

SPB

280

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2/24/88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: RESOURCES

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

4/28/87

DATE TURNED INTO OFFICE 3/11/88

Mr. President:

STATE AFFAIRS

Committee considered SB 280

issuance of permits and consistency determinations.

and recommended:

replace with CS _____ same title
 attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Jim Dal (No Rec)
W. Hurler (No Rec)

Don Willard
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: _____
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Natural Resources
 Title: SB280 Relating to the issuance of permits and consistency determinations BRU: Commissioner's Office
 Sponsor: Coghill, Faiks, and Jones Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	400.7	400.7	400.7	400.7	400.7	400.7
TRAVEL	14.9	14.9	14.9	14.9	14.9	14.9
CONTRACTUAL	91.7	91.7	91.7	91.7	91.7	91.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	507.3	507.3	507.3	507.3	507.3	507.3

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	507.3	507.3	507.3	507.3	507.3	507.3
FEDERAL FUNDS						
OTHER						
TOTAL	507.3	507.3	507.3	507.3	507.3	507.3

POSITIONS:

FULL-TIME	8	8	8	8	8	8
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: _____ Phone: _____
 Division: _____ Date: _____

Approved by Commissioner: *Jennie Gornik* Date: 3-11-88
 Agency: Department of Natural Resources

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturqulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

MEMORANDUM

To: Senator Abood, Chairman Senate State Affairs Committee
Members of Senate State Affairs Committee

From: Senator Coghill

Subj: Sponsor Statement on SB 280; relating to the issuance of permits and consistency determinations.

Date: February 29, 1988

Very briefly this bill would require the Office of Management and Budget to do two things:

- 1) designate a lead agency to render on behalf of the state, each federal consistency determination and certification authorized by the Coastal Zone Management Act of 1972; and
- 2) designate a lead agency to render on behalf of the state each conclusive state consistency determination when a project requires two or more state or federal permits, leases, or authorizations.

These two changes are located on page 3 of the bill.

The rest of the bill adds a new section to statutes that designates DNR as the lead agency for development activities on state land and water, on federal land and water, and on the outer continental shelf.

My intent in this bill is to get DNR back in the drivers seat on resource development projects and to reduce the time lines for industry to receive the necessary permits.

Attached to this memo are two pages from the Legislative Reporting Service publication, relating to SB 280.

INTRODUCTION OF BILLS (Senate, cont'd)

SB 279, (cont'd)

section, the applicant has to be reexamined on the whole section. If the applicant fails the exam or any section of it on two separate occasions, the board has to refuse to examine the applicant further until the applicant produces evidence satisfactory to the board that the applicant has pursued further study in preparation for the examination.

—Sections relating to examination and license qualifications are retroactive to January 1, 1987 (does not include section increasing number of board members or section outlining reexamination procedures). Provides Act takes effect immediately.

Introduced April 27 and referred to Health, Education & Social Services; Finance.

Permits &
Consistency
Determinations
(lead agencies)

SENATE BILL NO. 280, by Senators Coghill, Faiks and Jones. Would require the Office of Management & Budget (OMB) to designate a lead agency to render, on behalf of the state, each federal consistency determination and certification authorized by the Coastal Zone Management Act of 1972; and each conclusive state consistency determination when a project requires two or more state or federal permits, leases, or authorizations. Current law requires OMB to render, on behalf of the state, all federal consistency determinations and certifications authorized by the CZM Act of 1972, and a conclusive state consistency determination when a project requires two or more state or federal permits, leases, or authorizations.

Adds sections to AS 44.19.145 (Functions and duties of the OMB) stating:

—The Department of Natural Resources is designated as the lead agency for consistency determinations that involve resource development activities on state land, water and submerged lands, and federal land, water, and the Outer Continental Shelf.

—In performing its functions, the lead agency has to consult with other resource agencies and with coastal resource districts under the Alaska Coastal Management Program (AS 46.40) The lead agency has to consider documented facts, data, opinions, or recommendations submitted by another agency of the state or by a coastal resource district with an approved district coastal management program within its area of expertise. The lead agency has to balance competing factors in reaching its final decision and can make a recommendation contrary to a recommendation received from another agency.

—Except when required by federal law, a state agency other than a designated lead agency may not make a recommendation to a federal permitting agency.

—In making a consistency determination for an activity that is occurring outside the boundaries of a coastal resource district.

INTRODUCTION OF BILLS (Senate, cont'd)

SB 280, (cont'd)

with an approved district plan, the lead agency and each resource agency have to apply statewide standards and guidelines adopted by the Alaska Coastal Policy Council.

--The director of OMB has to make the designations of lead agencies by administrative order published in the Alaska Administrative Journal. The designations may be revised by published administrative order.

The director of OMB has to make the initial lead agency designations not later than October 1, 1987.

Introduced April 28 and referred to State Affairs; Resources.

Occupational/
Phys. Therapy &
Religious
Healing

SENATE BILL NO. 281, by Senator Fischer by Request. Relates to occupational therapy, physical therapy, and religious healing practitioners:

--Would incorporate occupational therapists into the state physical therapy board, making it the "State Physical Therapy and Occupational Therapy Board." The membership of the board would be increased from five to seven members, adding two licensed occupational therapists or a licensed occupational therapist and a licensed occupational therapy assistant. The board would control all matters pertaining to the licensing of physical and occupational therapists and their assistants and the practice of physical and occupational therapy.

--The physical and occupational therapy board would "provide for the examination of applicants" (currently the board must conduct examinations).

--Adds a new subsection outlining requirements for licensure as an occupational therapist or assistant. An applicant, unless a graduate of a foreign school of occupational therapy, would have to have successfully completed a curriculum of occupational therapy approved by the Committee of Allied Health Education and Accreditation of the American Medical Association, and the American Occupational Therapy Association appropriate to the license being sought. The applicant also has to submit proof of successful completion of supervised field work, pass the test, and meet qualifications for licensure set out in regulations. Outlines procedure for becoming licensed for applicants who are graduates of schools located outside the U.S. Adds a new sections that provides for licensing by credential, and a section outlining experience-based licensure of occupational therapists.

--A temporary permit issued to an occupational therapist is valid for eight months or until the results of the exam for which the applicant is scheduled are published, whichever occurs first. If the applicant fails to take an exam for which the applicant is scheduled, the temporary permit would lapse on the day of the exam.

--Licensees would have to renew the license every two years

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET DIVISION OF GOVERNMENTAL COORDINATION

STEVE COWPER, GOVERNOR

CENTRAL OFFICE

P.O. BOX AW
JUNEAU, ALASKA 99811-0165
PHONE: (907) 465-3562

SOUTHEAST REGIONAL OFFICE

431 NORTH FRANKLIN
P.O. BOX AW, SUITE 101
JUNEAU, ALASKA 99811-0165
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2600 DENALI STREET
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PHONE: (907) 274-1581

NORTHERN REGIONAL OFFICE

675 SEVENTH AVENUE
STATION H
FAIRBANKS, ALASKA 99701-4596
PHONE: (907) 456-3084

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Robert L. Grogan, ^{RLG} Director
Division of Governmental Coordination

RE: Senate Bill 208

DATE: February 29, 1988

I have attached for your review the following documents:

1. The Alaska Coastal Consistency Review Process - Overview

This attachment briefly describes how the state's permitting process works. It highlights key provisions of the state's current procedures and discusses the primary benefits to applicants.

2. Coastal Consistency Review Process - Results

This document focuses on the state's four-year experience with the current regulations. Various performance indicators are used.

3. How to Apply for Permits in Alaska's Coastal Zone

This outreach document has been used to communicate information about the state's permitting process.

Please contact me for additional information.

cc: Senate State Affairs Committee Members

DIVISION OF GOVERNMENTAL COORDINATION
ALASKA COASTAL CONSISTENCY REVIEW PROCESS
OVERVIEW

Since adoption of the coastal consistency review regulations in early 1984, major progress has been made to achieve the following permit reform goals:

- ° establish regulatory deadlines for state permit decisions,
- ° eliminate repetitive state reviews and decisions on the same project,
- ° expedite state permit reviews and decisions,
- ° ensure uniformity in state agency comments on federal permit decisions,
- ° assist applicants in the processing of state and federal permits,
- ° provide adequate opportunity for public and local government participation in state permit decisions, and
- ° achieve a balanced, factually documented decision including consideration of the costs and benefits of requiring particular stipulations.

The state's system for reviewing and processing most project related permits, leases, and other legal approvals is governed by regulations adopted in March 1984, entitled Project Consistency with the Alaska Coastal Management Program (6 AAC 50). The regulations require that coastal projects only be reviewed one time for approvals required by the Departments of Environmental Conservation, Fish and Game, and Natural Resources and for consistency reviews conducted by the Division of Governmental Coordination (DGC). These regulations, provide for (1) easy access to and participation in the decision making process by applicants, (2) expedient decisions on project consistency and (3) quick issuance of permits by the state resource agencies. Features of the existing regulations and additional efforts being taken by the state to improve the permitting process include the following:

- ° All appropriate permits and certificates for a project are evaluated in a single review. This eliminates duplicative and time consuming review of individual permits necessary for the same project.
- ° When a project requires permits of two or more state agencies or a federal permit, DGC coordinates the project review and renders a conclusive consistency determination on behalf of all the state resource agencies. This provides applicants with a single state agency contact (DGC) to coordinate the project review and, if necessary, resolve any outstanding conflicts. It also provides a single state voice for communicating

the state's position on a project to federal permitting agencies.

- ° The consistency review regulations have streamlined the permitting process. Consistency determinations are completed in an average of 39 days. State resource agency permits are required to be issued within 5 days of the consistency determination. Previously, the state could take six months or longer to complete the review of a project for federal consistency with the Alaska Coastal Management Program (ACMP).
- ° If an applicant considers a decision by the State of Alaska to be unacceptable, opportunities exist to elevate a decision to policy makers of the state resource agencies for their reconsideration. Applicants are encouraged to participate in discussions of their project at each level of review.
- ° On request, DGC will assist applicants schedule pre-application meetings with all the concerned agencies (state, federal and local) to discuss their project prior to filing permit applications. At these pre-application meetings, agencies provide recommendations to an applicant for designing a project that will meet review criteria and ensure compliance with state, federal, and local requirements. Also, the applicant learns how the permit process works, who to contact for information, and what to expect during the review process. These pre-application meetings also provide a forum for informal agency contact to assess regulatory requirements for projects.
- ° A brochure which describes the state's consistency review to potential applicants has been mailed to approximately 5,000 potential applicants listed in business directories prepared by the Department of Commerce and Economic Development (attached). Part of the brochure includes a survey form which the applicant can return by mail to request additional assistance from DGC in dealing with the consistency review process.

Since January 1984, DGC has processed 1,959 project reviews. Of this total, more than 99% were found consistent. The average review period for these projects was 39 days. Following the review, all state and most federal permits are promptly issued.

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Division of Governmental Coordination
 Office of the Governor, State of Alaska
 P.O. Box AW
 Juneau, Alaska 99811

**30-Day and 50-Day
 Review Schedules**

Federal and state public notice requirements determine the review schedule for your project. A 30-day review schedule will be used if a public notice is not required and all associated state permits can be issued in 30 days. A 50-day review schedule will be used for projects with approvals requiring a public notice. These schedules limit the amount of time state agencies have to review your project and issue state permits if the project is found consistent with Alaska Coastal Management Program standards.*

	30-Day Review	50-Day Review
Consistency review begins	Day 1	Day 1
Deadline for regional reviewers to request additional information	Day 15	Day 25
Public and agency reviewer comments due	Day 17	Day 34
Notification of preliminary determination	Day 24	Day 44
Request for elevation	Day 29	Day 49
Conclusive consistency determination issued (unless elevation requested)	Day 30	Day 50
If elevated, director's determination	Day 45	Day 65
If elevated again, commissioner's determination	Day 60	Day 80

* These schedules may be extended only under circumstances outlined in 6 AAC 50.110.



Elevation (Appeal) Process

If you do not concur with the proposed determination on your project, you may request *elevation*, or further review by division directors within the state resource agencies. The directors review the proposed determination and any additional information included in the elevation request, then issue a second proposed determination.

You may then elevate the review to the commissioners of the resource agencies if the director-level review does not satisfy your interests. This is the final step in the administrative appeal process.

Each elevation review can take no longer than 15 days. State resource agencies and coastal districts may also request elevation. In actual practice, elevation has rarely been required.

For More Information

About a specific project, contact the DGC office nearest you:

Southeast Regional Office
 Division of Governmental
 Coordination
 P.O. Box AW, Suite 101
 431 North Franklin Street
 Juneau, AK 99811-0165
 Phone: (907) 465-3562

Southcentral Regional Office
 Division of Governmental
 Coordination
 2600 Denali Street, Suite 700
 Anchorage, AK 99503-2798
 Phone: (907) 274-1581

Northern Regional Office
 Division of Governmental
 Coordination
 Station H
 675 Seventh Avenue
 Fairbanks, AK 99701-4596
 Phone: (907) 456-3084

If you have any questions about the *Consistency Review Process* or the *Alaska Coastal Management Program*, contact:

Division of Governmental
 Coordination
 P.O. Box AW
 431 North Franklin Street
 Juneau, AK 99811-0165
 Phone: (907) 465-3562

Division of Governmental Coordination
 Office of the Governor, State of Alaska
 P.O. Box AW
 Juneau, Alaska 99811

How To Apply For State Permits In Alaska's Coastal Zone



stamp



The State of Alaska has a streamlined, coordinated system for reviewing applications and issuing permits for proposed projects that would affect natural resources in Alaska's coastal zone. It's called the *consistency review process*.

This brochure briefly outlines the consistency review process for applicants seeking resource-related state and federal permits.* The review process is more fully explained in state regulation 6 AAC 50. The consistency review process does not cover business licenses, municipal authorizations, or projects outside the coastal zone.

The Consistency Review Process Provides

- Quick answers to whether your project is in the coastal zone and what permits you need.
- A one-stop, consolidated state response to coastal development projects and related state and federal permit applications.
- Specific timeframes and deadlines for permit issuance.
- A fast appeal process.

* Federal agencies, please contact the Division of Governmental Coordination regarding procedures for direct federal actions.

The State Permitting Process

The consistency review process is based on the Alaska Coastal Management Program and is designed to improve management of Alaska's coastal land and water uses. Project proposals are reviewed to:

- Determine the project's consistency with the Alaska Coastal Management Program.
- Identify permits required by the state resource agencies, that is, the Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources.
- Trigger the issuance of necessary permits and other authorizations by state resource agencies.

Who Handles The Consistency Review Process?

If a federal permit or permits from more than one state agency are required, the consistency review process is coordinated by a regional office of the Division of Governmental Coordination in the Office of the Governor. If permits from only one state agency are required, the state agency responsible for issuing those permits coordinates the review.

To Start

Project applicants should complete the *Coastal Project Questionnaire* to determine which permits are needed. *Note: Placer miners see below.*

Copies of the questionnaire are available from the Division of Governmental Coordination (DGC), the resource agencies, or the U.S. Army Corps of Engineers (COE). Regional DGC contacts are shown on the back of this brochure. The COE has a toll-free telephone number: 1-800-478-2712.

Filling out the questionnaire properly is important and will help agencies process your project application without delays. If you have any questions or need assistance, contact a regional DGC or state agency office (listed on the questionnaire). The questionnaire includes a *Certification of Consistency* which must be completed and signed by you to meet federal requirements.

The Coastal Project Questionnaire will help identify which permits are needed, your contacts for the consistency review process and the DGC regional office that will be working with you.

Placer miners should submit a *Triagency Application* to the Department of Natural Resources (DNR) instead of completing the Coastal Project Questionnaire. Contact the DNR, Division of Mining and Geology, or the nearest DGC regional office for more information.

Preapplication Meetings Can Save You Time

Before you settle on your final project plans and submit your application, the state can arrange for meetings between you and state agency representatives. These can help identify concerns and information needs, and encourage a mutual understanding of the project. To arrange for a preapplication meeting, call or write the coordinating agency contact.

Review Begins When The Application Packet Is Complete

Consistency review begins upon receipt of your complete application packet, which will be prepared by you and the agencies. A complete packet includes:

- The Coastal Project Questionnaire and signed Certification of Consistency.
- Copies of any state permit applications needed for the project (originals go to the state agency issuing the permit).
- Copies of any federal permit applications needed for the project (originals go to the federal agency issuing the permit).
- Any additional pertinent information including public notices from agencies.

Who Reviews The Project ?

The participants in the review process include:

1. You, the applicant
2. State resource agencies and the Division of Governmental Coordination
3. The affected local coastal community
4. Other interested members of the public

Steps in the Review Process

Start-up

You will be notified when the review starts. You will receive your project's assigned review number, review schedule, and other information.

Information Requests

Agencies may request additional information from you up to the 25th day of the review. The coordinating agency may stop the review until that information is received.

Proposed Determination

After reviewing comments on the packet, the coordinating agency will develop a proposed consistency determination. It will be discussed with you, state resource agencies, and coastal districts.

Conclusive Determination

A conclusive consistency determination will be issued upon agreement of the proposed determination.

Permits

Agencies will issue state permits covered by the determination within five days after the conclusive consistency determination is issued.

see other side →

Name _____
 Organization _____
 Street (or Box #) _____
 City _____ State _____ Zip _____

Please send more detailed information on:

- Alaska Consistency Review Process
 The Alaska Coastal Management Program

I would attend a consistency review process workshop scheduled in my area.

Yes _____ No _____

DIVISION OF GOVERNMENTAL COORDINATION
COASTAL CONSISTENCY REVIEW PROCESS
RESULTS

Project Review and Permit Coordination

Development projects in Alaska are regulated by an interlocking web of federal, state, and local permits, leases, and other authorizations. Whether a project involves large investments, such as a major oil and gas project or a relatively small investment such as a residential fill project, all require some degree of review by federal, state, and local agencies before the project can move forward. As provided under AS 44.19.15 and 6 AAC 50, the Division of Governmental Coordination (DGC) coordinates the agency review of all required project permits within the state's coastal boundary. This coordination service means all state permits for a project are reviewed at the same time, permits are issued quickly (Table 1), and that the project applicant and federal permitting agencies has a single point of contact with the state.

DGC coordinates the balancing of different state interests and responsibilities through a process of agency consensus to yield a conclusive consistency finding on the proposed project. If an applicant or resource agency considers a proposed decision to be unacceptable, opportunities exist to elevate that decision to policy makers of the state resource agencies for their reconsideration. When a proposed coastal development project has been found consistent with applicable standards of the Alaska Coastal Management Program (ACMP), all project permits are promptly issued.

Regional offices are maintained in Anchorage, Fairbanks, and Juneau for the convenience of development project applicants and to facilitate timely project review and permit issuance by state resource agency personnel having the greatest familiarity with the natural resources of each region.

DGC's permit coordination process serves eight specific objectives which include:

1. Render a conclusive consistency determination for coastal projects that must be reviewed for consistency within the Alaska Coastal Management Program;
2. Streamline and expedite state reviews and decisions on coastal development projects;
3. Establish uniformity in the state's comments and decisions on direct federal actions of federally permitted development projects;

4. Eliminate repetitive reviews and decisions on the same projects;
5. Provide adequate opportunity for public and local participation in state decisions;
6. Assist applicants in the processing of state and federal permits;
7. Achieve balanced, factually documented decisions including consideration of the costs and benefits of requiring particular stipulations; and
8. Provide an interagency conflict resolution mechanism.

The result of this process is that the time and effort needed to obtain state approval for a variety of permits is significantly reduced especially for projects requiring several federal and state approvals.

The following table shows that the majority of projects reviewed for consistency are approved, and the average project review is completed in 39 days. Following the review, all state and most federal permits are promptly issued.

TABLE 1

Consistency Reviews Summary
January 1, 1984 - December 30, 1987

<u>Total Number of Projects Reviewed:</u>	1959
Projects Found Consistent:	1941
Projects Found Inconsistent:	18
<u>Total Number of Projects Elevated:</u>	15
Director Level:	9
Commissioner Level:	6
<u>Average Number of Days in Review:</u>	39

A few examples of DGC coordinated consistency review projects follow.

PLATINUM MINING Platinum mining occurred this year in the Goodnews Bay area within the Cenaliulriit coastal resource service area, in the Yukon-Kuskokwim region. Cenaliulriit has an approved coastal management program and actively participated in the consistency review, including site visits with state agency staff. DGC's consistency determination balanced several competing resource needs. The determination assured that mining could occur, that access would be provided to a subsistence berry-picking site, and that significant work was completed on a reclamation plan for an onsite anadromous fish stream.

RED DOG ROAD On behalf of the Alaska Industrial Development Authority, Cominco Alaska submitted a detailed permit package for the DeLong Mountain Transportation System, or the "Red Dog Road." DGC coordinated the review of the proposed port facility, the 54-mile road from the port to the mine, 16 material sites and access roads, a temporary construction camp, a solid waste disposal site, and tundra travel, interagency agreement on conditions for state approvals was reached in 43 days.

BRADLEY LAKE HYDROELECTRIC PROJECT Review of the Bradley Lake Hydroelectric Project included review of the final environmental impact statement and Federal Energy Regulatory Commission license, state and federal construction permits and leases (23 approvals), permanent camp permits (two approvals), and operational discharge permits and transmission line construction permits (three approvals). Each phase was found to be consistent with the standards of the Alaska Coastal Management Program.

DEFENSE ENVIRONMENTAL RESTORATION ACT The U.S. Army Corps of Engineers (COE) has been conducting a major effort to inventory and clean up former military sites across Alaska. DGC worked with COE and Defense Environmental Restoration Act Program staff to establish review procedures for these activities. Based on the COE's implementation schedule, DGC proposed a four-phase review process to satisfy state regulatory requirements without delaying the COE's schedule. This procedure has subsequently been used as the basis for numerous other project reviews.

- (1) supervise and administer the activities of the office;
- (2) advise the governor on matters of comprehensive state planning;
- (3) make an annual report to the governor of the activities of the office.

(b) The director may

(1) with the written concurrence of the governor, enter into contracts and subcontracts on behalf of the state to carry out the provisions of AS 44.19.141 — 44.19.152;

(2) act for the state in the initiation, investigation, evaluation of or participation in any program relative to the stated purpose of AS 44.19.141 — 44.19.152 which may involve more than one government or governmental unit;

(3) on behalf of the state, accept and expend any gifts or grants made to the state with the approval of the governor where such gifts or grants were made for the purposes of furthering the objectives of the office. (§ 1 ch 219 SLA 1970; am §§ 18, 19 ch 63 SLA 1983)

Revisor's notes. — Formerly AS 44.19.877. Renumbered in 1980. amendment substituted "office" for "division" throughout this section.

Effect of amendments. — The 1983

Sec. 44.19.145. Functions and duties of the office. (a) The office shall

(1) provide technical assistance to the governor and the legislature in identifying long range goals and objectives for the state and its political subdivisions;

(2) prepare and maintain a state comprehensive development plan;

(3) provide information and assistance to state agencies to aid in governmental coordination and unity in the preparation of agency plans and programs;

(4) review planning within state government as may be necessary for receipt of federal, state or other funds;

(5) participate with other countries, provinces, states or subdivisions of them in international or interstate planning, and assist Alaska's local governments, governmental conferences and councils, in planning and coordinating their activities;

(6) encourage educational and research programs that further state planning and development, and provide administrative and technical services for them;

(7) publish such statistical information or other documentary material as will further the provisions and intent of AS 44.19.141 — 44.19.152;

(8) assist the governor and the Department of Community and Regional Affairs in coordinating the activities of state agencies which have an impact on the solution of local and regional development problems;

(9) serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to federal, state or local governmental agencies in discharging their respective responsibilities or in obtaining federal or state financial or technical assistance;

(10) review all proposals for the location of capital improvements by any state agency and advise and make recommendations concerning location of these capital improvements;

(11) render, on behalf of the state, all federal consistency determinations and certifications authorized by 16 U.S.C. 1456 (§ 307, Coastal Zone Management Act of 1972), and a conclusive state consistency determination when a project requires two or more state or federal permits, leases, or authorizations.

(b) The office shall, in carrying out its functions, consult with local, regional, state and federal officials, private groups and individuals, and with officials of other countries, provinces and states, and may hold public hearings to obtain information for the purpose of carrying out the provisions of AS 44.19.141 — 44.19.152.

(c) The governor may establish coordinating or advisory planning groups.

(d) The office shall

(1) coordinate its services and activities with those of other state departments and agencies to the fullest extent possible to avoid duplication;

(2) prepare an integrated annual report on the long-range development program of the state and submit it to the governor for incorporation into the governor's report to the legislature;

(3) cooperate with the University of Alaska and other appropriate public and private institutions in research and investigations. (§ 2 ch 103 SLA 1966; am § 2 ch 219 SLA 1970; am § 2 ch 60 SLA 1972; am §§ 8, 10 ch 200 SLA 1972; am § 5 ch 207 SLA 1975; am § 20 ch 63 SLA 1983)

Revisor's notes. — Formerly AS 44.19.880. Renumbered in 1980.

Effect of amendments. — The 1983 amendment substituted "office" for "division"

throughout the section, made other minor word changes, and in subsection (1) revised the paragraph numbering and added paragraph (11).

Sec. 44.19.152. Definitions. In AS 44.19.141 — 44.19.152,

(1) "director" means the director of the office of management and budget;

(2) "office" means the Alaska office of management and budget. (§ 1 ch 219 SLA 1970; am § 13 ch 207 SLA 1975; am § 21 ch 63 SLA 1983)

Revisor's notes. — Formerly AS 44.19.881. Renumbered in 1980.

Effect of amendments. — The 1983 amendment repealed a former definition of "division," in the definition of "director"

substituted "office of management and budget" for "division of policy development and planning", added the definition of "office," and ordered the definitions alphabetically.

Article 1. Development of Alaska Coastal Management Program.

Section	Section
10. Development of Alaska coastal management program	60. Review and approval by council
20. Objectives	70. Standards for council review and approval
30. Development of district coastal management programs	80. Effective date of Alaska coastal management program
40. Duties of the Alaska Coastal Policy Council	90. Implementation of district coastal management programs
50. Action and submission by coastal resource districts	100. Compliance and enforcement

Collateral references. — 78 Am. Jur. 2d, Waters, §§ 59-116, 375-438. 65 C.J.S., Navigable Waters, §§ 10-18, 20-132; 93 C.J.S., Waters, §§ 71-85.

Sec. 46.40.010. Development of Alaska coastal management program. (a) The Alaska Coastal Policy Council established in AS 44.19.155 shall approve, in accordance with this chapter, the Alaska coastal management program.

(b) The council may approve the Alaska coastal management program for a portion or portions of the coastal area before approving the complete program under (a) of this section. Portions of the program approved under this subsection shall be incorporated into the Alaska coastal management program.

(c) The Alaska coastal management program shall be reviewed by the council and, when appropriate, revised to

(1) add newly approved district coastal management programs, or revisions and amendments to the Alaska coastal management program;

(2) integrate newly approved district coastal management programs, or revisions and amendments of district coastal management programs, with existing approved programs and with plans developed by state agencies;

(3) add new or revised state statutes, policies, regulations or other appropriate material;

(4) review the effectiveness of implementation of district coastal management programs; and

(5) consider new information acquired by the state and coastal resource districts.

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under AS 46.40.040. (§ 4 ch 84 SLA 1977)

NOTES TO DECISIONS

Stated in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982).

Sec. 46.40.030. Development of district coastal management programs. Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives and standards governing the use of resources within the coastal area of the district. The program shall be consistent with the guidelines and standards adopted by the council under AS 46.40.040 and shall include:

- (1) a delineation within the district of the boundaries of the coastal area subject to the district coastal management program;
- (2) a statement, list, or definition of the land and water uses and activities subject to the district coastal management program;
- (3) a statement of policies to be applied to the land and water uses subject to the district coastal management program;
- (4) regulations, as appropriate, to be applied to the land and water uses subject to the district coastal management program;
- (5) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to the land and water within the coastal area;
- (6) a summary or statement of the policies which will be applied and the procedures which will be used to determine whether specific proposals for land or water uses or activities shall be allowed; and
- (7) a designation of, and the policies which will be applied to the use of, areas within the coastal resource district which merit special attention. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — The adoption of forest practices regulations by the Department of Natural Resources in 11 AAC 95 has completely preempted the coastal policy council's regulations, 6 AAC 00.100, in regulating timber harvest and processing in the coastal area. April 20, 1981 Op. Att'y Gen.

The allocation of responsibility for administration of the forest practices regulations in coastal management consistency determinations is sufficiently unclear that it seems appropriate for resolution by the

adoption of regulations since differing policy considerations emphasized in the Forest Practices Act, the Coastal Management Act, and proposed permit reform regulations will be served to a greater or lesser extent by assigning responsibility for interpreting and applying the forest practices regulations to more than one agency and since a particular result is not compelled under the various pieces of authorizing legislation. April 20, 1981 Op. Att'y Gen.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
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Article 1. Development of Alaska Coastal Management Program.

Section	Section
10. Development of Alaska coastal management program	60. Review and approval by council
20. Objectives	70. Standards for council review and approval
30. Development of district coastal management programs	80. Effective date of Alaska coastal management program
40. Duties of the Alaska Coastal Policy Council	90. Implementation of district coastal management programs
50. Action and submission by coastal resource districts	100. Compliance and enforcement

Collateral references. — 78 Am. Jur. 65 C.J.S., Navigable Waters, §§ 10-18, 2d. Waters, §§ 59-116, 375-433. 20-132; 93 C.J.S., Waters, §§ 71-85.

Sec. 46.40.010. Development of Alaska coastal management program. (a) The Alaska Coastal Policy Council established in AS 44.19.155 shall approve, in accordance with this chapter, the Alaska coastal management program.

(b) The council may approve the Alaska coastal management program for a portion or portions of the coastal area before approving the complete program under (a) of this section. Portions of the program approved under this subsection shall be incorporated into the Alaska coastal management program.

(c) The Alaska coastal management program shall be reviewed by the council and, when appropriate, revised to

(1) add newly approved district coastal management programs, or revisions and amendments to the Alaska coastal management program;

(2) integrate newly approved district coastal management programs, or revisions and amendments of district coastal management programs, with existing approved programs and with plans developed by state agencies;

(3) add new or revised state statutes, policies, regulations or other appropriate material;

(4) review the effectiveness of implementation of district coastal management programs; and

(5) consider new information acquired by the state and coastal resource districts.

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under AS 46.40.040. (§ 4 ch 84 SLA 1977)

(5) "person" means an individual, municipal, public, or private corporation, or other entity, and includes a state agency and a local government;

(6) "processing" and "processing of applications" means the entire process followed in relation to the making of decisions on an application for a permit and review of it as provided in AS 46.35.030 — 46.35.080;

(7) "project" means any new activity or expansion of or addition to an existing activity, fixed in location, for which permits are required before construction or operation;

(8) "state agency" means a state department, commission, board or other agency of the state; for the purposes of this chapter "state agency" also means a local or regional air pollution control authority established under AS 46.03.210. (§ 1 ch 60 SLA 1977; am § 84 ch 74 SLA 1985)

Revisor's notes. — Paragraph (4) reorganized in 1987.

amendment substituted "unified municipality" for "municipality unified under AS 29.68.240 — 29.68.440" in paragraph (3).

Effect of amendments. — The 1985

Sec. 46.35.210. Short title. This Act may be cited as the Environmental Procedures Coordination Act. (§ 1 ch 60 SLA 1977)

Chapter 40. The Alaska Coastal Management Program.

Article

1. Development of Alaska Coastal Management Program (§§ 46.40.010 — 46.40.100)
2. Coastal Management Programs in the Unorganized Borough (§§ 46.40.110 — 46.40.180)
3. General Provisions (§§ 46.40.190 — 46.40.210)

Cross references. — For regulations for the Alaska Coastal Management Program, see 6 AAC 80 and 6 AAC 85.

Opinions of attorney general. — The activities of lessees, permittees and other private persons on nonexclusive federal coastal lands remain subject to state regulatory authority including the coastal management program unless the particular state regulation is preempted by, irreconcilably conflicts with or frustrates the

purpose of another federal law. February 3, 1978 Op. Att'y Gen.

While federal land use decisions will not be governed or controlled by the state's coastal management program, they must, to the degree that they directly affect nonfederal coastal resources, conform to the state program to the maximum extent practicable. February 3, 1978 Op. Att'y Gen.

NOTES TO DECISIONS

Stated in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982).

Sec. 46.40.030. Development of district coastal management programs. Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs policies, objectives and standards governing the use of resources within the coastal area of the district. The program shall be consistent with the guidelines and standards adopted by the council under AS 46.40.040 and shall include:

- (1) a delineation within the district of the boundaries of the coastal area subject to the district coastal management program;
- (2) a statement, list, or definition of the land and water uses and activities subject to the district coastal management program;
- (3) a statement of policies to be applied to the land and water uses subject to the district coastal management program;
- (4) regulations, as appropriate, to be applied to the land and water uses subject to the district coastal management program;
- (5) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to the land and water within the coastal area;
- (6) a summary or statement of the policies which will be applied and the procedures which will be used to determine whether specific proposals for land or water uses or activities shall be allowed; and
- (7) a designation of, and the policies which will be applied to the use of, areas within the coastal resource district which merit special attention. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — The adoption of forest practices regulations by the Department of Natural Resources in 11 AAC 95 has completely preempted the coastal policy council's regulations, 6 AAC 80.100, in regulating timber harvest and processing in the coastal area. April 20, 1981 Op. Att'y Gen.

The allocation of responsibility for administration of the forest practices regulations in coastal management consistency determinations is sufficiently unclear that it seems appropriate for resolution by the

adoption of regulations since differing policy considerations emphasized in the Forest Practices Act, the Coastal Management Act, and proposed permit reform regulations will be served to a greater or lesser extent by assigning responsibility for interpreting and applying the forest practices regulations to more than one agency and since a particular result is not compelled under the various pieces of authorizing legislation. April 20, 1981 Op. Att'y Gen.

Opinions of attorney general. — The doctrine of federal preemption, derived from the supremacy clause of the United States Constitution, Article VI, clause 2, would not apply to state regulation of outer continental shelf activities in the coastal zone. May 12, 1980 Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980 Op. Att'y Gen.

Municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal preemption may prohibit local coastal zone ordinances from affecting any measure of control. In the case of the latter, local coastal management programs which are approved by the Alaska Coastal Policy Council and thus

part of the Alaska Coastal Management Program will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the Coastal Zone Management Act, 16 U.S.C. § 1451 et seq. May 12, 1980 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980 Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980 Op. Att'y Gen.

Sec. 46.40.020. Objectives. The Alaska coastal management program shall be consistent with the following objectives:

(1) the use, management, restoration and enhancement of the overall quality of the coastal environment;

(2) the development of industrial or commercial enterprises which are consistent with the social, cultural, historic, economic and environmental interests of the people of the state;

(3) the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;

(4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority when compared to uses which do not economically or physically require a coastal location;

(5) the protection and management of significant historic, cultural, natural and aesthetic values and natural systems or processes within the coastal area;

(6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water usages adjacent to that land;

(7) the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs; and

(8) the full and fair evaluation of all demands on the land and water in the coastal area. (S 4 ch 84 SLA 1977)

CORRECTION

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(5) "person" means an individual, municipal, public, or private corporation, or other entity, and includes a state agency and a local government;

(6) "processing" and "processing of applications" means the entire process followed in relation to the making of decisions on an application for a permit and review of it as provided in AS 46.35.030 — 46.35.080;

(7) "project" means any new activity or expansion of or addition to an existing activity, fixed in location, for which permits are required before construction or operation;

(8) "state agency" means a state department, commission, board or other agency of the state; for the purposes of this chapter "state agency" also means a local or regional air pollution control authority established under AS 46.03.210. (§ 1 ch 60 SLA 1977; am § 84 ch 74 SLA 1985)

Revisor's notes. — Paragraph (4) reorganized in 1987. amendment substituted "unified municipality" for "municipality unified under AS 29.68.240 — 29.68.440" in paragraph (3).
 Effect of amendments. — The 1985

Sec. 46.35.210. Short title. This Act may be cited as the Environmental Procedures Coordination Act. (§ 1 ch 60 SLA 1977)

Chapter 40. The Alaska Coastal Management Program.

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1. Development of Alaska Coastal Management Program (§§ 46.40.010 — 46.40.100)
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Article 1. Development of Alaska Coastal Management Program.

<p>Section</p> <p>10. Development of Alaska coastal management program</p> <p>20. Objectives</p> <p>30. Development of district coastal management programs</p> <p>40. Duties of the Alaska Coastal Policy Council</p> <p>50. Action and submission by coastal resource districts</p>	<p>Section</p> <p>60. Review and approval by council</p> <p>70. Standards for council review and approval</p> <p>80. Effective date of Alaska coastal management program</p> <p>90. Implementation of district coastal management programs</p> <p>100. Compliance and enforcement</p>
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(b) The council may approve the Alaska coastal management program for a portion or portions of the coastal area before approving the complete program under (a) of this section. Portions of the program approved under this subsection shall be incorporated into the Alaska coastal management program.

(c) The Alaska coastal management program shall be reviewed by the council and, when appropriate, revised to

(1) add newly approved district coastal management programs, or revisions and amendments to the Alaska coastal management program;

(2) integrate newly approved district coastal management programs, or revisions and amendments of district coastal management programs, with existing approved programs and with plans developed by state agencies;

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(4) review the effectiveness of implementation of district coastal management programs; and

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part of the Alaska Coastal Management Program will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the Coastal Zone Management Act, 16 U.S.C. § 1451 et seq. May 12, 1980 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980 Op. Att'y Gen.

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(1) the use, management, restoration and enhancement of the overall quality of the coastal environment;

(2) the development of industrial or commercial enterprises which are consistent with the social, cultural, historic, economic and environmental interests of the people of the state;

(3) the orderly, balanced utilization and protection of the resource of the coastal area consistent with sound conservation and sustained yield principles;

(4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority when compared to uses which do not economically or physically require a coastal location;

(5) the protection and management of significant historic, cultural, natural and aesthetic values and natural systems or processes within the coastal area;

(6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water usages adjacent to that land;

(7) the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs; and

(8) the full and fair evaluation of all demands on the land and water in the coastal area. (S 4 ch 84 SLA 1977)

NOTES TO DECISIONS

Stated in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982).

Sec. 46.40.030. Development of district coastal management programs. Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives and standards governing the use of resources within the coastal area of the district. The program shall be consistent with the guidelines and standards adopted by the council under AS 46.40.040 and shall include:

- (1) a delineation within the district of the boundaries of the coastal area subject to the district coastal management program;
- (2) a statement, list, or definition of the land and water uses and activities subject to the district coastal management program;
- (3) a statement of policies to be applied to the land and water uses subject to the district coastal management program;
- (4) regulations, as appropriate, to be applied to the land and water uses subject to the district coastal management program;
- (5) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to the land and water within the coastal area;
- (6) a summary or statement of the policies which will be applied and the procedures which will be used to determine whether specific proposals for land or water uses or activities shall be allowed; and
- (7) a designation of, and the policies which will be applied to the use of, areas within the coastal resource district which merit special attention. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — The adoption of forest practices regulations by the Department of Natural Resources in 11 AAC 95 has completely preempted the coastal policy council's regulations, 6 AAC 80.100, in regulating timber harvest and processing in the coastal area. April 20, 1981 Op. Att'y Gen.

The allocation of responsibility for administration of the forest practices regulations in coastal management consistency determinations is sufficiently unclear that it seems appropriate for resolution by the

adoption of regulations since differing policy considerations emphasized in the Forest Practices Act, the Coastal Management Act, and proposed permit reform regulations will be served to a greater or lesser extent by assigning responsibility for interpreting and applying the forest practices regulations to more than one agency and since a particular result is not compelled under the various pieces of authorizing legislation. April 20, 1981 Op. Att'y Gen.

NOTES TO DECISIONS

Stated in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982).

Sec. 46.40.040. Duties of the Alaska Coastal Policy Council. Through the public hearing process and the recording of the minutes of the hearings, the Alaska Coastal Policy Council shall

(1) by regulation, adopt under the provisions of the Administrative Procedure Act (AS 44.62) not later than April 15, 1978, for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter, guidelines and standards for

(A) identifying the boundaries of the coastal area subject to the district coastal management program;

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

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

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

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

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

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

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

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

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

(5) develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state. (5 4 ch 84 SLA 1977; am 5 1 ch 129 SLA 1978)

Cross references. — For regulations for the Alaska Coastal Management Program, see 6 AAC 80 and 6 AAC 85.

Sec. 46.40.050. Action and submission by coastal resource districts. Each coastal resource district shall make substantial progress, in the opinion of the council, toward completion of an approvable district coastal management program and shall complete and submit to the council for approval its program within 30 months of June 4, 1977 or within 30 months of certification of the results of the district's organization, whichever is later. If, in the opinion of the council, after receipt of a written request for extension from the district which includes the reasons for the extension, an extension is considered proper, the council may grant an extension to a date which is not later than December 4, 1981, or to a date which is within 54 months of certification of the results of the district's organization, whichever is later. (§ 4 ch 84 SLA 1977; am § 1 ch 66 SLA 1979)

Sec. 46.40.060. Review and approval by council. (a) If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the council may grant summary approval of the district coastal management program, or may approve portions of the district program which are consistent.

(b) If the council finds that a district coastal management program is not approvable or is approvable only in part under (a) of this section, it shall direct that deficiencies in the program submitted by the coastal resource district be mediated. In mediating the deficiencies, the council may call for one or more public hearings in the district. The council shall meet with officials of the coastal resource district in order to resolve differences.

(c) If, after mediation, the differences have not been resolved to the mutual agreement of the coastal resource district and the council, the council shall call for a public hearing and shall resolve the differences in accordance with the Administrative Procedure Act (AS 44.62). After a public hearing held under this subsection, the council shall enter findings and, by order, may require

(1) that the district coastal management program be amended to make it consistent with the provisions of this chapter or the guidelines and standards adopted by the council;

(2) that the district coastal management program be revised to accommodate a use of state concern; or

(3) any other action be taken by the coastal resource district as appropriate.

(d) The superior courts of the state have jurisdiction to enforce orders of the council entered under (c) of this section (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — The invalid provisions of AS 46.40.080 are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44 62. The effective date of council action on district programs is governed by the council's regulations and this section. April 29, 1980 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980 Op. Att'y Gen.

Sec. 46.40.070. Standards for council review and approval.

(a) The council shall approve a district coastal management program submitted for review and approval if the program is consistent with the provisions of this chapter and the guidelines and standards adopted by the council.

(b) Notwithstanding an inconsistency of a district coastal management program submitted for review and approval with the guidelines and standards adopted, the council shall approve the program if it finds that

(1) strict adherence to the guidelines and standards adopted would result in a violation of another state law or policy;

(2) strict adherence to the guidelines and standards adopted would cause or probably cause substantial irreparable harm to another interest or value in the coastal area of the district; or

(3) the inconsistency is of a technical nature and no substantial harm would result to the policies and objectives of this chapter or the Alaska coastal management program.

(c) In determining whether a restriction or exclusion of a use of state concern is arbitrary or unreasonable, the council shall approve the restriction or exclusion if it finds that

(1) the coastal resource district has consulted with and considered the views of appropriate federal, state or regional agencies;

(2) the district has based its restriction or exclusion on the availability of reasonable alternative sites; and

(3) the district has based its restriction or exclusion on an analysis showing that the proposed use is incompatible with the proposed site.

(d) A decision by the council under this section shall be given within 90 days. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — Reading subsection (b) as vesting local officials with complete control over policy formulation would probably render the Alaska Coastal Management Act unconstitutional under Alaska Const., art. VIII, § 2. May 12, 1980 Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program,

would be enforceable against off-shore federal leasees. May 12, 1980 Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exclusion of municipal authority if that restriction or exclusion is reasonable,

within the meaning of subsection (c), May 12, 1980 Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and pro-

hibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program, May 12, 1980 Op. Att'y Gen.

Sec. 46.40.080. Effective date of Alaska coastal management program. The Alaska coastal management program adopted by the council, and any additions, revisions, or amendments of the program, take effect upon adoption of a concurrent resolution by a majority of the members of each house of the legislature or by a vote of the majority of the members of each house at the time the houses are convened in joint session to confirm executive appointments submitted by the governor. (§ 4 ch 84 SLA 1977)

Cross references. — For effective dates related to the Alaska Coastal Management Program, see 6 AAC 80.170(n) and 6 AAC 85.180. For resolution approving certain regulations under this section before the A.L.I.V.E. decision (discussed in notes below), see LR 41 in the 1978 Temporary and Special Acts and Resolves.

Opinions of attorney general. — Under the decision in *State v. A.L.I.V.E.*, Voluntary, Sup. Ct. Op. No. 2022 (File No. 3670), 606 P.2d 769 (1980), that the use of legislative resolutions as a veto over regulations, programs or other actions or pro-

posed actions is constitutionally impermissible except as expressly provided by the constitution, this section is invalid. March 6, 1980 Op. Att'y Gen.

The invalid provisions of section are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations, and AS 46.40.060. April 29, 1980 Op. Att'y Gen.

Sec. 46.40.090. Implementation of district coastal management programs. (a) A district coastal management program approved by the council and the legislature for a coastal resource district which does not have and exercise zoning or other controls on the use of resources within the coastal area shall be implemented by appropriate state agencies. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district.

(b) A coastal resource district which has and exercises zoning or other controls on the use of resources within the coastal area shall implement its district coastal management program. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district. (§ 4 ch 84 SLA 1977)

Sec. 46.40.100. Compliance and enforcement. (a) Municipalities and state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and the legislature and in effect.

(b) On petition of a coastal resource district, a citizen of the district, or a state agency, showing that a district coastal management program is not being implemented, enforced or complied with, the council shall convene a public hearing to consider the matter. A hearing called under this subsection shall be held in accordance with the Administrative Procedure Act (AS 44.62). After hearing, the council may order that the coastal resource district or state agency take any action which the council considers necessary to implement, enforce or comply with the district coastal management program.

(c) In determining whether an approved district coastal management program is being implemented, enforced or complied with by a coastal resource district which exercises zoning authority or controls on the use of resources within the coastal area, the council shall find in favor of the district if

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

(2) variances are being granted according to procedures and criteria which are elements of the district coastal management program, or the variance is otherwise approved by the council; and

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

(d) In determining whether a state agency is complying with a district coastal management program with respect to its exercise of regulation or control of the resources within the coastal area, the council shall find in favor of the agency if

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

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

(e) The superior courts of the state have jurisdiction to enforce lawful orders of the council. (§ 4 ch 84 SLA 1977)

Opinions of attorney general. — For programs, see notes under this heading following AS 46.40.080.

Article 2. Coastal Management Programs in the Unorganized Borough.

<p>Section 110 Authority in the unorganized borough 120 Coastal resource service areas 130 Organization of coastal resource service area</p>	<p>Section 140 Coastal resource service area boards 150. Elections in coastal resource service areas 160 Organization at the direction of the council</p>
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Section

170. Preparation of district coastal management program by the Department of Community and Regional Affairs

Section

180. Approval of programs in coastal resource service areas

Collateral references. — 78 Am. Jur. 2d. Waters, §§ 59-116, 375-438.

65 C.J.S., Navigable Waters, §§ 10-18, 20-132; 93 C.J.S., Waters, §§ 71-85.

Sec. 46.40.110. Authority in the unorganized borough. Under AS 29.03.020 and AS 46.40.110 — 46.40.180, the legislature authorizes organization of coastal resource service areas in the unorganized borough and grants authority to the service areas which may be organized to perform the duties required under this chapter. (§ 4 ch 84 SLA 1977).

Sec. 46.40.120. Coastal resource service areas. (a) Except as otherwise provided in this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area.

(b) The commissioner of the Department of Community and Regional Affairs may, after public hearings held in the area affected, consolidate two or more regional educational attendance areas as a single coastal resource service area

(1) if a substantial portion of the coastal area contains land and water area owned by the federal government over which it exercises exclusive jurisdiction or land held in trust by the federal government for Alaska Natives over which the state would not exercise control as to use; or

(2) if, after giving due consideration to the standards applicable to incorporation of borough governments and the likelihood that a borough will be incorporated within the area, the commissioner determines that the functions to be performed under this chapter could be undertaken more efficiently through the combination of two or more regional educational attendance areas as a single coastal resource service area.

(c) A determination under (b) of this section shall be made before organization of the coastal resource service area.

(d) For purposes of coastal zone management only, the commissioner of the Department of Community and Regional Affairs may, after public hearings held in the regional educational attendance area affected, divide an existing regional educational attendance area into no more than three coastal resource service areas according to geographic, cultural, economic, environmental, or other features relevant to coastal management planning. However

(1) each coastal resource service area formed by dividing an existing regional educational attendance area must contain at least one first class city or home rule city;

(2) a city within a coastal resource service area formed by dividing an existing regional educational attendance area may not elect to exclude itself from the coastal resource service area; and

(3) a coastal resource service area formed before June 1, 1980, may not be divided for coastal management planning purposes. (§ 4 ch 84 SLA 1977; am § 2 ch 129 SLA 1978; am §§ 1, 2 ch 48 SLA 1980)

Sec. 46.40.130. Organization of coastal resource service area.

(a) Organization of a coastal resource service area may be initiated

(1) by submission to the council of a petition signed by a number of registered voters equal to 15 percent of the number of votes cast within the coastal resource service area at the last state general election;

(2) by submission to the council of a resolution approved by the city council or traditional village council of not less than 25 percent of the number of cities and villages within the coastal service area; or

(3) at the direction of a majority of the members of the council in the manner set out in AS 46.40.160.

(b) Acting at the request of the council, the lieutenant governor, not less than 60 nor more than 90 days after receipt of a proper petition under (a)(1) of this section, a proper resolution under (a)(2) of this section, or at the direction of the council under (a)(3) of this section, shall conduct an election on the question of organization of a coastal resource service area. (§ 4 ch 84 SLA 1977)

Sec. 46.40.140. Coastal resource service area boards. (a) Each coastal resource service area, upon organization, shall have an elected board representing the population of the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts.

(b) A coastal resource service area board shall contain seven members. Board members shall be elected at large by the qualified voters of the coastal resource service area.

(c) The commissioner of the Department of Community and Regional Affairs, after consultation with residents of a coastal resource service area, may divide a service area into sections only for the purpose of nominating and electing board members. Division of a service area into sections for the purpose of nomination and election shall be in accordance with the provisions of AS 14.08.051(a). Division may be proposed in the petition submitted under AS 46.40.130(a)(1), in the resolution submitted under AS 46.40.130(a)(2), at the direction of the council under AS 46.40.130(a)(3), or may be proposed at any time by the members of the coastal resource service area board. If proposed by

the board, the division of the service area into sections is subject to approval of a majority of the qualified voters voting on the question in the coastal resource service area at the next regular election or at a special election called for that purpose and, if approved, takes effect at the next regular election of members of the coastal resource service area board.

(d) The term of office of a member of a coastal resource service area board is three years, except that the terms of the members of the first board elected after organization of a coastal resource service area shall be determined by lot, with two members serving one-year terms, two members serving two-year terms, and three members serving three-year terms. Members serve until their successors are elected and have qualified. This section does not prohibit the reelection of a board member.

(e) The lieutenant governor shall provide for the election of the members of coastal resource service area boards. The first election of board members shall occur not less than 60 nor more than 90 days after certification of the results of an organization election under AS 46.40.130(b) in which a majority of votes cast favors organization of the coastal resource service area.

(f) Except for the first election of members of coastal resource service area boards, elections shall be held annually on the date of election of members of regional educational attendance area boards under AS 14.08.071(b).

(g) A vacancy on a coastal resource service area board shall be filled by appointment as provided in AS 14.08.041(a) for vacancies in the membership of regional educational attendance area boards.

(h) Members of coastal resource service area boards are subject to recall on the same grounds and in the same manner as provided for recall of municipal officials in AS 29.26.240 — 29.26.350. The lieutenant governor functions in place of the assembly or council and municipal clerk for receipt and review of recall petitions and the conduct of recall elections. (§ 4 ch 84 SLA 1977; am § 85 ch 74 SLA 1985)

Effect of amendments. — The 1985 29.28.250" at the end of the first sentence amendment substituted "AS 29.26.240 — of subsection (h). 29.26.350" for "AS 29.28.130 —

Sec. 46.40.150. Elections in coastal resource service areas. Organization elections under AS 46.40.130 and other elections, including recall elections conducted under AS 46.40.140, shall be administered by the lieutenant governor in the general manner provided in the Alaska Election Code (AS 15). In addition, the lieutenant governor may adopt regulations necessary to the conduct of coastal resource service area board elections. The state shall pay all election costs. (§ 4 ch 84 SLA 1977)

Editor's notes. — The director of elections has succeeded to most of the administrative duties of the lieutenant governor under AS 15.10.105.

Sec. 46.40.160. Organization at the direction of the council.

(a) Whenever it appears that major economic development activity will occur in a coastal resource service area or in water adjacent to a coastal resource service area which has not been organized, the council may direct the lieutenant governor to submit to the voters of the service area the question of organization. The council may require an election on the question only after holding at least one public hearing within the area proposed for organization.

(b) In this section, "major economic development activity" includes a call for nomination by the Secretary of the United States Department of the Interior for leasing of tracts within petroleum basins in water of the outer continental shelf adjacent to the coastal resource service area or any other significant industrial or commercial activity which, in the opinion of the council, would commit the resources of the coastal area to a use of direct and significant impact upon the coastal water of the state. (§ 4 ch 84 SLA 1977)

Sec. 46.40.170. Preparation of district coastal management program by the Department of Community and Regional Affairs.

(a) If residents of a coastal resource service area reject organization of the service area at an election called for the purpose and the council finds, after public hearing, that major economic development activity has occurred or will occur within the service area, the council may direct the Department of Community and Regional Affairs to prepare and recommend for consideration by the council and for submission to the legislature a district coastal management program for the service area.

(b) At the request of the council, the Department of Community and Regional Affairs shall complete the district coastal management program in accordance with this chapter and the guidelines and standards adopted by the council for a coastal resource service area which has been organized but which has failed to make substantial progress in the preparation of an approvable district coastal management program within 18 months of certification of the results of an organization election or which has not submitted for approval to the council a program within 30 months of certification of the results of its organization election. Preparation of the program shall be conducted in consultation with the coastal resource service area and shall, to the maximum extent consistent with this chapter, reflect the expressed concerns of the residents of the service area.

(c) Before requesting the department to complete the district coastal management program under (b) of this section, the council shall meet with the members of the coastal resource service area

board to determine whether the board is able to complete a district coastal management program within the time limitations established in this section. (§ 4 ch 84 SLA 1977)

Sec. 46.40.180. Approval of programs in coastal resource service areas. (a) Before adoption by a coastal resource service area board, or by the Department of Community and Regional Affairs under AS 46.40.170, a district coastal management program shall be submitted for review to each city or village within the coastal resource service area. The council of a city or traditional village council shall consider the program submitted for review. Within 60 days of submission, the council of a city or traditional village council shall either approve the program or enter objections to all or any portion of the program.

(b) If a city or village within a coastal resource service area fails to approve a portion of the district coastal management program prepared and submitted for approval under (a) of this section, the governing body shall advise the coastal resource service area board or the department, as applicable, of its objections to the proposed program and suggest alternative elements or components for inclusion in the district coastal management program. New matter submitted by a city or village which is substantially consistent with the guidelines and standards adopted by the council shall be accepted and the district coastal management program modified accordingly. If a city or village fails to provide objections and suggested alternatives within the time limits established in this section, the coastal resource service area board or the department, as applicable, may adopt the district coastal management program as initially offered.

(c) Objection by a city council under (b) of this section is limited to objection to elements of the program affecting resources or the use of resources within the corporate limits of the city. Objection by a traditional village council under (b) of this section is limited to objection to elements of the program affecting resources or the use of resources within the village or within two miles of the village.

(d) For purposes of this section, "village" means an unincorporated community where at least 25 persons reside as a social unit as determined by the Department of Community and Regional Affairs. (§ 4 ch 84 SLA 1977)

Article 3. General Provisions.

Section
190. Cooperative administration
200. State agencies

Section
210. Definitions

Collateral references. — 78 Am. Jur. 2d, Waters, §§ 59-116, 375-438. 65 C.J.S., Navigable Waters, § 10-18, 20-132; 93 C.J.S., Waters, § 71-85.

Sec. 46.40.190. Cooperative administration. (a) A city within the coastal area which is not part of a coastal resource service area shall be included for purposes of this chapter within an adjacent coastal resource service area unless its governing body, by resolution adopted by a majority of its membership, chooses to exclude the city from an adjacent coastal resource service area and a copy of the resolution is filed with the commissioner of community and regional affairs.

(b) This chapter does not restrict or prohibit cooperative or joint administration of functions between a municipality and a coastal resource service area organized under the provisions of this chapter upon initiation of a mutual agreement for the purpose. A city which elects to be excluded from an adjacent coastal resource service area under (a) of this section shall enter into a mutual agreement for cooperative or joint administration of functions with the coastal resource service area board from the adjacent coastal resource service area. (§ 4 ch 84 SLA 1977; am § 3 ch 48 SLA 1980)

Sec. 46.40.200. State agencies. Upon the adoption of the Alaska coastal management program, state departments, boards and commissions shall review their statutory authority, administrative regulations, and applicable procedures pertaining to land and water uses within the coastal area for the purpose of determining whether there are any deficiencies or inconsistencies which prohibit compliance with the program adopted. State agencies shall, within six months of the effective date of the Alaska coastal management program, take whatever action is necessary to facilitate full compliance with and implementation of the program, including preparation and submission of recommendations to the council for additional or amended legislation. (§ 4 ch 84 SLA 1977)

Sec. 46.40.210. Definitions. In this chapter, unless the context otherwise requires,

(1) "area which merits special attention" means a delineated geographic area within the coastal area which is sensitive to change or alteration and which, because of plans or commitments or because a claim on the resources within the area delineated would preclude subsequent use of the resources to a conflicting or incompatible use, warrants special management attention, or which, because of its value to the general public, should be identified for current or future

planning, protection, or acquisition; these areas, subject to council definition of criteria for their identification, include:

(A) areas of unique, scarce, fragile or vulnerable natural habitat, cultural value, historical significance, or scenic importance;

(B) areas of high natural productivity or essential habitat for living resources;

(C) areas of substantial recreational value or opportunity;

(D) areas where development of facilities is dependent upon the utilization of, or access to, coastal water;

(E) areas of unique geologic or topographic significance which are susceptible to industrial or commercial development;

(F) areas of significant hazard due to storms, slides, floods, erosion or settlement; and

(G) areas needed to protect, maintain, or replenish coastal land or resources, including coastal flood plains, aquifer recharge areas, beaches and offshore sand deposits;

(2) "coastal resource district" means each of the following which contains a portion of the coastal area of the state:

(A) unified municipalities;

(B) organized boroughs of any class which exercise planning and zoning authority;

(C) home rule and first class cities of the unorganized borough or within boroughs which do not exercise planning and zoning authority;

(D) second class cities of the unorganized borough, or within boroughs which do not exercise planning and zoning authority, which have established a planning commission, and which, in the opinion of the commissioner of community and regional affairs, have the capability of preparing and implementing a comprehensive district coastal management program under AS 46.40.030;

(E) coastal resource service areas established and organized under AS 29.03.020 and AS 46.40.110 — 46.40.180;

(3) "council" means the Alaska Coastal Policy Council;

(4) "department" means the Department of Community and Regional Affairs;

(5) "use of direct and significant impact" 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;

(6) "uses of state concern" means those land and water uses which would significantly affect the long-term public interest; these uses, subject to council definition of their extent, include:

(A) uses of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;

(B) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal resource district;

(C) the siting of major energy facilities, activities pursuant to a state oil and gas lease, or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;

(D) facilities serving statewide or interregional transportation and communication needs; and

(E) uses in areas established as state parks or recreational areas under AS 41.21 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20. (§ 4 ch 84 SLA 1977; am § 3 ch 129 SLA 1978; am § 86 ch 74 SLA 1985)

Effect of amendments. — The 1985 AS 29.68.240 — 29.68.440" at the end of amendment deleted "established under subparagraph (A) of paragraph (2).

Chapter 45. Northwest Interstate Compact on Low-level Radioactive Waste Management.

Section

10. Compact enacted
20. Implementation

Sec. 46.45.010. Compact enacted. The Northwest Interstate Compact on Low-Level Radioactive Waste Management, as contained in this section, is enacted into law and entered into on behalf of the State of Alaska with any and all other states legally joining it in a form substantially as follows:

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

ARTICLE I. POLICY AND PURPOSE.

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens