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Chapter No.
34

AN ACT

Establishing a procedure for review of proposed projects under the Alaska coastal management program, and relating to petitions for compliance with and enforcement of district coastal management programs under that program and to the disposition of those petitions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: May 9, 1994
Actual Effective Date: August 7, 1994

AN ACT

1 Establishing a procedure for review of proposed projects under the Alaska coastal management
2 program, and relating to petitions for compliance with and enforcement of district coastal
3 management programs under that program and to the disposition of those petitions.

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6 * Section 1. AS 46.40.040 is amended to read:

7 Sec. 46.40.040. DUTIES OF THE ALASKA COASTAL POLICY COUNCIL.

8 Through the public hearing process and the recording of the minutes of the hearings,
9 the Alaska Coastal Policy Council shall

10 (1) by regulation, adopt under the provisions of AS 44.62 ([THE]
11 Administrative Procedure Act] [(AS 44.62) NOT LATER THAN APRIL 15, 1978,]
12 for the use of and application by coastal resource districts and state agencies for
13 carrying out their responsibilities under this chapter, guidelines and standards for

14 (A) identifying the boundaries of the coastal area subject to the

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1 district coastal management program;

2 (B) determining the land and water uses and activities subject
3 to the district coastal management program;

4 (C) developing policies applicable to the land and water uses
5 subject to the district coastal management program;

6 (D) developing regulations applicable to the land and water uses
7 subject to the district coastal management program;

8 (E) developing policies and procedures to determine whether
9 specific proposals for the land and water uses or activities subject to the district
10 coastal management program shall be allowed;

11 (F) designating and developing policies for the use of areas of
12 the coast which merit special attention; and

13 (G) measuring the progress of a coastal resource district in
14 meeting its responsibilities under this chapter;

15 (2) develop and maintain a program of technical and financial
16 assistance to aid coastal resource districts in the development and implementation of
17 district coastal management programs;

18 (3) undertake review and approval of district coastal management
19 programs in accordance with this chapter;

20 (4) initiate a process for identifying and managing uses of state concern
21 within specific areas of the coast;

22 (5) develop procedures or guidelines for consultation and coordination
23 with federal agencies managing land or conducting activities potentially affecting the
24 coastal area of the state;

25 **(6) by regulation, establish a consistency review and determination**
26 **or certification process that conforms to the requirements of AS 46.40.096.**

27 * Sec. 2. AS 46.40 is amended by adding a new section to read:

28 Sec. 46.40.096. CONSISTENCY REVIEWS AND DETERMINATIONS. (a)
29 The council shall, by regulation, establish a consistency review and determination
30 process that conforms to the requirements of this section.

31 (b) If a consistency review is not subject to AS 44.19.145(a)(11) because the

1 project for which a consistency review is made requires a permit, lease, or
2 authorization from only one state agency, that state agency shall coordinate the
3 consistency review of the project. The state agency shall coordinate the consistency
4 review according to the requirements of the regulations adopted by the council under
5 this section.

6 (c) The regulations adopted by the council under this section must include
7 provisions for public notice and provide the opportunity for public comment. The
8 regulations adopted under this subsection may make distinctions relating to notice
9 based upon differences in project type, anticipated effect of the project on coastal
10 resources and uses, other state or federal notice requirements, and time constraints.
11 However, a notice given under this subsection must contain sufficient information,
12 expressed in commonly understood terms, to inform the public of the nature of the
13 proposed project for which a consistency determination is sought, and must explain
14 how the public may comment on the proposed project.

15 (d) In preparing a consistency review and determination for a proposed project,
16 the reviewing entity shall

17 (1) request consistency review comments for the proposed project from
18 state resource agencies, affected coastal resource districts, and other interested parties
19 as determined by regulation adopted by the council;

20 (2) prepare proposed consistency determinations;

21 (3) coordinate subsequent reviews of proposed consistency
22 determinations prepared under (2) of this subsection; a subsequent review of a
23 proposed consistency determination under this paragraph

24 (A) is limited to a review by the state resource agencies; and

25 (B) may occur only if requested by

26 (i) the project applicant;

27 (ii) a state resource agency; or

28 (iii) an affected coastal resource district;

29 (4) after providing an opportunity to file a petition for review under (e)
30 of this section, render the final consistency determination and certification.

31 (e) Under regulations adopted by the council, the reviewing entity shall provide

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1 opportunity to file a petition under AS 46.40.100(b)(1) seeking a review by the council
2 of the proposed consistency determination prepared under (d)(2) of this section. The
3 regulations must include provisions that establish a reasonable limit on the time that
4 may elapse between the completion of the proposed consistency determination prepared
5 under (d)(2) of this section and a hearing to consider a petition filed under this
6 subsection. Not more than 30 days shall elapse between the filing of the petition and
7 the decision by the council. Under this subsection,

8 (1) the right to file a petition is limited to

9 (A) each of the following parties, but only if the party had
10 submitted comments during the period for receipt of public comments
11 established under (c) of this section:

12 (i) an affected coastal resource district;

13 (ii) a state agency; or

14 (iii) a citizen of an affected coastal resource district; or

15 (B) the project applicant; and

16 (2) the reviewing entity

17 (A) may not accept a petition filed under this subsection if a
18 final consistency determination has been rendered under (d)(4) of this section;

19 (B) may accept a petition filed by a party identified in (1)(A)(i),
20 (1)(A)(ii), or (1)(B) of this subsection only if a party had requested a review
21 of the proposed consistency determination prepared under (d)(2) of this section;

22 (C) may accept a petition filed by a party identified in
23 (1)(A)(iii) of this subsection without regard to whether a party had requested
24 a review of the proposed consistency determination prepared under (d)(2) of
25 this section.

26 (f) For a consistency review subject to AS 44.19.145(a)(11), the council may,
27 by regulation, limit consideration of a petition under (e) of this section seeking review
28 of a proposed consistency determination to the extent necessary to meet the deadlines
29 set by federal law for timely submission of a federal consistency determination as
30 allowed by 16 U.S.C. 1456.

31 (g) In this section,

1 (1) "affected coastal resource district" means a coastal resource district
2 in which a project is proposed to be located or which may experience a direct and
3 significant impact from a proposed project;

4 (2) "reviewing entity" means the

5 (A) office, for a consistency review subject to
6 AS 44.19.145(a)(11);

7 (B) state agency identified in (b) of this section, for a
8 consistency review not subject to AS 44.19.145(a)(11).

9 * Sec. 3. AS 46.40.100(b) is amended to read:

10 (b) A party that is authorized under AS 46.40.096(e)(1) or (g) of this
11 section may file a petition showing that a district coastal management program
12 is not being implemented, enforced, or complied with. On receipt of a petition [OF
13 A COASTAL RESOURCE DISTRICT, A CITIZEN OF THE DISTRICT, OR A
14 STATE AGENCY, SHOWING THAT A DISTRICT COASTAL MANAGEMENT
15 PROGRAM IS NOT BEING IMPLEMENTED, ENFORCED OR COMPLIED WITH],
16 the council, after giving public notice in the manner required by (f) of this section,
17 shall convene a [PUBLIC] hearing to consider the matter. A hearing called under this
18 subsection shall be held in accordance with regulations adopted by the council [THE
19 ADMINISTRATIVE PROCEDURE ACT (AS 44.62)]. After hearing,

20 (1) if the petition was filed under AS 46.40.096(e) and the council
21 finds that

22 (A) the office or the state agency responsible for
23 coordinating the consistency review has not fairly considered the
24 petitioner's comments in the development of a proposed consistency
25 determination, the council shall remand the proposed consistency
26 determination to the office, or to the state agency responsible for
27 coordinating the consistency review, for preparation of a revised proposed
28 consistency determination that gives fair consideration to the petitioner's
29 comments;

30 (B) a remand of the consistency determination is not
31 required under (A) of this paragraph, the council shall dismiss the petition;

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1 **(2) if the petition was not filed under AS 46.40.096(e)**, the council
2 may order that the coastal resource district or a state agency take any action [WHICH]
3 the council considers necessary to implement, enforce, or comply with the district
4 coastal management program.

5 * Sec. 4. AS 46.40.100(c) is amended to read:

6 (c) **Except when a petition has been filed under AS 46.40.096(e), in** [IN]
7 determining whether an approved district coastal management program is being
8 implemented, enforced, or complied with by a coastal resource district **that** [WHICH]
9 exercises zoning authority or controls on the use of resources within the coastal area,
10 the council shall find in favor of the district if

11 (1) zoning or other regulations have been adopted and are being
12 enforced;

13 (2) variances are being granted according to procedures and criteria
14 **that** [WHICH] are elements of the district coastal management program, or the
15 variance is otherwise approved by the council; and

16 (3) procedures and standards adopted by the coastal resource district
17 as required by this chapter or by the guidelines and standards adopted by the council
18 and subsequently approved by the legislature have been followed and considered.

19 * Sec. 5. AS 46.40.100(d) is amended to read:

20 (d) **Except when a petition has been filed under AS 46.40.096(e), in** [IN]
21 determining whether a state agency is complying with a district coastal management
22 program with respect to its exercise of regulation or control of the resources within the
23 coastal area, the council shall find in favor of the agency if

24 (1) the use or activity for which the permit, license, or approval is
25 granted is consistent with the district coastal management program and regulations
26 adopted under it; and

27 (2) the use or activity for which the permit, license, or approval is
28 granted is consistent with requirements imposed by state statute, regulation, or local
29 ordinance applicable to the use or activity.

30 * Sec. 6. AS 46.40.100 is amended by adding new subsections to read:

31 (f) Upon receipt of a petition under (b) of this section, the council shall give

1 notice of the hearing convened to consider the petition as follows:

2 (1) notice of the hearing shall be given at least 10 days before the
3 scheduled date of the hearing

4 (A) by publication in

5 (i) a newspaper of statewide circulation; or

6 (ii) a newspaper of general circulation in the vicinity of
7 the district coastal management program that is the subject of the
8 petition; and

9 (B) by at least one of the following methods:

10 (i) publication through public service announcements on
11 the electronic media serving the area affected by the district coastal
12 management program;

13 (ii) posting in a conspicuous location in the vicinity of
14 the proposed project or action;

15 (iii) notifying parties known or likely to be affected by
16 the proposed project or action; or

17 (iv) another method calculated to effectively notify
18 affected interested parties.

19 (2) a notice provided under (1) of this subsection must

20 (A) contain sufficient information in commonly understood
21 terms to inform the public of the nature of the petition; and

22 (B) indicate the manner in which the public may comment on
23 the petition if the petition is filed under (b)(2) of this section.

24 (g) The opportunity to petition under (b)(2) of this section is limited to

25 (1) a coastal resource district;

26 (2) a citizen of the coastal resource district; or

27 (3) a state agency.

28 * Sec. 7. AS 46.40.210 is amended by adding new paragraphs to read:

29 (7) "consistency review" means the evaluation of a proposed project
30 against the standards adopted by the council under AS 46.40.040 and a district coastal
31 management program approved by the council under AS 46.40.060;

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- 1 (8) "office" means the office of management and budget established in
2 the Office of the Governor.