted a distance which will adequately relate the plat to its surroundings.
 - U. A certificate certifying that the subdivision has the approval of any and all mortgage holders and others holding an interest in the property.
 - V. Any recorded covenants or restrictions on the property.

9.06.240 Review Agencies

The Commission may designate review agencies to aid in the examination of preliminary plats. In order to receive consideration, review agencies comments on the proposed subdivision shall be submitted in writing no later than ten (10) working days prior to the Commission public hearing on the preliminary plat.

9.06.250 Acceptance for Review

If the preliminary plat of a subdivision meets the requirements of this chapter the Manager shall accept or reject the preliminary plat for review within five working days of submittal by the subdivider. Any rejection must be in writing and state the reasons for rejection under this chapter. Following acceptance by the Manager of the preliminary plat of a subdivision, the plat shall be forwarded to review agencies and commission members for review. The Manager shall retain one copy in the official file and make available copies to the public.

9.06.260 Minor Subdivision Plat

The minor subdivision plat process provides a mechanism by which preliminary and final

approval may be granted by the Manager. A proposed subdivision qualifies for the minor subdivision plat procedures if it does not require the dedication of a public right-of-way, and

1. It results in the creation of not more than four lots, or
2. It involves the movement or elimination of lot lines which does not result in the creation of a new lot, or
3. It is the subdivision of a communication site or utility site, or
4. It is a boundary survey of an existing deeded parcel.

9.06.270 Preliminary Plat Approval

- A. Approval by the Manager. The Manager shall, within thirty (30) days of the acceptance, approve, approve conditionally, or reject the preliminary plat of a minor subdivision. The subdivider shall be notified, in writing, of any conditions of approval or the reasons for rejection.
- B. Approval by the Commission. The Commission shall, within sixty (60) days of the acceptance by the Manager, approve, approve conditionally or reject the preliminary plat of a major subdivision. The subdivider shall be notified, in writing, of any conditions of approval or the reasons for rejection. No action to approve, approve conditionally or reject a preliminary plat shall be taken until after a public hearing has been held.
- C. General. 1. Approval of the preliminary plat is the approval of the layout of such plat. If the final plat conforms substantially to such layout and conditions of approval have been met, final plat approval can be sought pursuant to Article III. Application for final plat approval must be completed and filed within 12 months of preliminary plat approval. The Manager may grant one 12 month extension to this deadline after a written request and justification is submitted by the subdivider.

Article III.—Final Plats

9.06.310 Submittal

In order to insure that the final plat of a subdivision is acceptable for processing, subdividers are encouraged to submit 3 copies to the Manager for checking prior to formal submittal. The final plat of a subdivision and as many copies thereof as required shall be submitted to the Manager within twelve months of approval of the preliminary plat. If an approval of the preliminary plat must be obtained from another authority subsequent to approval by the Commission, the final plat shall be submitted within sixteen months of approval of the preliminary plat. No approval shall be granted until it has been certified that there is no objection to the plat by any state agency authorized to review it.

9.06.320 Form and Contents

- A. Form. A reproducible copy of the final plat drawn to scale with non-fading black ink on material approved by the Manager. A duplicate diazo process polyester copy of the plat shall be filed along with this original copy if required by the Manager.
- B. Size and Scale. The plat shall be at a scale of not less than 1 inch equals 100 feet. The plat or plats shall be a sheet size of 18"x 24", 22"x 36", or 31 and ½"x 42" with a 1 and ½ inch border at the left end of the longer sheet dimension and a one-half inch border along the other three edges. When multiple sheets are required, each must be numbered, be the same size, and show clearly labeled match lines. Match lines shall follow street center lines or be otherwise located to avoid cutting lots or blocks in two.
- C. Accuracy. The plats shall show all existing and established monuments and courses and distances necessary to re-stake any portion of the plat. In communities the allowable error of closure shall not exceed one foot in fifteen thousand feet (1:15,000) and shall conform in addition to the following to the standards established by the Alaska Society of

Professional Land Surveyors Standards of Practice for a Type II survey as amended. In rural areas the survey shall conform to Type III standards (1:10,000).

- D. Contents. The final plat shall show the following:
1. The boundary of the subdivided area showing clearly what stakes, monument, or other evidence were found or established on the ground to determine the boundary of the subdivision;
 2. Bearing and distance to all monuments used to locate the subdivision boundary;
 3. The basis of the bearing and its source shall be shown;
 4. Primary monuments shall have horizontal control in accordance with the Alaska State Plane Coordinate System included.
 5. All monuments found shall be indicated. If the monuments were reset by ties, that fact shall be stated.
 6. Within the subdivision, the plat shall show the following:
 - a. Center lines of all streets.
 - i. Tangents, lengths and bearings.
 - ii. Curve radius of all curves, curve data which may be in tabular form and include central angles, lengths, radius, and arc and chord bearings.
 - iii. Central or deflection angles of all curves.
 - iv. Arc lengths of all curves.
 - b. Total width of each street, walkway, trail or path being dedicated.
 - c. Width of any existing dedications.
 - d. Width of portions of streets each side of the center line.
 - e. Width of the following rights-of-way:
 - i. Patent reserves.
 - ii. Section line easements.
 - iii. Public utility easements.
 - iv. Any other easements existing or dedicated by the plat.
 - f. All lot lines should, if possible, be radial to a curve. If not, they shall be labeled "not radial".
 - g. Dimensions shall be in feet and hundredths of a foot.
 - h. Bearings shall be shown to within 5 seconds or less.
 7. The width of any existing dedication which provides access to the subdivision.
 8. The width, bearing, and other data necessary to delineate all easements to which lots are subject.
 - a. Easements shall be denoted by broken lines.
 - b. If an easement is not parallel to and adjoining the lot lines, distances and bearings on the side lines of the lots which are cut by easements shall be shown so as to indicate clearly the actual length of the lot line from the lot corners to the easement.
 9. All lots and blocks shall be numbered in a simple, consecutive, easy to follow manner.
 10. Sufficient data shall be shown on lot and block boundaries to determine readily the length and bearing of each line.
 11. No ditto marks shall be used.
 12. The name of adjoining subdivisions and numbers of adjoining lots as well as adjoining easements and roads.
 13. North arrow.
 14. Three-inch bar scale.
 15. Title block arranged in the lower right hand corner which shall include the following:
 - a. Date survey was completed.

- b. Subdivision name.
 - c. Surveyor's name, address, telephone number and registration number.
 - d. Drafts person's initials.
 - e. Checker's initials.
 - f. Legal description of the subdivision location.
 - g. Name of the owner(s) of record.
16. The area of each lot in square footage to the nearest 10 square feet or acres to three decimal places.
 17. A vicinity map arranged in upper right hand corner at a scale no smaller than 1 inch equals 1 mile, showing major street systems, major water bodies, section lines, and north arrow.
 18. A legend with appropriate symbols indicating pertinent information.
 19. If the property lies within Flood Zone A the area shall be delineated and a note shall be included on the plat, stating that "The property within Flood Zone A as identified by the Federal Emergency Management Agency shall be required to comply with Federal Regulations".
 20. If the property contains any other hazard areas these areas shall be delineated and noted as to hazard.
- E. The Manager shall designate the certificates required for each plat.
1. Required certificates shall be printed on the plat in a form supplied by the Manager.
 2. The certificate of ownership must be signed by all vested owners.
 - a. Other parties with a secured interest in the property to be subdivided or dedicated.
 - b. A standard form provided by the Manager may be signed and notarized, authorizing subdivision or dedication in place of signing the certificate on the plat.
 - c. Official seals of the attesting officers, of the land surveyor who prepared the plat, and approval certificates from state agencies shall be placed on the plat.
- F. Filing fees shall be established and amended by resolution of the Borough Assembly.

9.06.330 Approval by the Manager.

The Manager shall approve or reject the final plat of a subdivision within thirty days of its submittal, unless the time is extended by agreement with the subdivider. The subdivider shall certify the respects in which the final plat differs from the approved preliminary plat and all modifications made to meet the conditions of approval. Reasons for rejection shall be stated in writing to the subdivider. The original approved plat will be filed by the Borough at the District Recorders Office. The Manager will retain a conforming reproducible copy on polyester.

Article IV. General Requirements and Design Standards

9.06.410 Conformance to Standards Generally.

A proposed subdivision shall conform to the following standards:

- A. All applicable provisions of this Code and any other ordinances of the Borough.
- B. The Comprehensive Plan.
- C. The Borough Development Permit Ordinance.
- D. The regulations of the State Department of Environmental Conservation (ADEC) relating to lot size and lot elevation if the subdivision is not served

by a public sewer and provision for such service has not been made. If ADEC has no governing regulations, or elects not to involve itself in the plat approval process, then the minimum lot size for a residential or commercial lot not connected to municipal water and sewer system is presumptively forty thousand (40,000) square feet. Minimum lot size may be varied by the Planning Commission, after notice and a public hearing, as provided in this subsection.

1. Lots subdivided for purposes which only occasionally have persons upon them may have reduced size on approval of the Planning Commission. The restriction on use shall be noted on the plat.
 2. If for reasons of soils, special conditions or other reasons (for example, a holding tank) a smaller lot size might be appropriate, and provided that public health and safety is not likely to be jeopardized, the Planning Commission may permit smaller lot sizes.
 3. The Planning Commission, because of soil conditions, proximity to open waters, or for other good cause, may impose a larger minimum lot size.
 4. Any exception to the presumptive minimum lot size, either requiring a larger lot size or permitting a smaller lot size, made by the Planning Commission, shall be made by specific findings supporting the reasons for the variance.
- E. All lots in a proposed subdivision shall be subject to the following minimum setback requirements:
1. Front boundary, a setback of twenty (20) feet.
 2. Side boundary, a setback of five (5) feet.
 3. Back boundary, a setback of ten (10) feet.
 4. The Planning Commission, after notice and a public hearing, may vary the setback requirements based upon the proposed usage, soil conditions or other considerations. Any variation in the setback requirements made by the Planning Commission shall be made by specific findings supporting the reasons for the variance.
- F. The regulations of the State Department of Transportation and Public Facilities relating to safety of access and preservation of the public interest and investment if the subdivision or any lot contained therein abuts on a state highway.
- G. The Borough Coastal Management Plan.

9.06.420 Design—Lot Dimensions.

- A. Subject to the lot dimensions and area requirements in the zoning regulations, all lots shall have the minimum dimensions required by this section.
- B. The width of the lot shall be at least one-fourth the average depth of the lot.
- C. Where lots are created of a size larger than the minimum for the area, the platting authority may require that the plat be designed so as to allow for the possible future re-subdivision of such lots into the minimum size required for the area.
- D. Notwithstanding any other provision of this section, the width of the flag pole portion of a flag shaped lot shall be no less than:
 1. 40 feet when both public water and sewer systems are to serve such a lot;
 2. 20 feet when only a public water or a public sewer is to serve such a lot;
 3. 20 feet when the lot is located in a rural area and will not be served by either public water or public sewer.

9.06.430 Design—Lot Lines.

To the extent feasible, side lot lines shall be perpendicular to straight streets and radial to curved streets.

9.06.440 Design—Lot Access.

- A. All lots shall have frontage on a street or navigable waterway. Rural lots may have frontage on an aircraft landing area.
- B. The frontage of a lot on a cul-de-sac bulb shall be at least 30 feet. This subsection does not apply to flag lots.

9.06.450 Design—Reserve Strips.

Privately owned strips of property may not be reserved to control access to public rights-of-way or navigable water.

9.06.460 Design—Hazardous Areas.

The design of a subdivision containing or abutting hazardous areas shall conform to this section, in addition to the remainder of this Chapter.

- A. The subdivider shall demonstrate to the satisfaction of the Platting Authority that the design takes into account other development in the vicinity and does not increase hazards to other areas.
- B. The Platting Authority may require the dedication of easements to construct and maintain cut and fill slopes and other control structures including, but not limited to, dikes or rip rap.
- C. Subdivision design shall take into consideration known areas susceptible to geophysical hazards including, but not limited to, bank erosion, land slide, mud and earth flow, soil creep, soil liquidification, avalanche chutes and run-outs.

9.06.470 Streets—General Design Considerations.

- A. The streets in a subdivision shall be designated and located in relation to existing and planned streets, to topographical conditions and natural terrain features such as streams for public convenience and safety, and in their appropriate relation to proposed uses of the land to be served by such streets. All subdivisions shall have legal and physical access.
- B. Where a subdivision borders on or contains an existing or proposed major street, the Platting Authority may require that marginal access streets be provided.
- C. The right-of-way of all streets shall be the width specified on the official or comprehensive plan, or, if no width is specified there, they shall be not less than thirty-three (33) feet.

9.06.480 Design—Streets.

- A. Streets shall be arranged properly in relation to topography to provide usable lots, safe streets, reasonable gradients, and minimum damage to terrain and existing vegetation. Construction methods, materials and quality control for the construction of streets shall be in accordance with the Alaska Department of Transportation and Public Facilities standard specifications for highway construction, as modified or approved by the Borough engineer.

9.06.510 Monuments

- A. Angle Points. All exterior angle points in the subdivision shall be marked with primary monuments permanently set as follows:

1. If not located within roadways or walkways – flush to the surface or protruding not more than four inches above ground level.
 2. Primary monuments shall be stamped with the following information:
 - a. Location and identification.
 - b. Year set.
 - c. Surveyor’s license number.
 - d. Exact transit point.
- B. All primary monuments shall be referenced by two secondary monuments. The secondary monuments shall be in a single line, preferably along a surveyed or boundary line.
- C. All other corners shall be monumented with secondary monuments permanently set:
 1. Flush to the surface, or
 2. Protruding no more than four inches above the surface.
 3. And stamped with the following information:
 - a. Location and identification.
 - b. Surveyor’s identification.
 - c. Year set.
- D. Monument Material. Unless otherwise approved by the platting authority, the following monument material or equal shall be employed in the survey:
 1. Primary Monuments
 - a. Alloyed iron pipe, zinc coated, or aluminum pipe.
 - i. Outside diameter - 2 inch or larger
 - ii. Cut in 30 inch lengths.
 - iii. One end of the pipe shall be split for several inches and the two halves spread to form flanges or a commercially manufactured foot attached.
 2. A brass or aluminum cap 2 ½ inches or larger in diameter shall be securely attached to the other end by mechanical means.
 3. If aluminum pipe is used, the monument must contain a magnetic insert as an integral part of its composition.
 4. In areas where primary monuments are located on rock outcrops or concrete surfaces, a brass or aluminum tablet 2 ½ inch diameter with a ½ inch diameter stem shall be cemented into a drilled hole. The tablet shall include a magnetic insert as an integral part of its composition.
- E. Secondary Monuments.
 1. Cap 1 ½ inch or larger secured by friction fit or mechanical means to 5/8 inch steel rebar or other ferrous metal rod at least 36 inches in length.
 2. The rods shall penetrate a minimum of 30 inches below the surface.
 3. Plastic stakes specifically designed for survey purposes are allowable if they meet penetration requirements and are detectable by commonly used metal detectors.
 4. In areas where secondary monuments are located on rock outcrop or concrete surfaces, the procedure for primary monuments shall be followed.
- F. Reference Monuments.
 1. Minimum requirements are the same as those for secondary monuments.
 2. All reference caps will be marked with the following information:
 - a. Distance to monument.
 - b. Surveyor’s license.
 - c. Designation of and an arrow pointing to the referenced “corner”.
 - d. Date set.

- G. Monument material requirements are minimum standards. Other materials of equal or higher quality approved by the Borough engineer shall be allowed.

Article VI. Land Divisions Other Than Subdivisions

9.06.710 Preliminary Plat.

Before submitting a final plat of a land division other than a subdivision for approval or recording, the subdivider shall submit a preliminary plat according to the procedure designated for a subdivision under this chapter.

9.06.720 Final Plat.

The final plat of a land division other than a subdivision, in the form of a certified survey map, shall be submitted according to the procedure designated for a subdivision under this article, and if the platting does not involve the creation of additional new streets.

9.06.730 Right-of-Way Acquisition Plats.

- A. A plat for a government agency's acquisition of a street right-of-way, airport, highway right-of-way or airport parcel, or for other public purposes is subject to approval under this section only and is not subject to any other approval procedure for plats under this chapter, except where hereinafter stated.
 - 1. Certain provisions of this section may also apply to other parties who volunteer a formal dedication of rights-of-way to the public.
- B. Submission Requirements. A government right-of-way acquisition plat submitted under this section must contain the following information:
 - 1. The location, name and number of the project for which the acquisition is required;
 - 2. The proposed timetable for acquisition and construction;
 - 3. The dimensions and area of the parcels to be acquired and each remainder parcel;
 - 4. The names of the property owners identified by parcel.
- C. Review and Approval Procedures. The Manager, or his designee, shall review the preliminary right-of-way acquisition plat for completeness prior to consideration by the Commission. If the plat does not meet the requirements of this section it shall be returned to the submitting agency with an explanation of the deficiencies.
 - 1. The public notice and hearing requirements applicable to other plats submitted for approval by the Commission apply to right-of-way acquisition plats.
 - 2. The preliminary approval of a right-of-way acquisition plat is effective for twenty four months, provided the Manager may grant an extension for filing the final plat upon finding that it is in the public interest to do so.
 - 3. No parcel, other than a parcel of record, may be acquired for right-of-way purposes until a preliminary plat has received final approval.
- D. Survey and Monumentation. Unless otherwise agreed to in writing by the Commission, all monumentation, re-monumentation, right-of-way alignment and reconstruction and other requirements of the Commission or of this title must be met before approval of the final plat unless it is clearly impractical or legally impossible to accomplish prior to final plat approval. Any action required as a condition of final plat approval but not to be accomplished prior to such approval must be completed under such terms and conditions

as are set out in writing by the Commission.

- E. Remainder Parcels. No remainder parcel resulting from the right-of-way acquisition plat shall be allowed which does not conform to applicable Borough codes unless a note is placed on the plat indicating that damages have been paid to the owner of the remainder and that the nonconforming remainder cannot be developed without first being re-platted so as to conform to applicable Borough codes.

9.06.740 Standards and Requirements Generally.

- A. Reasonable Compliance. To the extent reasonably practicable the plat of a land division other than a subdivision shall comply with the provisions of this chapter relating to general requirements and design standards and required improvements of subdivisions.
- B. Registered Survey. The survey shall be performed and the map prepared by a surveyor registered in Alaska. Such map shall describe the entire ownership involved in the process of division; provided, that where the division results in a residual parcel in excess of ten acres, not intended for immediate sale or other conveyance, the Commission may waive the requirement for inclusion of the residual parcel. In this event, a supplementary map of reasonable accuracy shall be attached showing the relationship to the original ownership of the parcel being severed.
- C. Monuments. All corners shall be permanently monumented.
- D. Drafting Standards. The final plat shall be clearly and legibly drawn in India ink on Mylar. The size of the map shall not be less than 18"x 24". The map of a subdivision containing six acres or less shall be drawn at a scale of one inch equals fifty feet. All other subdivisions shall be drawn at a scale of one inch equals one hundred feet, unless otherwise required by the Commission.

9.06.750 Certificates and Affidavits Required.

- A. Owners and Surveyors. The map of a land division other than a subdivision shall include the certificate of ownership and the affidavit of the surveyor who surveyed and mapped the parcel, typed, lettered or reproduced legibly with non-fading black ink, giving a clear and concise description of the land surveyed by bearings and distances, commencing with some corner marked and established in the U.S. public land survey or some corner providing reference to a corner marked and established in the U.S. public land survey. Such affidavit shall include the statement of the surveyor to the effect that he fully complied with the requirements of this section. Every plat, subdivision or dedication shall show the initial point of survey, the basis of bearing original or re-established corners, with description of them, referencing the recorded distance and bearings and the source of record and actual traverse showing area of closure and all measured, calculated and recorded distances required to determine initial point, corners and distances of the plat.
- B. Certificate of Approval. Certificates of approval, as required, shall be typed, lettered or reproduced legibly with non-fading black ink on the face of the map.

9.06.760 Recordation.

Following approval of the final plat of a land division other than a subdivision the certified map shall be submitted to the Manager for recording.

9.06.770 Vacation.

A request for the vacation of a public area, whether dedicated by subdivision plat or separate conveyance, shall be treated procedurally as a major subdivision, except that the Commission may waive all or part of the submission requirements where no purposes of this ordinance or the general interest of the Borough will be violated.

The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by a different person, original boundary lines shall be adhered to so that the area which lies on one side of the

boundary line shall attach to the abutting property on that side, and the area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If other public areas are vacated, the title to them vests in the city if it lies within a city, and to the Borough if it lies within the Borough outside a city. If the property vacated is a lot or tract, title vests with the rightful owner.

If the Borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the Borough or city other than required subdivision plat, before the final act of vacation the fair market value of the street or public area shall be deposited with the Platting Authority to be paid over to the Borough or city on final vacation.

(Chapter 9.06 added by Ordinance 93-05, 12/21/93)

Chapter 9.07 DEVELOPMENT PERMITS

Sections:

09.07.010 Purpose and Intent

09.07.020 Definitions

09.07.030 Permit Required

09.07.040 Application Procedure

09.07.050 Approval Criteria and Operational Conditions

09.07.060 Reclamation Plans

09.07.070 Surety

09.07.080 Penalty

09.07.090 Appeals

09.07.010 Purpose and Intent

The purpose of this chapter is to insure that certain development within the Borough complies with the comprehensive Plan and other plans and policies that are adopted by the Borough. It is intended that through compliance with this permit system that valuable natural resources, watersheds and fish habitat, will be protected from deleterious development. The permit system established through this Title will provide a record of development and an opportunity for residents to review and comment on development. This chapter shall not apply to Native allotments or other lands held in trust by the federal government. *(amended by Ordinance 12-02 2/21/2012)*

09.07.020 Definitions

The definitions in this section are specific to this chapter. Any word or term not defined shall be used with the meaning of common or standard usage as determined by a current edition of Webster's Unabridged Dictionary. In this chapter, the following definitions shall apply:

"Anadromous Waters" means any waterway or body of water that serves as habitat, or spawning grounds to any species of salmon during any stage of the species' life cycle as documented in the Alaska Department of Fish and Game's "Catalog of Waters Important for the Spawning, Rearing or Migration of Anadromous Fishes" and its associated Atlas. *(Initiative #2 passed 10/04/2011)*

"Archeological Survey" is the systematic investigation or recovery of materials from a site involving significant disturbance of the immediate area.

"Assembly" means the Lake and Peninsula Borough Assembly.

"Borough" means the Lake and Peninsula Borough.

"Coastal Zone" means the lands within the boundaries of the Borough drained by Anadromous Waters. *(amended by Ordinance 12-02 2/21/2012)*

"Commercial" means a use involving the storing, wholesaling, retailing or rental of any article, service or substance for cash, trade or any form of compensation, and supporting activities, but excludes such uses when they are conducted in a residential dwelling and are clearly subordinate to the use of the dwelling for residential purposes; provided that the primary use and appearance of the lot and accessory building, remains residential and generally conforming to the appearance of the surrounding area. This term includes but is not limited to lodges, stores and guide activities.

"Commission" means the Planning Commission of Lake and Peninsula Borough.

"Industrial" means a use involving the manufacture, storage, fabrication, processing, reduction, or conversion of raw materials including fish or seafood. This term includes but is not limited to canneries, freezer plants, fish smoking or any other use involving the preserving of fish or shellfish for wholesale.

"Manager" means the Manager of the Lake and Peninsula Borough or designee.

“Person” means any natural person, corporation, partnership, organization or association.

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

“Significant Adverse Impact” ~~shall have the stated in Section 09.05.060 of the Lake and Peninsula Borough Peninsula Borough Municipal Code (Initiative #2 passed 10/04/2011)~~

means a use, or an activity associated with the use, which proximately contributes to a material change or alteration in the natural or social characteristics of a part of the state's coastal area and in which

- (A) the use, or activity associated with it, would have a net adverse effect on the quality of the resources of the coastal area;
- (B) the use, or activity associated with it, would limit the range of alternative uses of the resources of the coastal area; or
- (C) the use would, of itself, constitute a tolerable change or alteration of the resources within the coastal area but which, cumulatively, would have an adverse effect.

(amended by Ordinance 12-02 2/21/2012)

“Working Day” means Monday through Friday exclusive of Borough holidays.

09.07.030 Permit Required

A. No excavation, placement of fill, grading, removal or disturbance of the topsoil of more than 10,000 square feet or ¼ acre shall occur on land within 100 feet of anadromous stream, tidelands or submerged lands until a permit has been obtained from the Borough. In addition the following uses must obtain a permit prior to commencement.

- 1. Archeological Survey
- 2. Commercial Use
- 3. Industrial Use
- 4. Resource Extraction

B. The Borough Assembly may establish and amend fees for permit by resolution.

09.07.040 Application Procedure

Development permits issued on the basis of incomplete plans and applications authorize only the use, arrangement, location and construction as to those parts of plans and applications which are complete and approved. Development permits shall be secured from the Borough as follows:

- A. Application for a development permit shall be made in writing, upon forms furnished by the Borough.
- B. Within five working days of the receipt of the application the Manager shall determine whether the application is complete and accept it for review. An application shall not be considered complete until all permits required by federal and state agencies have been obtained by the applicant. An application which is not complete enough to be processed will be returned to the applicant with a written list of deficiencies to be satisfied for acceptance.
- C. If the application is accepted, the Manager shall place the application on the agenda of the Commission for review. The Commission shall review the application and approve, deny, or approve with conditions based upon findings related to the approval criteria in Section 09.07.060.
- D. If the Commission fails to act on the accepted application within 45 working days, the application shall be considered approved and a permit issued upon demand unless the applicant consents to an extension of review time.
- E. The Commission may conduct a public hearing to allow testimony on the proposed use.
- F. The public hearing may be held in the community or communities nearest the proposed

use. The public hearing may be conducted by the city or village council. A short summary and recommendation for action from the community must be received by the manager one day prior to the Assembly meeting following the date of the hearing.

- G. The Manager may inspect or cause to be inspected all work sites at intervals during periods of construction, operation or reclamation.
- H. Work approved under a permit issued by authority of this chapter must begin within eighteen (18) months of the date of approval unless a time extension is authorized in writing by the Borough Manager.

09.07.050 Approval Criteria and Operational Conditions

The following apply to all development permits:

- A. To the extent possible, all activities shall be timed and conducted so as to avoid disturbance during critical periods in adjacent anadromous waters.
- B. All activities shall be conducted in conformance with all state and/or federal permit stipulations and conditions. ~~All applicable state and federal permits must be obtained by the applicant before a development permit will be issued by the Borough.~~ **The applicant should obtain its development permit from the Borough prior to obtaining applicable state and federal permits. (Initiative #2 passed 10/4/2011)**
- C. ~~All activities within the Coastal Zone shall be conducted in conformance with the Borough Coastal Management Plan. Notwithstanding this requirement, all activities within the Borough must comply with this Chapter (Initiative #2 passed 10/4/2011)~~ All activities within the Borough shall comply with this Chapter (Ordinance 12-02 2/21/2012)
- D. All activities shall occur harmoniously with other uses occurring or allowed in the general area, as determined by the Commission.
- E. Any site work which is hazardous to the general public shall be reasonably fenced, except where at the determination of the Commission other suitable devices may be used.
- F. **Where a Resource Extraction Activity could result in excavation, placement of fill, grading, removal and disturbance of the topsoil of more than 640 acres of land and will have a Significant Adverse Impact on existing anadromous waters, a development permit shall not be issued by the Commission (Initiative #2 passed 10/4/2011)**

09.07.060 Reclamation Plans

Reclamation may be required by the Commission to return lands affected by the permitted development to a suitable condition. Reclamation plans may be required for industrial or resource extraction uses. The reclamation plan must contain the following;

- A. A grading plan drawn and certified by a licensed in Alaska professional engineer, land surveyor, or landscape architect, indication the areas excavated, the proposed finished grades and contours, and drainage directions.
- B. All maps shall be submitted at an appropriate scale extending two hundred feet beyond the boundary of the work area. Contour elevations shall be a maximum contour interval of five feet except in areas where slopes are extremely steep and the Commission approves greater distance between intervals.
- C. The methods and plans to be employed for reclamation of the site during and after the operation shall be stated. The reclamation plan shall describe all permanent roads and other man-made fixtures or structures which will remain after final reclamation.
- D. The site may be re-vegetated by seeding or planting with suitable perennial vegetation and fertilized.
- E. A strip of undisturbed land free of machinery, equipment shall be retained at the periphery of the site wherever the site abuts:
 - 1. a public right-of-way or property line: 15 feet;
 - 2. anadromous waters where the natural slope is less than 12%: 50 feet;

3. anadromous waters where the natural slope is greater than 12%: 50 feet from the top of the 12% slope;
 4. the distances above may be modified by the Commission upon approval of a plan of operations.
- F. Other plans or documents required by federal or state agencies may be accepted as meeting the requirements of this section.

09.07.070 Surety

After receiving notification that the application for a development permit for an industrial or resource extraction use has been approved, but prior to commencement of such operation, the applicant may be required to provide surety to the Borough in a form and amount to be determined by the Commission.

- A. In determining the amount of surety to be provided the Commission shall consider factual information as to the magnitude, type and costs of approved reclamation activities planned for the land affected and the nature, extent, and duration of operations under the approved application. The Commission shall fix the amount of the surety reasonably related thereto, to protect the Borough and insure compliance with the requirements of the permits however, the amount of the bond shall not exceed one hundred and twenty percent of the estimated cost of rehabilitating the site. The surety shall be periodically reviewed to insure that the amount is capable of insuring adequate reclamation.
- B. In determining the form of surety to be provided by the owner, the Commission shall approve a method consistent with the requirements of this chapter which may be one or a combination, of corporate surety bond, land, cash or other deposited securities. Surety posted with another governmental agency or evidence of self insurance may be accepted to fulfill the requirements of this section.
- C. The liability under surety provisions shall continue until such time as released as to part, or in its entirety, by the Commission.
- D. If the permittee fails or refuses to carry out the necessary reclamation as outlined in the approved operation and reclamation plans, the Commission may, after notice and hearing, declare any surety filed for this purpose forfeited, or in case of a corporate bond file suit against the owner and his bonding company. The Borough shall also have the right to file suit against the defaulting permittee for costs of rehabilitation and reasonable attorney's fees.

09.07.080 Penalty

Any person(s) violating any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined not more than three hundred dollars (\$300.00) and imprisoned for not more than thirty (30) days, or both. Each act of violation, and every day upon which such violation occurs constitutes a separate offense.

09.07.090 Appeals

Any person aggrieved by a decision under this chapter may appeal a decision within 10 days of the decision by serving written notice of appeal on the Manager. The notice shall state the reasons why the appellant believes the decision is improper. Notice of an appeal is ~~considered served when actually received.~~ may be filed either personally, by facsimile, electronically, or by mail. Service by mail is considered complete at the time of deposit in the mail if mailed with sufficient postage and properly addressed. (Initiative #2 passed 10/4/2011)

- A. Decisions of the Commission are appealed to the Lake and Peninsula Borough Assembly. The issues before the Assembly 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 to demonstrate the issues on appeal by substantial evidence. The Assembly may affirm or reverse the decision, return

the matter to the Commission for further evidence, or change the conditions attached to any approval. Approved uses may not proceed during the appeal process ~~unless specifically authorized by the Assembly.~~ (Initiative #2 passed 10/4/2011)

- B. An appeal to the Assembly of the Commission's decision may be made in the same manner and according to the same requirements as set forth above for appeals to the Commission. Notice of appeal shall be served on the Manager. The Assembly's decision shall be final for the Borough. *(Chapter 9.07 added by Ordinance 93.06 3/15/94)*

Chapter 9.08 LARGE PROJECT PERMITS

Sections:

09.08.010 Purpose and Intent

09.08.020 Definitions

09.08.030 Applicability

09.08.040 Socioeconomic and Fiscal Impact Assessment Report

09.08.050 Application Procedure

09.08.060 Approval Criteria and Operational Conditions

09.08.070 Fees

09.08.080 Relationship of Required Payments to Borough Taxes

09.08.090 Compliance

09.08.100 Appeals

09.08.110 Savings Clause

09.08.010 Purpose and Intent

The purpose of this chapter is to foster the development of the Borough in a manner that increases the jobs, income, and quality of life of its citizens, and protects the financial resources of local government from uncompensated costs. It is intended that through compliance with this permit system, projects with the potential for significant socioeconomic change will take steps to mitigate negative socioeconomic impacts on the citizens of the Borough. It is also intended that compliance with this chapter will ensure payments by large projects that at least match the fiscal costs imposed on the Borough. The permit system established through this chapter will provide a record of development and an opportunity for Borough residents to review and comment on the development. Payments made under this chapter do not replace or substitute for taxes otherwise required by the Borough.

This chapter is intended to regulate areas of local concern, reserving to the Borough all powers not expressly prohibited or preempted by state or federal law. This chapter is not intended to deny or prohibit new development in the Borough but to impose conditions on that development for the protection of the health, safety and welfare of the Borough and its citizens.

09.08.020 Definitions

The definitions in this section are specific to this chapter. Any word or term not defined shall be used with the meaning of common or standard usage as determined by a current edition of Webster's Unabridged Dictionary. In this chapter, the following definitions shall apply:

- A. "**Assembly**" means the Lake and Peninsula Borough Assembly.
- B. "**Borough**" means the Lake and Peninsula Borough.
- C. "**Manager**" means the Manager of the Lake and Peninsula Borough or the Manager's designee.
- D. "**Resource Extraction**" means any activity involving the removal for commercial purposes of native vegetation, timber, topsoil, fill, sand, gravel, rock, oil or other hydrocarbons, natural gas (including coal bed methane), coal, metal and metal ore, or any other mineral, fish, game, and other operations having similar characteristics. The Assembly may from time to time designate by resolution additional specific activities as Resource Extraction.
- E. "**Resource Extraction Project**" means a Resource Extraction activity for which a Permit is required under Section 9.08.030.
- F. "**Working Day**" means Monday through Friday, exclusive of Borough holidays.
- G. "**Direct and Indirect, Effect or Impact**" is the cost, effect, or impact to the Borough or to a Borough community caused by project activities, activities associated with the project, or by that portion of any change in population or economic activity that is due to the project.

09.08.030 Applicability

- A. **Permit Required.** No Project may begin without a permit issued under this chapter if that Project would also require a permit or revision to a permit from the borough under Chapter 09.07 of this code (Development Permit), and indicates potential for material socio-economic impact, including but not limited to two or more of the following:

1. causes or may cause more than 100 acres of unreclaimed surface disturbance;
2. employs or may employ one hundred (100) or more personnel in the Borough; whether direct employees or employees of independent contractors, in any consecutive three-month period, in circumstances likely to have a material direct or indirect effect or impact on all or part of the borough; or
3. is a Resource Extraction activity that a federal agency has determined would involve a federal action significantly affecting the quality of the human environment so that the preparation of an environmental impact statement in accordance with the National Environmental Policy Act ("NEPA") is required.

In addition, no project may begin without a permit issued under this chapter if that project would also require a permit or revision to a permit from the Borough under Chapter 09.07 of this code, and, in the judgment of the Manager supported by written findings of fact, will have a material direct or indirect effect or impact socio-economic impact on all or part of the borough. *(amended by Ordinance 12-02 2/21/2012)*

- B. **Exemptions.** Notwithstanding A of this section, the following activities are exempt from the requirements of this chapter:
1. a project undertaken by the Borough itself or by one of its communities;
 2. a state- or federally funded project previously requested and approved by the Borough;
 3. an operation that is in existence or has a Development Permit under Chapter 09.07 of the Borough Code at the effective date of this ordinance; except that a material change or an expansion of such an operation must obtain a Permit issued under this chapter if the material change or expansion would require a Permit according to subsection A of this section; or
 4. activities in response to a natural disaster for which the State of Alaska or the federal government has issued a disaster declaration.

09.08.040 Socioeconomic and Fiscal Impact Assessment Report; Contents

An application for a Permit may not be approved by the Borough until the Borough has approved a Socioeconomic and Fiscal Impact Report that describes the applicant's Project. The report must contain sufficient information so that the Assembly, after reviewing the application, may evaluate the positive and negative impacts described in this section that the proposed use would have on the Borough, in accordance with the standards of this section and Section 09.08.060. However, the socioeconomic and fiscal impacts to be studied must be reasonably foreseeable and demonstrable. Speculative impacts need not be studied or reported.

The Socioeconomic and Fiscal Impact Report must contain the following information, as applicable:

Project Description. A description of the proposed activity, including any alternatives being considered to mitigate direct and indirect socioeconomic effects on communities and citizens. The project description must be of adequate detail to support the assessments of socioeconomic and fiscal impacts described in this chapter.

A. Socioeconomic Impact Assessment. The report must forecast socioeconomic changes that will occur as a result of the project as indicated below. The project must include direct and indirect impacts, as appropriate.

1. General Forecast of Changes.

- a. Population Changes. The report must forecast expected populations by community within the Borough. Population changes should be forecast by village and demographic group adequate to support the forecast of change in education needs by school in part 2 of this section.
- b. Employment Changes. The report must forecast expected changes in jobs, and the match between Borough citizens' skills and the expected jobs available. Where mitigation is proposed to increase citizens' abilities to acquire or keep those jobs, that information should be included.
- c. Income Changes. The report must forecast changes in income for citizens of the Borough. Where income effects are different for different identifiable groups within the Borough, the groups should be treated separately.

- 2. Detailed Forecast of Effects.** For each of the subjects below, the report should forecast the changes for each village of the Lake and Peninsula Borough. The detailed description of changes should include direct and indirect impacts.
- a. Education. If the project is likely to cause a change in school population for individual schools of the Lake and Peninsula Borough School District, a forecast should be prepared for the schools in each village likely to experience changes. Where the applicant proposes activities to mitigate effects on education or to alter Borough citizens' academic or vocational education, these mitigation activities should be identified.
 - b. Housing. The report should forecast expected changes in housing prices, housing stock, and the cost of housing for Borough residents. Forecasts should be specific to individual villages within the Region affected by the project. Where the applicant proposes activities to mitigate negative effects or improve housing within the borough, those activities should be described.
 - c. Fuel and Energy. If the project will raise or lower electricity, fuel, or other energy costs within a part of the Lake and Peninsula Borough, those changes should be described.
 - d. Health Care. If the project will change the demand for health care or the quality of health care, or change residents' access to health care for any part of the Lake and Peninsula Borough, those changes should be described.
 - e. Competition for Subsistence Resources. Regulation of activities that cause a change in fish and wildlife populations and habitat is completed through the state and federal permitting process. However, the report should describe the likely effect of the project on residents' competition for subsistence resources.
 - f. Post-closure impacts. If the project is not permanent, the report should forecast, in general, likely impacts that may occur once the project closes, including but not limited to topics (a) through (e) and (g) of this subsection; provided, however, that the assessment is not required to forecast in detail impacts that may occur decades in the future and which are speculative at the time of preparation of the assessment.
 - g. Other. Other socioeconomic changes not discussed above should be described in adequate detail to understand the effect on individual villages within the borough. To the extent that the project will have an impact, these may include but are not limited to: transportation and traffic, solid waste, fire protection, or Native history and culture.

B. Fiscal Impact Assessment. The report must provide a schedule of expected costs to the Lake and Peninsula Borough and any local government within the Borough resulting from the socioeconomic impacts outlined in subsections 1 and 2 of this section. Expected costs include direct and indirect cost. The schedule of expected costs must be compared with expected direct and indirect revenue from taxes or other sources to the Lake and Peninsula Borough and any local government within the Borough resulting from the Project. The result will include a schedule of expected net fiscal impacts by year to the Lake and Peninsula Borough and any local government within the Borough.

Section 09.08.050 Application Procedure

A. Selecting a Contractor to Prepare the Socioeconomic and Fiscal Impact

Assessment Report. The Socioeconomic and Fiscal Impact Assessment Report may be prepared by (1) a contractor to the Borough paid by applicant; (2) a contractor to a state or federal agency, or (3) a third-party contractor to the applicant approved by the Borough. The applicant may propose to the Borough which of the three methods to use. If the Borough approves the use of a Borough contractor paid by the applicant, the applicant will prepare a draft scope of work for use by the Borough. If Borough approves the use of a third-party contractor to the applicant, the Borough must approve the contractor, must approve the non-financial portion of contract between the contractor and the applicant, and must be named as the client in the contract between the contractor and the applicant.

B. Pre-application Meeting; Waiver of Requirements. Before a Socioeconomic and Fiscal Impact Report is prepared or submitted to the Borough, an applicant may meet with the Manager to discuss the scope of the Assessment. The Manager shall waive the requirement that an applicant submit particular information concerning impacts required by Section 40 when the Manager determines that: (1) such information is not essential to evaluate the what impact the proposed activity will have on the Borough, or the activity will not affect a subject, such as housing, for which information is required under this subsection; (2) such information has been previously provided; or (3) such information is adequately presented in another report previously submitted to the Assembly or is being prepared for a federal or state agency which has agreed to make the report available to the Assembly. Any waiver of requirements by the Manager must be in writing and must set forth the reasons for the waiver. The Manager may outline all issues not included, or included in a general way, in Section 40 that the applicant will be required to address. The Manager may solicit comments from the public on this decision.

C. Coordination with State and Federal Agency Processes; Coordinated Review

Process. To minimize duplicative studies, avoid premature decision making, and to develop an application review process that is easy for the applicant and the public to understand and use, the applicant and the Manager may develop a schedule for review by the Assembly that complements other state or federal permit processes that exist for the project. The schedule may be different than that given in this section. However, this coordinated review process must be consistent with the following: if an environmental impact statement ("EIS") or environmental assessment ("EA") is required to be completed on the proposed activity pursuant to the federal National Environmental Policy Act (NEPA), then the application will not be considered to be complete until the draft EIS or draft EA is published. The Assembly will begin its review under this chapter upon the issuance of the draft EIS or draft EA and acceptance of the Report by the Manager. The draft EIS or draft EA, the final EIS or the final EA, and all comments and testimony related thereto will be considered as part of the application. The Assembly shall not approve or deny an application made under this chapter until the Record of Decision has been issued by the appropriate federal agency following a final EIS or EA. The Assembly may also delay its approval until key state or federal agency permits are issued, if the federal or state agency permits are integral to the design of the project. Finally, any coordinated review process must require payment of application fees as required by Section 70.

D. Assembly and Public Review of the Application. If a coordinated review schedule is not developed under B of this section, the following schedule and procedures apply.

1. **Completeness Review.** An application is complete if the Socioeconomic and

Fiscal Impact Report addresses the subjects required by this chapter in a manner that allows the Manager to understand the socioeconomic impacts and to predict the fiscal impacts, and the fee requirements of Section 09.08.070 have been met. Within thirty days following submission of a Report, the Manager shall determine whether the Report is complete. If the Report is complete, the Manager shall accept the Report for review by the Assembly. If the Report is not complete, the Manager shall reject the Report and provide a written list of all deficiencies to the applicant, which must be addressed before the Report is re-submitted.

2. *Assembly Review and Public Comment.* Once the Manger has determined that the Report is complete, the Manager shall advance the Report to the Assembly for review. As part of its review, the Assembly shall ask for the public for comments on the Report. To do so, the Assembly shall provide public notice of the Report to Borough residents. The notice shall inform Borough residents of their right to provide testimony at a public hearing and to submit written comments. The public hearing may be held in the community or communities nearest the proposed use and the date of the hearing shall be publicized not less than fourteen (14) days before the hearing. The Assembly shall also accept written comments regarding the Report received before a deadline set by the Assembly and publicized to Borough residents. If after considering public comment, the Assembly decides that the application is deficient in one or more areas, the Assembly may explain the deficiency in writing and return the Report to the applicant to correct the deficiency.

2. *Timing of Assembly Decision.* Unless the applicant agrees to an extension, within sixty (60) days of the close of public comments in paragraph 2 of this section, or within sixty (60) days following a resubmittal of the Report after correction of a deficiency, the Assembly shall complete its review of the Report and make a decision on the Report according to the criteria in Section 60 of this chapter.

Section 09.08.060. Approval Criteria and Operational Conditions.

A. **General Approval Criteria.** The Assembly shall approve an application made under this Chapter if the Assembly finds, after the review outlined in Section 50, that a project is consistent with other applicable provisions of the Borough Code, and with the socioeconomic impact criteria and the fiscal impact criteria outlined in B and C of this section.

- B. Socioeconomic Impact Criteria.** The purpose of the socioeconomic impact criteria is to ensure that a Project within the Borough has taken reasonable efforts to minimize adverse socioeconomic impacts. The Assembly shall approve the project under the socioeconomic impact criteria if the Report shows that the Project has taken all reasonable efforts to minimize adverse socioeconomic impacts of the Project on the Borough, its residents, and communities. In this subsection, all reasonable efforts means those efforts which are reasonable taking into account economic, technical, environmental, and safety factors. The Assembly may impose one or more conditions on the Project that would make the Project consistent with this criteria, as long as it finds that the condition to be imposed does not cause environmental, social, or economic problems, including those to the Applicant, that outweigh the benefit to be derived from the stipulation. Any such condition imposed by the Assembly shall be incorporated into the terms of the Permit, and should, if practical, be coordinated with state and federal agencies to avoid contradictory requirements.
- C. Fiscal Impact Criteria.** The purpose of the fiscal impact criteria is to ensure that citizens of the Borough and existing taxpayers will not have to bear increased local government costs as a result of the Project. The Assembly shall approve the Project under the fiscal impact criteria if the Report shows that the expected project revenues from taxes or other sources to the Borough, including direct and indirect revenues, exceed the expected fiscal costs to the Borough including direct and indirect costs. The Borough may impose an obligation on the Project to make payments to the Borough to make up the difference between expected costs and revenue for any year in which expected revenues do not equal or exceed costs.
- D. Monitoring.** As part of an approval under this Chapter, the Assembly may require the Project to monitor socioeconomic or fiscal impacts. With respect to fiscal impacts, the Assembly may require periodic evaluation of actual fiscal impacts to ensure that uncompensated costs are not imposed upon the Borough. Should the Borough find that fiscal impacts are greater or less than expected, the Borough may revise the financial obligations of the project for subsequent fiscal years to make up the difference or compensate the project for overpayment. With respect to socioeconomic impacts, the Assembly may require the Project to monitor actual socioeconomic impacts where such monitoring is reasonably related to actions that the project or Borough could take to mitigate unexpected adverse impacts.
- E. Performance Guarantee.** Where the Project assumes or the Assembly requires an activity to mitigate an adverse socioeconomic or fiscal impact, and non-performance of that activity would impose a cost on the Borough, the Borough may impose a performance guarantee to ensure that the required activity is accomplished. The performance guaranty must be reasonably related to the potential cost of non-performance on the Borough. Examples of activities that may require performance guarantees include building a new school, new road, or extending an airport.
- F. Post Project Closure Socioeconomic Impact Fund.** Where a significant fiscal or socioeconomic impact is likely upon the closure of a Project, such as an impact caused by a declining population once a mine closes, the Project and the Borough will negotiate a schedule of payments to be made toward a post-closure fund to help the Borough and its residents make the economic transition after the loss of income, employment, or tax revenues. The timing and amount of payments to such a fund would be determined through discussion between the Borough and the Project.

Section 09.08.070 Fees

Before beginning review of an application, the Manager will require as a condition of Borough review of the application, that the Applicant enter into an agreement to pay the Borough's actual and reasonable cost of reviewing the application.

The Borough's actual cost includes any of the following: actual staff cost to review the application; if, in the Manager's discretion, proper review of the application requires the Manager to retain outside professional assistance, then the cost of that assistance; any required staff or consultant travel; publication or duplication costs; and other necessary costs. As part of the agreement to pay reasonable and actual costs of the review, the Manager will provide the applicant with an estimate of costs, and notify the applicant as soon as possible, if that estimate will be exceeded. The agreement shall specify that the Applicant may request and pay for an audit of any charges made under the agreement.

Section 09.08.080 Relationship of Required Payments to Borough Taxes

Unless otherwise agreed to in writing by the Borough, an Applicant's payment required under this chapter does not replace any taxes or other payments otherwise required by the Borough or another local government including any local community or the school district.

Section 09.08.090 Compliance.

Subsequent to the issuance of a Permit, the applicant's compliance shall be measured against the requirements contained in the Permit. In the event that the proposed use violates or threatens to violate this chapter, the Borough Code, or the requirements, stipulations, or conditions of the Permit, the Applicant shall immediately notify the Manager of such fact and of the steps taken to return to compliance or prevent the potential noncompliance.

09.08.100 Appeals

Any person aggrieved by a decision of the Manager under this chapter may appeal that decision to the Assembly. Such an appeal must be brought within thirty (30) days of the Manager's decision, and shall be heard by the Assembly at its next regularly scheduled meeting occurring twenty (20) or more days after the date of the appeal.

Any person aggrieved by a decision of the Assembly may appeal that decision to the Superior Court for the State of Alaska. Venue shall be at the Superior Court in Dillingham, Alaska. Such an appeal must be taken within thirty (30) days of the Assembly decision. In the event of a timely appeal, no Permit shall be issued except upon conclusion of the appeal proceedings.

09.08.110 Savings Clause

If any provision of this Chapter or the application thereof to any person, applicant, or circumstance is held unlawful or otherwise invalid, the remainder of this Chapter and the application to other persons, applicants or circumstances shall not be affected thereby. Notwithstanding the foregoing, any applicant under this Chapter must identify the socioeconomic impacts of its proposed activities, as described in this chapter.

Section 9.08 added by Ordinance 09-03 May 19, 2009

Chapter 9.09 FLOOD HAZARD MANAGEMENT AND FLOOD INSURANCE

Section 9.09.010	Statutory authorization, findings of fact, statement of purpose, and methods of reducing flood losses.
Section 9.09.020	Definitions
Section 9.09.030	General Provisions
Section 9.09.040	Administration
Section 9.09.050	Provisions for Flood Hazard Reduction

9.09.010 Statutory authorization, findings of fact, purpose and objectives

- A. The Legislature of the State of Alaska has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.
- B. The flood hazard areas of the Lake and Peninsula Borough are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in Areas of Special Flood Hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood-proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.
- C. It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:
1. To protect human life and health;
 2. To minimize expenditure of public money and costly flood control projects;
 3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 4. To minimize prolonged business interruptions;
 5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in Areas of Special Flood Hazard;
 6. To help maintain a stable tax base by providing for the sound use and development of Areas of Special Flood Hazard so as to minimize future flood blight areas;
 7. To ensure that potential buyers are notified that property is in an Area of Special Flood Hazard; and,
 8. To ensure that those who occupy the Areas of Special Flood Hazard assume responsibility for their actions.
- D. In order to accomplish its purposes, this ordinance includes methods and provisions for:
1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
 2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging, and other development which may increase flood damage; and
5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.

9.09.020 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. Unless specifically provided, the definitions set out in this section apply only to this Chapter.

"Accessory Structures" means low cost buildings such as detached garages, boathouses, small pole barns and storage sheds (that are considered a minimum investment) not to be used for human habitation, shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters; shall be anchored to prevent floatation which may result in damage to other Structures; service utilities such as electrical and heating equipment shall be elevated or flood-proofed.

"Appeal" means a request for a review of the interpretation of any provision of this ordinance or a request for a variance.

"Area of Special Flood Hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V. This is also referred to as the Special Flood Hazard Area (SFHA).

"Base Flood" means the Flood having a one percent chance of being equaled or exceeded in any given year. This is also referred to as the "100-year flood." Designation on maps always includes the letters A or V.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Borough" means the Lake and Peninsula Borough.

"Borough Assembly" means the Lake and Peninsula Borough Assembly, except that in the case of Appeals from interpretations and applications of this ordinance the Borough Assembly delegates to the Lake and Peninsula Borough Planning Commission the authority to hear appeals under Section 9.09.040(I).

"Borough Manager" means the Manager of the Borough or his or her designee.

"Critical Facility" means a facility for which even a slight chance of Flooding might be too great. Critical Facilities include, but are not limited to schools, nursing homes, hospitals police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other Structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the Area of Special Flood Hazard. Storage of materials also includes the temporary placement of fill.

"Elevated Building" means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood Insurance Rate Map (FIRM)" means the official map described in Section 9.09.030(B) in which the Federal Insurance Administration has delineated both the Areas of Special Flood Hazards and the risk premium zones applicable to the Borough.

"Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, and the water surface elevation of the Base Flood.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than one foot.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or limited storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the Structure in violation of the applicable non-elevation design requirements of this ordinance found at Section 9.09.050(F)(1)(b).

"Manufactured Home" means a Structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "Manufactured Home" does not include a "Recreational Vehicle."

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more Manufactured Home lots for rent or sale.

"New Construction" means Structures for which the Start of Construction commenced on or after the effective date of this ordinance.

"New Manufactured Home Park or Subdivision" means a Manufactured Home Park or Subdivision for which the construction of facilities for servicing the lots on which the Manufactured Homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

"Recreational Vehicle" means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Start of Construction" includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, placement or

other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a Structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a Manufactured Home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main Structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a Structure whereby the cost of restoring the Structure to its before damaged condition would equal or exceed 50 percent of the market value of the Structure before the damage occurred.

"Substantial Improvement" means any repair, reconstruction, or improvement of a Structure, the cost of which equals or exceeds 50 percent of the market value of the Structure either:

- (1) Before the improvement or repair is started; or
- (2) If the Structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the Structure.

The term does not, however, include either:

- (a) Any project for improvement of a Structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- (b) Any alteration of a Structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

"Water Dependent" means a Structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

9.09.030 General Provisions

- A. This ordinance shall apply to all Areas of Special Flood Hazards within the Lake and Peninsula Borough.
- B. The Areas of Special Flood Hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the LAKE AND PENINSULA BOROUGH, ALASKA, " dated February 3, 2010, with accompanying Flood Insurance Rate Maps, are hereby adopted by reference and declared to be a part of this

ordinance ("the 2010 Flood Insurance Study"). The 2010 Flood Insurance Study is on file at the Borough Office. The best available information for flood hazard area identification as outlined in Section 9.09.040(K) shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under section 9.09.040(F).

- C. No Structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall be unlawful under Section 9.07.080. Nothing herein contained shall prevent the Lake and Peninsula Borough from taking such other lawful action as is necessary to prevent or remedy any violation.
- D. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- E. In the interpretation and application of this ordinance, all provisions shall be:
 - 1. Considered as minimum requirements;
 - 2. Liberally construed in favor of the governing body; and,
 - 3. Deemed neither to limit or repeal any other powers granted to the Borough under its charter State law.
- F. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Areas of Special Flood Hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Lake and Peninsula Borough, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

9.09.040 Administration

- A. A development permit shall be obtained before construction or Development begins within any Area of Special Flood Hazard established in Section 9.09.030(B). The permit shall be for all Structures including Manufactured Homes, as set forth in Section 9.09.020 and for all Development including fill and other activities, also as set forth in the Section 9.09.020.
- B. Application for a development permit shall be made on forms furnished by the Borough Office and may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed Structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
 - 1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all Structures;
 - 2. Elevation in relation to mean sea level to which any Structure has been flood-proofed;

3. Certification by a registered professional engineer or architect that the flood-proofing methods for any nonresidential Structure meet the flood-proofing criteria in Section 9.09.050(F); and
 4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
- C. The Borough Manager is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.
- D. Duties of the Borough Manager shall include, but not be limited to:
1. Review all floodplain development permits under this Chapter to determine that the permit requirements of this ordinance have been satisfied.
 2. Review all floodplain development permits under this Chapter to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
 3. Review all floodplain development permits under this Chapter to determine if the proposed Development is located in a Floodway. If located in the Floodway, assure that the encroachment provisions of Section 9.09.050(G) are met.
- E. When Base Flood elevation data has not been provided (A Zones) in accordance with Section 9.09.030(B), the Borough Manager shall make reasonable efforts to obtain, review, and reasonably utilize any Base Flood elevation and Floodway data available from a Federal, State or other source, in order to administer Sections 9.09.050(F) and 9.09.050(G).
- F. The Borough shall obtain and maintain records:
1. Where Base Flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Section 9.09.040(D)(3), obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved Structures, and whether or not the Structure contains a basement.
 2. For all new or substantially improved flood-proofed Structures where Base Flood elevation data is provided through the Flood Insurance Study, FIRM, or as required in Section 9.09.040(B):
 - (b) (i) Verify and record the actual elevation (in relation to mean sea level), and
 - (c) (ii) Maintain the flood-proofing certifications required in Section 9.09.040(B)(3).
 3. Maintain for public inspection all records pertaining to the provisions of this ordinance.
- G. The Borough shall notify adjacent communities and the Alaska Department of Commerce, Community, and Economic Development (DCCED); Division of Community and Regional Affairs (DCRA) prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration. The Borough shall require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- H. The Borough shall make interpretations where needed, as to exact location of the boundaries of the Areas of Special Flood Hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting

the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 9.09.040(I).

I. The Lake and Peninsula Borough Assembly shall hear and decide appeals and requests for variances from the requirements of this ordinance.

1. The Lake and Peninsula Borough Planning Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Lake and Peninsula Borough in the enforcement or administration of this ordinance. Persons dissatisfied with the decision of the Planning Commission may appeal to the Borough Assembly. Persons still dissatisfied with the decision of the Assembly may appeal to the Superior Court.

2. In passing upon such applications, the Lake and Peninsula Borough Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- (a) The danger that materials may be swept onto other lands to the injury of others;
- (b) The danger to life and property due to flooding or erosion damage;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;
- (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (g) The compatibility of the proposed use with existing and anticipated development;
- (h) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
- (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

3. Upon consideration of the factors in subsection (2) above and the purposes of this ordinance, the Lake and Peninsula Borough Planning Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

J. The Borough Clerk shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

K. In deciding a request for a variance, the Lake and Peninsula Planning Commission shall follow these guidelines:

1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot

of one-half acre or less in size contiguous to and surrounded by lots with existing Structures constructed below the Base Flood level, all the considerations in Section 9.09.040(I)(2) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.

2. Variances may be issued for the reconstruction, rehabilitation, or restoration of Structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
3. Variances shall not be issued within a designated floodway if any increase in flood levels during the Base Flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon:
 - (a) A showing of good and sufficient cause;
 - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the Structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of flood-proofing than watertight or dry-flood-proofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except Section 9.09.040(J)(2), and otherwise complies with Sections 9.09.050(A) and 9.09.050(B).
8. Any applicant to whom a variance is granted shall be given written notice that the Structure will be permitted to be built with a lowest floor elevation below the Base Flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

9.09.050 Provisions for Flood Hazard Reduction

In all Areas of Special Flood Hazards, the following standards are required:

A. Anchoring

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the Structure.
2. All Manufactured Homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

B. Construction Materials and Methods

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the Base Flood elevation.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Utilities

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
4. Where Base Flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

E. Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (Section 9.09.040(B)(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

F. In all Areas of Special Flood Hazards where Base Flood elevation data has been provided (AE Zone) as set forth in Section 9.09.030(B), or Section 9.09.040(B), the following provisions are required:

1. For Residential Construction

- (a) New construction and substantial improvement of any residential Structure shall have the lowest floor, including basement, elevated one foot or more above the Base Flood elevation.
- (b) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for

meeting this requirement must be either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (ii) The bottom of all openings shall be no higher than one foot above grade.
 - (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 2. For Nonresidential Construction new construction and substantial improvement of any commercial, industrial or other nonresidential Structure shall either have the lowest floor, including basement, elevated one foot or more above the Base Flood elevation; or, together with attendant utility and sanitary facilities, shall
 - (a) Be flood-proofed so that below the Base Flood level the Structure is watertight with walls substantially impermeable to the passage of water;
 - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 - (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 9.09.030(F)(2);
 - (d) Nonresidential Structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as described in 9.09.050(F)(1)(b);
 - (e) Applicants flood-proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g. a building flood-proofed to the Base Flood level will be rated as one foot below.
 3. All Manufactured Homes to be placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the Manufactured Home is elevated one foot or more above the Base Flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.
 4. Recreational Vehicles placed on sites are required to either:
 - (a) Be on the site for fewer than 180 consecutive days,
 - (b) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - (c) Meet the requirements of subsection (3) above and the elevation and anchoring requirements for Manufactured Homes.
- G. In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the Base Flood more than one foot at any point within the community.

- H. Construction of new Critical Facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA). Construction of new Critical Facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above highest adjacent grade or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the Base Flood elevation shall be provided to all Critical Facilities to the extent possible.
- I. All Structures shall be a minimum of 100 feet setback from ordinary high water line along any water body for fisheries and subsistence habitat protection.

Section 3. Repealed:

Existing Chapter 9.08 of Borough Ordinances are repealed

Section 4 Transition & Effective Date:

- 1. All development of Structures where the Start of Construction occurred prior to the enactment of this ordinance shall be governed by former Chapter 9.08.
- 2. All Development Permits applied for prior to the enactment of this ordinance shall be governed by former Chapter 9.08, except to the extent that applicable federal or state law may require imposition of the new Chapter 9.09.
- 3. Except as provided in subsections (1) and (2), this Ordinance becomes effective upon its adoption by the Lake and Peninsula Borough

Section 9.09 added by Ordinance 10-01 on January 19, 2010